

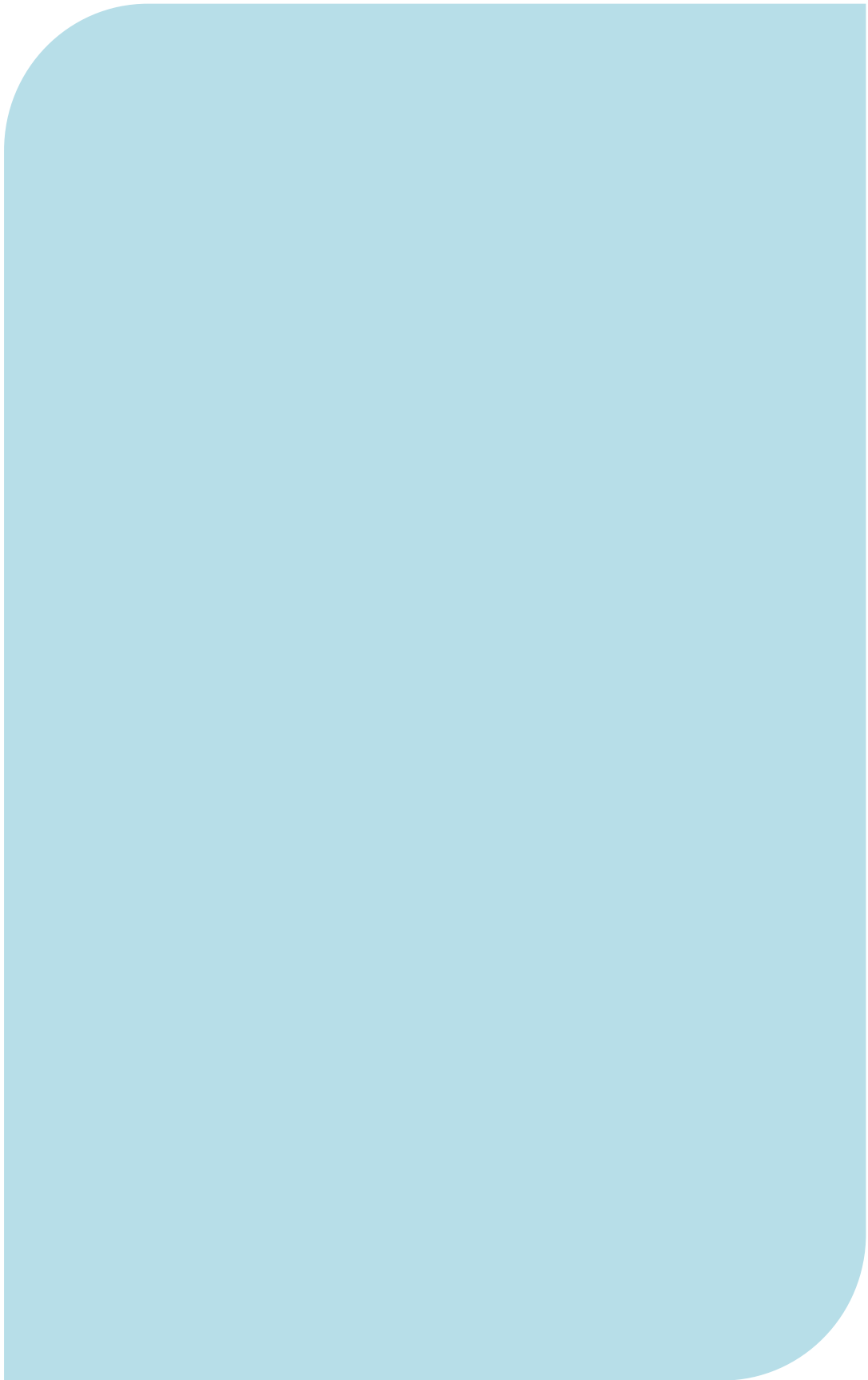


Office of Surveillance
Commissioners

ANNUAL REPORT

of the Chief Surveillance Commissioner
to the Prime Minister and
to the Scottish Ministers
for 2015-2016

HC 214
SG/2016/66



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for **2015-2016**

Chief Surveillance Commissioner:
The Rt. Hon. Lord Judge

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

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to be printed on 7 July 2016

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by the Scottish Ministers
7 July 2016

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1. Introduction

- 1.1. This report covers the period 1st April 2015 to 31st March 2016.
- 1.2. In July 2015 I succeeded Sir Christopher Rose as the Chief Surveillance Commissioner. He had held the office since 2006. Together with his predecessor, Sir Andrew Leggatt, he established the essential principles which govern the way in which the Office of Surveillance Commissioners (OSC) discharges its responsibilities. The most important principles are its determined independence of government departments, law enforcement agencies, and Ministers, and the consistent high quality of those who work in the OSC and are responsible for the performance of its statutory responsibilities. I have been fortunate to take over from Sir Christopher an independent body which includes former senior judicial office holders and retired senior police officers who work together as a team to provide what is now being described as a “double lock” arrangement in relation to the most serious kinds of covert activity.
- 1.3. My very firm impression, following a number of visits to various police forces throughout the United Kingdom, is that the work of the OSC is welcomed. It provides a constant check on the arrangements made by each individual law enforcement agency or other authority to ensure compliance with the relevant statutory provisions, and offers guidance or makes recommendations to improve standards. In the overwhelming majority of cases these are accepted with alacrity. Like the OSC, they are indebted to Sir Christopher. His leadership created enthusiasm and commitment among those working for the OSC and respect and high standing with the authorities over which it has authorisation and supervisory responsibilities.
- 1.4. I believe that the structures and practical arrangements adopted by the OSC would provide a sound template for the body which will be created to exercise statutory responsibilities over surveillance matters after the enactment of the Investigatory Powers Bill.
- 1.5. The statutory responsibilities of the OSC are to keep under review:
 - (i) the performance of functions under Part III of the Police Act 1997 (PA 97);
 - (ii) except in relation to the interception of communications and intelligence services, the exercise and performance of the powers and duties conferred by or under Parts II and III of the Regulation of Investigatory Powers Act 2000 (RIPA); and
 - (iii) 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).

Following public disquiet at the revelation of serious impropriety during the course of some notorious police undercover operations, by the Regulation of Investigatory Powers (Covert Human Intelligence Sources; Relevant Sources) Order 2013 and the Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 a new supervisory responsibility in relation to undercover operations (described as “relevant sources”) was added to the OSC’s statutory responsibilities.

- 1.6.** Every single authority vested with any of the powers which fall within the ambit of the responsibilities of the OSC is subject to scrutiny and inspection. The arrangements for approval, inspection and oversight have been carefully structured to try and ensure that so far as humanly possible the powers created by the relevant legislation are lawfully exercised. The specific duties of the OSC and the way in which they are discharged have been explained in the reports of my predecessor. They can also be found on the OSC website. I see no advantage in repetition.
- 1.7.** Where surveillance powers falling within the OSC ambit of responsibility are most frequently exercised, Police Forces, and all the major law enforcement agencies like HMRC and the National Crime Agency, are subject to a detailed annual inspection. A number of authorities, like the Health and Safety Executive and the Serious Fraud Office are inspected every other year. Every Council throughout the United Kingdom (whether Unitary, Metropolitan, County, District, London Borough, Scottish or Welsh) and a number of other authorities are inspected every three years. A full list of the authorities subject to the inspection regime, and the frequency of inspection, is found at Appendix C. When necessary, for the purposes of this Annual Report a distinction is sometimes drawn between “law enforcement agencies” (those that fall within the first category) and “public authorities” or “authorities” (the others).
- 1.8.** I also act as the Investigatory Powers Commissioner for the Sovereign Base Areas, Cyprus, under the Regulation of Investigatory Powers Ordinance 2012. Following each inspection I report to the Administrator of the Sovereign Base Areas. I have decided that, for the time being, it is only necessary for that inspection to be carried out once every two years.
- 1.9.** Like earlier Annual Reports by the OSC (which can be found on the website) this report addresses the way in which its statutory responsibilities have been discharged. The statutory provisions which govern my responsibilities require me to report annually. I shall continue the practice of preparing a single report which addresses them all.
- 1.10.** During the period under report neither my predecessor nor I have had any occasion to make a report to the Prime Minister or to Scottish Ministers about matters arising from the exercise of the powers conferred by the legislation.

2. Overview of the year

- 2.1. The statistics relating to property interference, intrusive surveillance, directed surveillance and covert human intelligence sources (CHIS), including “relevant sources”, are set out in section 4.
- 2.2. The returns for the reporting year have seen a marked improvement, thanks to a concerted effort on the part of the OSC Secretariat to ensure that all returns were provided, and in good time. We have received returns from every public authority but despite frequent requests, have not heard from the following: Cumbria County Council & Fire and Rescue Service, and Luton Borough Council. The statistics continue to indicate an overall downturn in the number of authorisations, with the exception of a rise in the number of directed surveillance authorisations by the Department for Work & Pensions (DWP), which has increasingly taken over the type of investigation traditionally managed by local councils.

Reduced use by public authorities

- 2.3. From the inspections which the OSC has carried out throughout the country, it is difficult to avoid the conclusion that the reduced number of authorisations (DWP being an exception) for covert activity is directly related to the substantial savings or budgetary cuts required of public authorities. These impact on public authorities in a number of different ways, the most obvious of which is that many of them - most notably local district and borough councils - do not deploy their statutory powers, or do so very rarely indeed, and do not intend or expect to do so in future. However, while they remain vested with these powers, the appropriate structures and training must continue to be in place so that if they come to be exercised, the exercise will be lawful. If the present trend continues, however, the question will arise whether the powers should continue to be vested in small public authorities. My predecessor emphasised that the responsibilities of the Chief Surveillance Commissioner do not extend to promoting or discouraging the use of covert surveillance powers. I agree with him. If and when this question arises, it must be decided by Parliament, and, subject to any legislation, by the authority itself.

Equipment

- 2.4. One unsurprising result of the new arrangements vesting responsibility on the OSC in relation to “relevant sources” has been a significant increase in the work of the Surveillance Commissioners. My predecessor expressed dissatisfaction in many of his annual reports about the antiquated equipment with which the OSC is required to communicate with law enforcement agencies. The problems impinge on all areas of OSC work. Authorisations, approvals, renewals and cancellations (indeed all communications are highly confidential) must therefore be dealt with through secure methods of communication. It is unfortunate, and ultimately wasteful of limited resources, that although these issues have been raised time and again, they remain unresolved, and with the additional responsibilities now vested in the OSC the

issue has become urgent. In brief, delays and impediments to working arrangements brought about by the absence of suitable secure and reliable means of communication between the OSC and the agencies continue when they should be reduced, so far as possible, to extinction. To alleviate these problems in urgent cases there have been occasions when police officers have travelled very many miles to provide a Surveillance Commissioner with the necessary material to enable him to decide whether an authorisation, or renewed approval, is appropriate. The waste is obvious. The successful achievement of the ambitious proposals for reform and improvement of the arrangements for surveillance, at any rate as presently reflected in the Investigatory Powers Bill, is dependent on the provision of effective means of secure communication.

Website

- 2.5.** During the last year preparations were made to update what is now a fairly tired looking OSC website. Due to matters outside my control the cost of updating proved to be disproportionate to what it was hoped to achieve. In the light of the imminent changes likely to follow the enactment of the Investigatory Powers Bill the website will for the time being remain in its current format.

Collaboration agreements

- 2.6.** There is a steady growth in formal collaborations or “alliances” between police forces, under section 22A-23I of the Police Act 1996, as amended and expanded by the Policing and Crime Act 2009 and the Police Reform and Social Responsibility Act 2011. As far as the OSC is concerned these arrangements are the exclusive responsibility of the relevant Chief Constables. Sometimes collaborative agreements address different common problems without always encompassing the same forces. So five forces may be involved in one collaborative agreement, three in another, and some, for example in the context of counter terrorism, may affect six forces.
- 2.7.** From the OSC point of view, particularly when regional collaborations bear on matters such as undercover police activity or national security, the lines of responsibility of authorising officers, and controllers and handlers, who are attached to individual forces but who for the time being are acting in support of a collaboration arrangement, require careful study. Police operations have become more complex and more extensive, particularly in the context of national security. My impression is that the greater the number of forces involved, the greater the eventual cohesion, provided Chief Constables are able to find common ground about the identity of the officers who should be vested with responsibility for statutory compliance. Authorising officers are faced with increasingly sensitive decisions relating to the “necessity” and “proportionality” of the proposed covert activity, and any consequent collateral intrusion and, in the context of some operations, high levels of risk to human intelligence sources including undercover police officers. With the increasing collaboration agreements it is now even more bizarre that responsibilities for

surveillance issues as a whole are currently handled by three different bodies, each of which operates in its own distinctive way. Considerations like these form the basis for my warm support for the proposals made by David Anderson QC, and now anticipated in the Investigatory Powers Bill, for the discharge of responsibilities for surveillance (in the very broadest sense) to be vested in a single unified body.

The “virtual world”

- 2.8.** There is a discernible shift towards criminal activity in or by the use of what I may describe as the “virtual world”. This increases the demands on those responsible for covert surveillance. They need an understanding of the technological advances and myriad types of communication and storage devices which are constantly being updated. They also need assistance about how the statutory powers available to them can or should be applied to technological developments of which criminals take advantage, factoring in potential regional, national or international boundaries. The developments, complex as they can be, do not diminish the requirement that any surveillance activity can only be undertaken in accordance with the provisions of the relevant authorisation.

Resources

- 2.9.** The burden on the OSC Inspectors and the Assistant Surveillance Commissioners when they carry out their inspections of the larger law enforcement agencies continues to increase. The issues are more complex. The additional responsibilities arising in relation to undercover police operations are significant. At the moment the inspections of the large agencies usually last for a week, and often involve a number of Inspectors. Preparation of a detailed and penetrating report to me follows every inspection. With local authorities, an inspection is carried out by a single Inspector, and is usually completed within a day. Again, a detailed report follows.

Changed arrangements for inspection of local authorities

- 2.10.** To address the increasing demands on OSC resources I shall be introducing a new system of inspection for some local authorities. In essence, where the statutory powers have not been used at all, or have been very rarely used in the last three years since a previous inspection, the process will start on paper, with a request for information. An Inspector or Assistant Surveillance Commissioner will visit the authority if there has been any significant increase in the use of the statutory powers, or if the responses to the OSC paper give ground for concern, or if the authority itself requests a personal visit by an Inspector. In short, there will be no automatic visit, but whether there is or not, I shall be provided with a written report, and form my own judgement.

Budget

- 2.11.** Expenditure by the OSC is summarised at Appendix D. This year the budget was £1.7 million, and as usual, there was an underspend, this year of £37,945.

Advice and assistance

- 2.12.** My office has continued the practice of identifying features of the legislation which are unclear or where limitations within it, or the Codes of Practice, have been identified during the inspections. For example, one of my Inspectors identified an error in the Code of Practice for Scotland which concerned the correct levels of authorisations as they applied to particular public authorities. Once this was drawn to the attention of the government, it was remedied and will be included when the Code is updated. From time to time the OSC is asked to provide legal advice. In principle our responsibilities do not extend to the provision of formal legal advice, but in practice, during the course of inspections, the Inspectors provide informal assistance, for example, by drawing attention to the relevant provisions in the Codes of Practice, and indeed it is an integral part of the inspection process that all relevant issues are open for discussion.

Media

- 2.13.** Media interest in the work of the OSC is not at present as high as it was when concerns were being publicly expressed about a number of questionable aspects of undercover police work. The focus has now shifted towards the Investigatory Powers Bill, introduced for consultation towards the end of 2015, and the Inquiry under Lord Justice Pitchford into undercover policing. The OSC will of course co-operate with that Inquiry, and discussions have already taken place about how best this can be achieved.

Appointments

- 2.14.** The OSC has continued to suffer from delays in the arrangements to secure reappointments and appointments of Surveillance Commissioners, Assistant Surveillance Commissioners and Surveillance Inspectors. The recruitment of a new Surveillance Inspector took several months. At the end of summer 2015 the process to seek the reappointment of one Surveillance Commissioner and two Assistant Surveillance Commissioners, as well as the replacement of one England and Wales and one Scotland-based Commissioner, began. At present only the single reappointment of a Surveillance Commissioner has been resolved, and that only occurred a few days before his appointment would otherwise have expired. At the time of finalising this report, I am aware that potential candidates have been identified to replace two retiring Surveillance Commissioners, but they will not be able to take up their new

appointments immediately on the retirement of their predecessors. None of this is satisfactory. Discussions between the OSC, the Ministry of Justice and the office of the Lord Chief Justice should now produce an improved and more rapid process.

Conclusion of overview

- 2.15.** This overview should end with me recording formally how impressed I have been with the close attention paid by Chief Constables and officials with responsibilities in relation to covert surveillance to secure compliance with the complex legislative provisions which govern it. It is now very rare for an authorisation to be sought when the conditions have not been carefully addressed and satisfied. If so they are rejected. If a Surveillance Commissioner rejects a proposed authorisation, there is a right of appeal to me, as Chief Surveillance Commissioner. This year there have been no appeals. The pleasing reality is that casual, unconsidered applications to the Surveillance Commissioners are not made. To the contrary, applications for permission to proceed with covert activity are not undertaken lightly or without a very high level of scrutiny and careful deliberation. Once an authorisation has been granted, genuine efforts are made to comply strictly with its terms. Inevitably, from time to time, breaches occur or are thought to have occurred. The statistics relating to irregularities is dealt with in more detail later in this report at paragraph 4.17.
- 2.16.** All irregularities are notified to me, together with the report of the circumstances in which they occurred and the remedial steps which have been or will be taken, immediately or as soon as practicable after they are discovered. During the course of annual inspections all the relevant material is once again examined. Where any such breaches have occurred the papers are also retained by the relevant agency or authority for onward disclosure to the Crown Prosecution Service in the event of a prosecution, and thereafter, in the usual way, full disclosure to the defence, and, if necessary, for a ruling by the trial judge on the exclusion of evidence, and possibly on an argument based on abuse of process. Human error, in the course of urgent investigations, coupled with complex legislative provisions, is inevitable. On very isolated occasions when evidence emerges that an individual police officer may have deliberately sought to evade the legislative processes, senior officers investigate urgently and in-depth and keep me fully informed. In short, my experience as Chief Surveillance Commissioner is that the powers created by the legislation are exercised with great circumspection, following careful analysis of whether and what form of covert surveillance is both “necessary” and “proportionate” and, with appropriate caution, where, collaterally, it may impact on those against whom there are no grounds for suspecting serious criminal conduct. I believe that the system of checks and balances is working well. This is immensely reassuring to me personally.

3. Particular matters relating to the OSC

- 3.1.** The OSC guidance. Until now the circulation of the OSC guidance was limited to those working within public authorities empowered to use covert surveillance. This guidance, last issued in December 2014, has been updated to those who have received it in August and November 2015. To date, therefore, it has not been a public document. After taking the views of Chief Constables and others, and discussing the issues with the Surveillance Commissioners and Inspectors, I have decided that this document should be made public. It will shortly become available to anyone who wishes to see it. When this Annual Report is published, the Guidance will be available on the website. It will provide a wider perspective of the circumstances in which covert surveillance is authorised and supervised. As a footnote; the Guidance does not replace the legislative provisions or the associated Codes of Practice.
- 3.2.** In accordance with long-standing arrangements, the Surveillance Commissioners, Assistant Surveillance Commissioners and the Surveillance Inspectors have met together on three occasions, at approximately 4 monthly intervals. The collegiate approach to the discharge of our responsibilities is immensely valuable. Problems are discussed by a body with immense collective experience of the practical realities of policing and, simultaneously, of the operation of criminal justice. When I need advice it is readily forthcoming and I am grateful for it.
- 3.3.** In July we extended the meeting to enable us to receive a presentation from members of West Midlands Police, who were working at the forefront of investigations which involve the use of an “on line” presence to deal with high levels of criminality. In November our meeting took place at the National Crime Agency when a number of officers provided us with a valuable insight into operational developments and technological advances. Although these presentations are not formalised as training for the OSC, in reality we are being kept up-to-date.
- 3.4.** Members of my Inspectorate have continued to represent the OSC on courses organised for authorising officers. This has included contributing to training provided by the College of Policing, by the Police College for Scotland, and other interested organisations. On two occasions I have myself spoken at the College of Policing at Ryton. The essence of the message given by the OSC to authorising officers is that they must carefully examine every application, and that in making their decision whether to seek OSC approval, they must act independently of any other officer, however senior. They carry exclusive responsibility for the application to the OSC. The capacity of the OSC to attend these and similar courses is not unlimited, and the additional burdens referred to earlier in this report are likely to lead to some reduction in the courses we can attend.

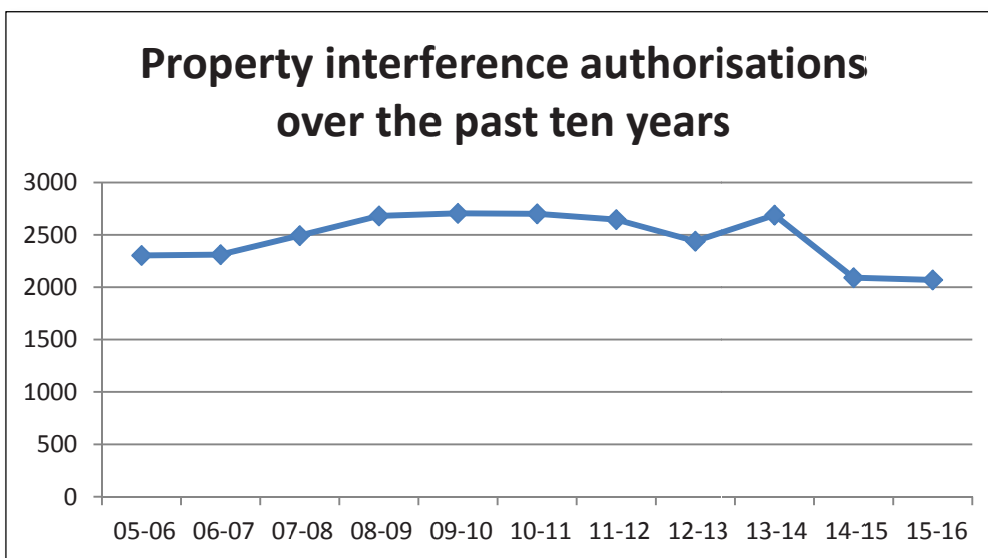
- 3.5.** The Chief Surveillance Inspector and one of the Surveillance Inspectors attended the inaugural annual conference focusing on undercover policing. On the same issue, I have spoken at a weekend training session. The Chief Surveillance Inspector, with a different Surveillance Inspector, attended a conference held by the Home Office Science Centre for Applied Science and Technology. Together the Chief Surveillance Inspector and I participated at an event held at King's College London, and hosted by Justice, to examine "*A Surveillance Framework for a Digital Age; Authorisation, Oversight and the Judiciary*".
- 3.6.** As part of my responsibilities I have been very keen to meet as many of those who play important roles in this area of law enforcement and investigation. Before taking over from Sir Christopher Rose I was able to accompany many of the OSC Inspectors and Assistant Surveillance Commissioners as they carried out their inspections of police forces, national agencies such as the National Crime Agency and HMRC, and prisons. I also accompanied Sir Christopher on his post report follow-up meetings with Chief Constables. Again, this did not constitute formal "training", but in reality that is what it was, and I was grateful for it. In the meantime my own programme of post report visits has continued.
- 3.7.** I have been involved in many meetings to discuss the Investigatory Powers Bill and its implications for the OSC. For this purpose I have engaged with policy officials at the Home Office as well as my fellow oversight Commissioners. In December 2015 and March this year I gave evidence before Parliamentary committees concerned with the new Bill. In January 2016 I visited Scotland, and apart from my meeting with Police Scotland, accompanied by the two Surveillance Commissioners from Scotland and the Chief Surveillance Inspector, I met with the Scottish Justice Secretary. This was the first such meeting, and it underlines the broad nationwide remit of the OSC.
- 3.8.** The Chief Surveillance Inspector is a member of the Covert Legislation and Guidance Peer Review Group. She continues to liaise with the Chair and Secretary of the National Undercover Working Group. Quite separately from our joint meetings she engages with the Home Office and her opposite numbers in the other oversight bodies.
- 3.9.** In his final report Sir Christopher made reference to the impressive knowledge base of the team at the OSC, and commented on the cooperation and camaraderie that prevails. I echo this finding, not least as it applies to the small Secretariat, well led by Mark Ogunjumo, who, as an indication to his commitment to the public service, was recently promoted to Sergeant in the Special Constabulary. Finally nothing is too much trouble for my Chief Surveillance Inspector, Clare Ringshaw-Dowle, who is held in the highest possible regard by a discerning group of retired senior judges and senior police officers who are not easily impressed, and can see through flurry and flannel. In a wholly understated, unfussy way she gives cohesion to the OSC, and encourages us all to yet greater efforts.

- 3.10.** A word of thanks, too, to the staff of the Security and Protection Group at the Northern Ireland Office, and the staff of the Police Division of the Scottish Government for the valuable administrative support they provide to the Commissioners in Northern Ireland and Scotland respectively. Beyond them there are many people I had met during the last year whether on inspection observations, follow-up discussions, conferences and training courses who, apart from personal kindness, have demonstrated during conversations and discussions how seriously they take their duties.
- 3.11.** Apart from the retirement of Sir Christopher Rose himself, the OSC has lost one of the Surveillance Commissioners, Sir William Gage, formerly a Lord Justice of Appeal, who has retired after six years service. Two Surveillance Inspectors, Mr Andrew Mackian and Mr Kevin Davis, retired in October 2015 and March 2016 respectively. All three will be difficult to replace, even after the system for new appointments achieves a degree of acceleration. A member of the secretariat, Mrs Ruby Durasamy, left on promotion to the Cabinet Office. We wish her every success.

4. Statistics

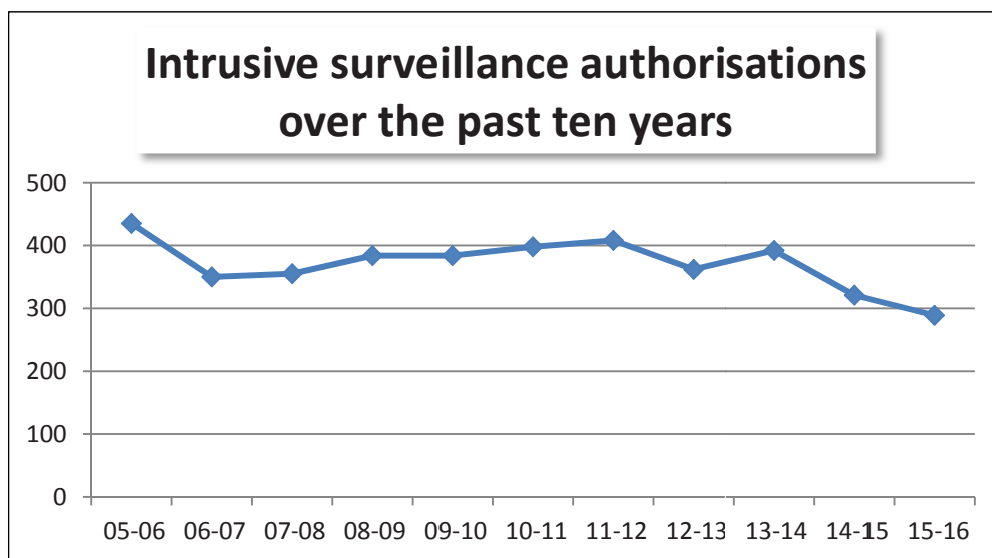
- 4.1. My starting point is the observation of my predecessor. Statistics can only provide a general record. Before conclusions are drawn from any statistic it should be seen as part of an overall context. What is more, like him, I also emphasise that the responsibilities of the OSC do not include either the promotion or discouragement of activities which fall within the ambit of the legislation. Policy is for the relevant public authority.
- 4.2. Statistics provided by law enforcement agencies for property interference and intrusive surveillance authorisations during the last three years are set out at Appendices A and B. The graph comparisons below show the overall trend for each type of activity during the last 10 years. Graphs also show the number of authorisations for directed surveillance and covert human intelligence sources (CHIS).
- 4.3. Separate statistics are provided for the use made of “relevant sources”, better known as undercover officers, following the coming into force of SI 2013/2788 in England and Wales and SI 2014/329 in Scotland. The necessary balance between the provision of sufficient material to meet the public interest and the disclosure of information that might assist criminals, is achieved by the provision of details of the number of authorisations throughout the United Kingdom, as notified to the OSC between 1 April 2015 and 31 March 2016; the number of cancellations notified to the OSC; and the number of those submitted for prior approval for renewal as a long-term relevant source. However the particular operations in which undercover officers are deployed are excluded. Dealing with it generally, typical activities include the infiltration of organised crime networks, involving criminal activity of the most serious kind, together with arrangements for “test purchasing” to detect the trading of drugs or stolen goods.
- 4.4. The statistical analysis is based on a return rate of 100% from law enforcement agencies, and 99% from all other public authorities.

Property interference



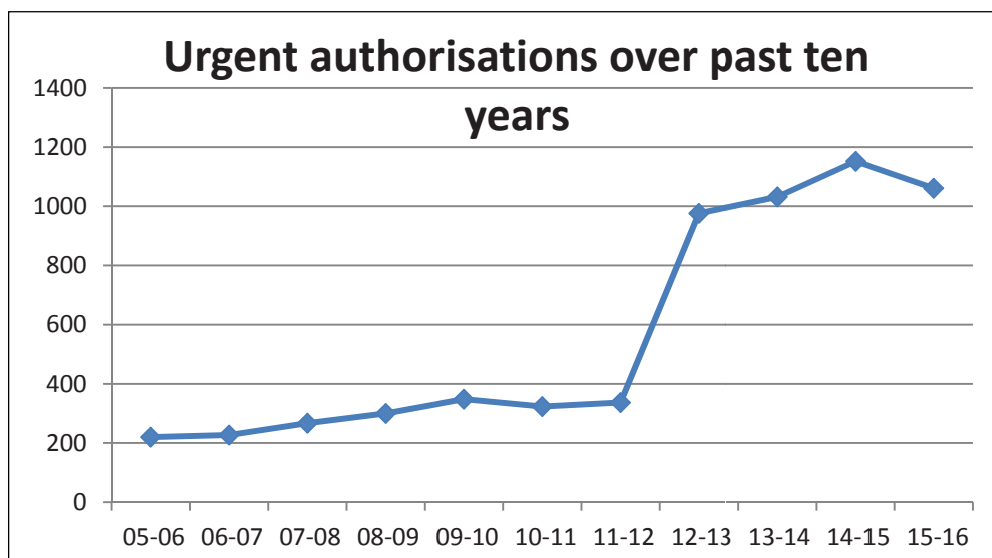
- 4.5.** Excluding renewals, 2,070 authorisations for property interference were granted, a decrease of 21 on the previous year.

Intrusive surveillance



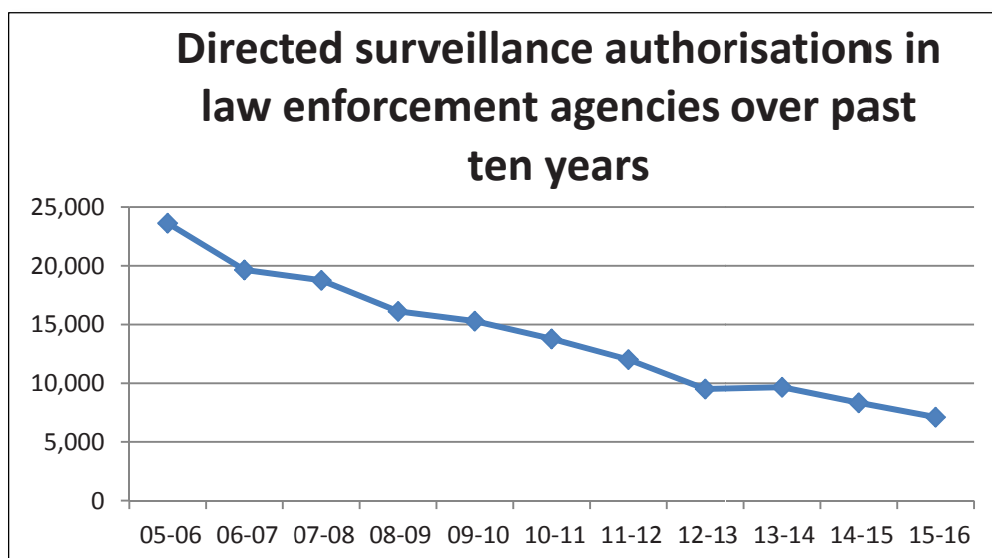
- 4.6.** 289 intrusive surveillance authorisations were granted this year, a decrease from 321 granted last year.

Urgency provisions

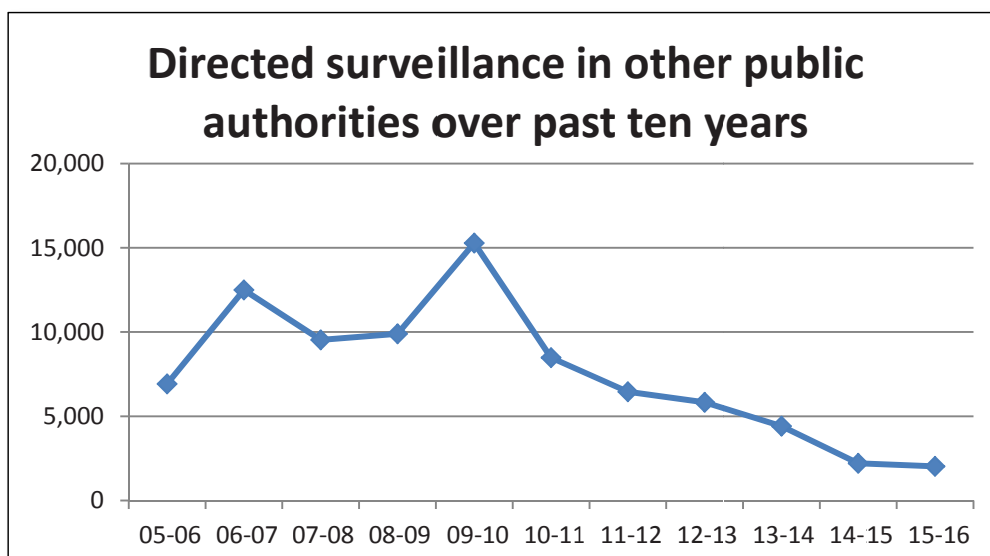


- 4.7. 1,061 occasions of the use of the urgency provisions permitted by the legislation were reported, an 8% reduction compared to last year.

Directed surveillance



- 4.8. Law enforcement agencies authorised the use of directed surveillance on 7,118 occasions, with 1,057 extant at the end of March 2016. This reflects a decrease on the previous year when the comparable figures were 8,333 and 1,173.

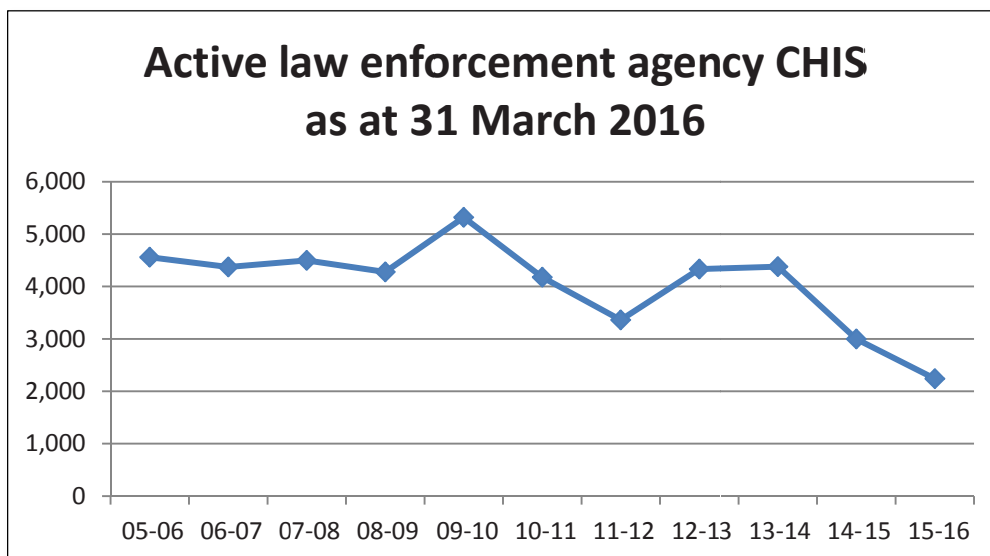


- 4.9.** Within other public authorities directed surveillance was authorised on 2,029 occasions, a small reduction from 2,207 such authorisations last year. The Department for Work and Pensions accounts for the overall majority of these authorisations, with an increase in use from 894 to 1,258. Out of the 476 public authorities, only 116 used directed surveillance at all.

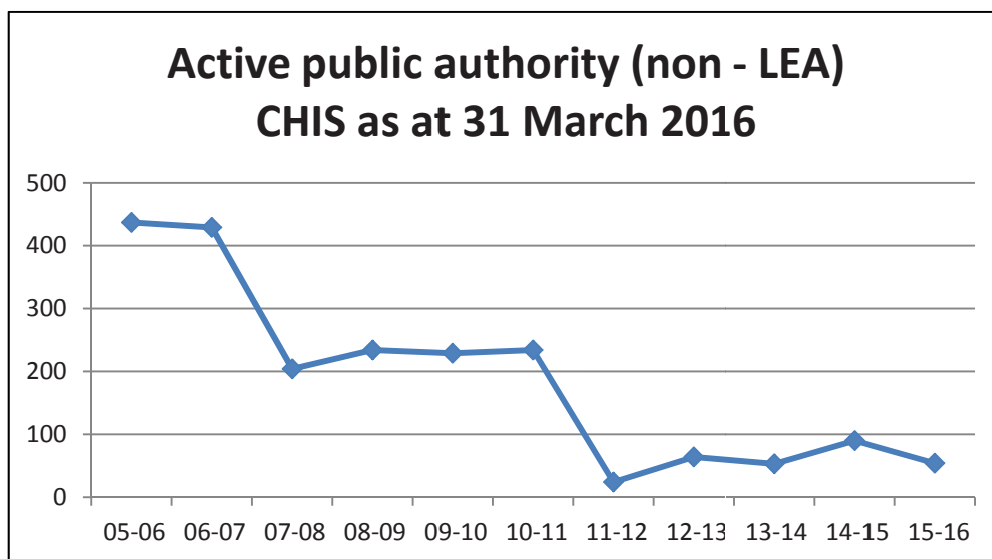
Protection of Freedoms Act 2012

- 4.10.** 317 authorisations were presented by local authorities to a magistrate for approval under this legislation. 13 were rejected.

Covert Human Intelligence Sources

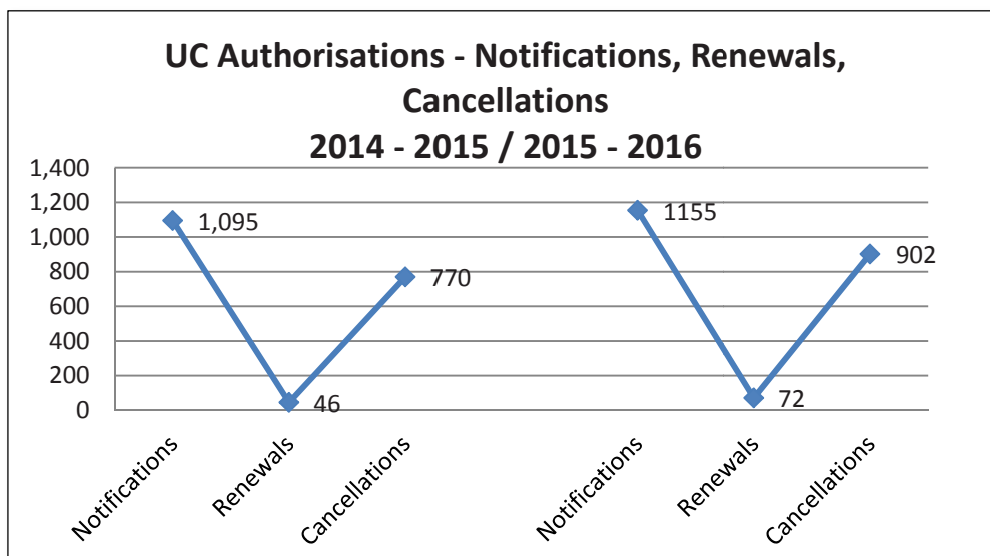


- 4.11.** 2,239 CHIS were authorised by law enforcement agencies, and 2,206, including some which may have been already authorised from preceding years, were cancelled. At the end of March 2016, 2,275 CHIS remained authorised.

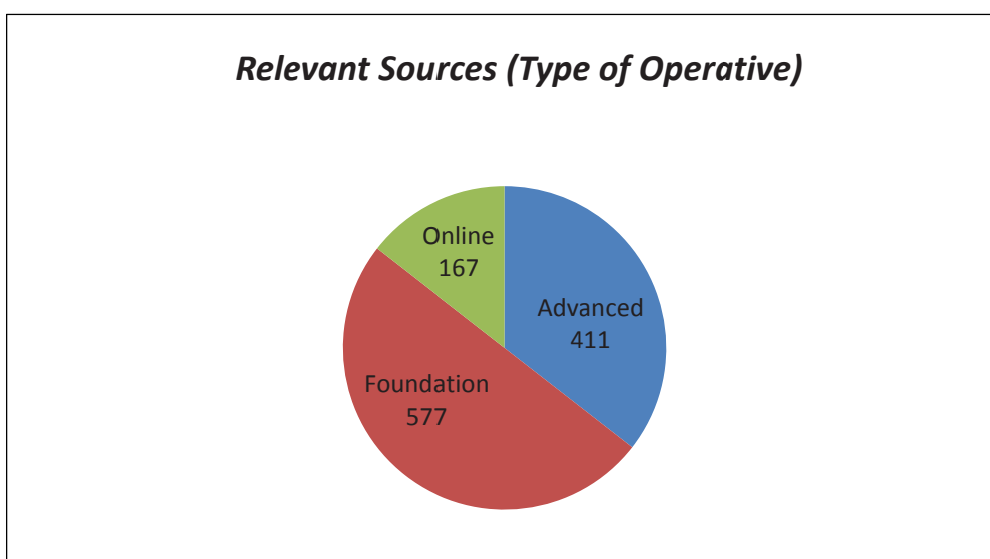


- 4.12.** Only 3% of public authorities (aside from the law enforcement agencies) have deployed CHIS, usually for matters involving investigations like trading standards. A total of 62 CHIS remained authorised at the end of the year. These were almost equally divided between local authorities and other government departments and agencies.

Relevant Sources (undercover officers)



- 4.13.** During this year 1,155 relevant source authorisations were notified to the OSC, a small increase from 1,095 last year. The number of cancellations rose from 770 last year to 902. The number of renewals rose from 46 to 72. As explained last year, these particular statistics need very careful interpretation. They represent the number of times a single individual undercover officer has been authorised for deployment on a specific and carefully defined police operation. Thus, the total number of authorisations does not reflect the number of undercover operations undertaken during the year. A single police operation may require the deployment of a number of undercover officers. Moreover there is a limited pool of trained officers, used on a variety of operations during the course of any year, and they may have been deployed on more than one operation.



- 4.14.** During the reporting year 1,155 relevant sources were deployed. Of those deployed, 411 were Advanced operatives, 577 Foundation operatives and 167 Online operatives¹.
- 4.15.** This is a rough breakdown of the types of operative authorised during the period. Some operatives will be undertaking on-line work in addition to their foundation or advanced role – the chart therefore shows how an operative has been primarily classed on the notification to the OSC.

Encryption

- 4.16.** During the period to which this report relates, the National Technical Assistance Centre granted 87 approvals following 88 applications. On inspections, the OSC carries out dip-sampling of these approvals. The offences under consideration can include international and domestic terrorism and extremism, indecent images of children, murder, people trafficking, kidnap, insider dealing, fraud, evasion of excise duty, drug-trafficking, and possession of drugs with intent to supply.

Irregularities

- 4.17.** During the period covered by this report, law enforcement agencies, usually through the Chief Constable himself or herself or the head of the relevant agency, reported in writing 96 irregularities and other public authorities reported four. In the period 2014–2015 a total of 127 reports were made: in the period 2013–2014 83 such reports were received: in the year before that, 99: in the year before that, 81: and in the year before that, 129. The nature of the irregularities varies very little from year to year. There are occasions of reports about pre-emptive activity before an appropriate authorisation has been granted by the OSC, usually the result of misunderstanding or poorly completed checks; overdue switching off of a recording device after the relevant authorisation has been cancelled; using a CHIS without an authorisation for use and conduct. The reports include very minor errors, such as the small mispositioning of a camera, the use of which has otherwise been properly authorised or activity undertaken, usually in the heat of the moment by a quick thinking, but untrained or inexperienced police officer. As already explained in paragraph 2.16, the reports are invariably accompanied by a full explanation of the reasons for the error or oversight, together with the remedial steps which have already been taken, or which will immediately be taken, to avoid any recurrence. In every case where an irregularity is reported, first, a record is maintained for disclosure to the Crown Prosecution Service in the event of a prosecution, and second, the record itself is examined during the course of the OSC inspection, to ensure that the relevant facts were indeed fully reported to me. Our experience is that the law enforcement agencies are candid in their acknowledgement of any shortcomings.

¹ The type of accreditation (Advanced, Foundation, On Line) an undercover operative holds depends on their particular training and capabilities.

- 4.18. The total number of reports of irregularities (100) continues to represent a tiny proportion of the total number of authorisations granted during the course of a year. The overwhelming majority are the result of human error. On rare occasions, however, the legislative powers have been deliberately misused. I include three examples:

Example 1: As reported in Example 3 of Sir Christopher Rose's final report, it had been discovered in a police force that 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 was alleged that in order to give the impression to one of my Surveillance Inspectors that all such reviews had been completed at the due time, reports had 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. One of the two officers so implicated, a Detective Sergeant, resigned from the force just days before facing a misconduct panel hearing. The other, the Authorising Officer and a Detective Superintendent with more than 20 years' service, was dismissed without notice in February 2016 after a case was proven for breaches of Standards of Professional Behaviour relating to honesty and integrity and duties and responsibilities.

Example 2: In a different force, one of my Surveillance Inspectors identified, through dip-sample inspection of certain documentation, a worrying pattern of activity suggesting there might have been activities undertaken by one or more uniformed officers that involved the use of a member of the public as a CHIS for some considerable time without authorisation under RIPA; suggestions in internal investigation documents of that officer acting as *agent provocateur*; the use of intelligence from a source(s) upon which arrests in relation to drugs were made; and suspicious activities by this same officer that might have had an innocent explanation, but otherwise gave the appearance of him undertaking covert surveillance, again, without the necessary authorisations in place. All this was conjecture, but my Surveillance Inspector was sufficiently concerned that there might have been serious breaches of the legislative provisions we oversee, and so highlighting the need for training and awareness raising, coupled with the period of time, scale and number of intelligence reports relating to these matters that had so far been addressed in a somewhat haphazard and inconclusive manner, he reported these in detail to me. He was quite right to do so and I held a personal meeting with the Chief Constable to ensure that the matters might now be fully investigated, if he considers this appropriate in light of my Surveillance Inspector's findings.

Example 3: In another force, through a combination of formal breach reporting and the inspection process that followed it, I have learned that uniformed police officers are strongly suspected of having engaged CHIS outwith any RIPA authorisation process; allowed those CHIS to participate in crime and deliberately directed those sources not to engage with officers appointed by the force to run CHIS in accordance with RIPA and to ensure the duty of care is afforded them and risks appropriately managed; and acted as *agents provocateur* to obtain evidence which reflected well on them as police officers. As a result, two Police Constables were suspended from duty at the end of 2015 pending formal investigation. There may be a number of criminal cases that may now be tainted as a result, and the force has disclosed this to the CPS. I have asked the relevant Chief Constable to update me should fresh material emerge.

- 4.19.** The overwhelming preponderance of irregularities caused by human error reinforces the need for those with responsibilities for ensuring compliance with the statutory provisions to receive regular, updated training, together with the need for continuing robust oversight by senior officers and managers of the processes. In the case of enforcement agencies, including the police, both these requirements are understood. In relation to some of the public authorities which, facing strains on their financial resources either have ceased or virtually ceased to use the statutory powers, and do not envisage using them in the future, training arrangements can sometimes assume a lowly priority. The view of the OSC is that every single authority vested with the relevant statutory powers should have in place structures and training arrangements which ensure that the exercise of any such powers, even if arising unexpectedly, will be lawful.

5. Key issues arising from my inspections

- 5.1. There is much to be understood beneath and beyond the statistics.

Law enforcement agencies

- 5.2. The experience of the OSC this year confirms the broad trend for the use of covert surveillance (using the description to cover all the activities for which the OSC has oversight), to be confined to applications which fall well within the ambit of the statutory requirements for necessity and proportionality. Moreover, given some of the financial strains, we detect a linked trend not to proceed with covert surveillance unless there is believed to be a realistic prospect of success from its deployment, including the availability of the appropriate equipment as well as officers trained, capable, and organised to complete the operation. The applications and authorisations, reviews, renewals, and cancellations, are generally speaking, of a good standard. Of course there are always exceptions, but the main thrust of the reports following the inspections, and the ensuing recommendations made by my Inspectors to each law enforcement agency, tend to focus on matters which can properly be described as “fine tuning”, or address very specific issues identified during the inspection of the individual agency or authority. During the course of these inspections, the Inspectors and Assistant Surveillance Commissioners provide advice and feedback, and occasionally reassurance, to those exercising these responsibilities. This appears to be a welcome part of the process. This level of cooperation may derive from a number of different factors. One is the experience of officers who have been appointed as an Authorising Officer, or senior Authorising Officer, now very familiar with the statutory provisions; another is the knowledge and skill of those who work in the Covert Authority Bureaux of each authority, perhaps reinforced by an internal oversight regime of an effective Operational Security Officer; another is the willingness, in sensitive and difficult cases, to seek legal advice in the process before an authorisation is sought; another, is the respect which is now given to the OSC processes themselves.
- 5.3. At the risk of repetition these processes include, satisfying a judicial Commissioner that the proposed authorisation is justified and fulfils the statutory criteria; an inspection process in which all the available material is open to examination, by former senior police officers, with their own wide, practical experience of the legislative structures; their subsequent report to me, which is then sent to the Chief Constable, or equivalent, with my own letter, highlighting any features of the inspection which seem to me to be relevant; all then followed up by a visit by me or one of the judicial Surveillance Commissioners to discuss the plans made by the force to implement the OSC recommendations; to be followed approximately a year after the inspection, by another inspection in which the implementation of the previous recommendations always receives specific attention. It is unusual for a recommendation to have been ignored, and if it has, a detailed explanation is demanded, and the recommendation is repeated.

Undercover operations

- 5.4.** The background, of course, is public disquiet at the revelation of serious impropriety affecting undercover operations. Three particular consequences have followed. The first is the new responsibility imposed on the OSC²; the second, the report by Her Majesty's Inspectorate of Constabulary of October 2014³; and the third, the Public Inquiry into Undercover Policing chaired by Lord Justice Pitchford⁴. As I have already indicated, the OSC has offered, and will continue to offer, every possible assistance to Lord Justice Pitchford. In the meantime it will continue to exercise its new statutory responsibilities.
- 5.5.** The current legislation provides that every authorisation of an undercover law enforcement officer must be notified to a Surveillance Commissioner. The Surveillance Commissioner has no specific further function at this stage. However any renewal (required when a law enforcement officer has been engaged undercover on the same operation, or against the same suspects for a total of 12 months) must be considered and cannot continue without the approval of the Surveillance Commissioner. When a Surveillance Commissioner is being asked to consider possible renewal, there is a full examination of the records, which extends to material which relates to the individual officer, the management and safety (duty of care) processes, as well as the circumstances in which the renewed authorisation is required. Thereafter when a law enforcement agency is visited for its annual inspection, the Inspectors "dip-sample" the undercover authorisations and documents. Any concerns are reflected in the post inspection report.
- 5.6.** Undercover work is sensitive, and it is perhaps worth reminding ourselves, sometimes highly dangerous. Without courageous men and women willing to take on the inevitable risks, serious criminals and terrorists would enjoy infinitely greater prospects of success and, simultaneously, reduced chances of detection.
- 5.7.** Our experience is that there has been a steady improvement in all these processes since the OSC first became involved in the supervision of undercover policing. Some of the early mistakes included the submission of late notifications to the OSC and failure to let the OSC know that an undercover operation had been cancelled. On other occasions there were miscalculations about the precise date when a relevant authorisation period would expire. However problems like these have steadily diminished. Authorising Officers are providing clear and thoughtful assessments of the issues, providing clear parameters to govern the conduct of each undercover officer. Our firm impression is that the imposition of statutory standards has

² By Statutory Instrument 2013/2788 - The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013 and Scottish Statutory Instrument 2014/339 - The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014

³ "An inspection of undercover policing in England and Wales" HMIC 2014, ISBN: 978-1-78246-515-7

⁴ For full details, see the Inquiry's website at <https://www.ucpi.org.uk/>

been welcomed by Assistant Chief Constables and Chief Constables. Beyond that there are a number of positive steps in progress; we anticipate College of Policing approved and accredited training courses, nationally agreed forms and policies, and collaboration agreements (referred to in paragraph 2.6) enabling specialised teams to serve a number of local police forces.

- 5.8.** Occasionally, risk assessments still do not provide a suitably detailed “pen picture” which enables the Authorising Officer to satisfy himself or herself that the undercover officer is sufficiently experienced and capable of withstanding the risks in the context of the criminality being addressed. When any shortcoming is identified, feedback is immediately provided. Many risk assessments are now more detailed and specific to the operative. By contrast, perhaps the result of increased awareness of public scrutiny of this area of police work, there are occasions when the paperwork is repetitive and should be briefer, not merely to reduce bureaucracy, but to avoid possible distraction from the essential issues. When concerns of this kind occur they are raised in the reports made by the Inspectors. As ever, the real question is whether the undercover arrangement is justified and lawful. The processes continue to improve.

Use of covert powers by public authorities other than law enforcement agencies

- 5.9.** Apart from the Department for Work and Pensions, the general trend during the past year has been for a decline in the use of directed surveillance by local authorities, and similar bodies. On inspections, we continue to explore the reasons behind this decline. The explanations have become familiar to my Inspectors. They include reduced funding and limited resources which mean that appropriate training appears to be unnecessary to some of the authorities which no longer intend to exercise the statutory powers; staffing shortages; collaborative partnership working with other investigative or enforcement bodies; increased use of data matching; a move towards more overt forms of enforcement in local neighbourhoods and town centres; the consequences of the reduced powers available to local authorities following The Protection of Freedoms Act 2012.
- 5.10.** From the OSC point of view the principle is clear. The fact that a local authority has elected not to exercise the relevant statutory powers does not remove it from the inspection process. While it retains these powers, which may be exercised at any time, appropriate structures and officials with the requisite training are required. From time to time the inspections reveal activity which should at least have been considered as appropriate for authorisation, particularly where it involves intelligence gathering undertaken through social media, an issue to which I shall return. Another widespread omission is the failure to provide regular reports to the elected councillors of all relevant activity, or if it is the case, inactivity.

- 5.11.** Dealing with it broadly, many local authorities have first-class arrangements in place, others do not. In those cases where standards have deteriorated, and a substantial number of recommendations are made, I seek a report from the Chief Executive after, say, six months, failing which, or failing a satisfactory response, a further inspection will be arranged. The problem of the malfunctioning local authority should be kept in perspective. The occasions when they have acted in breach of the legislative provisions remain very rare.

Prisons

- 5.12.** Prisons, and similar institutions, present unusual problems. The governor is responsible for good order and discipline, and the safety of the inmates as well as the staff. For very many years information, quietly and informally given by an inmate to a prison officer, has contributed to the even running of these institutions. We need to avoid unnecessary bureaucracy.
- 5.13.** Nevertheless, there are occasions when the provision of information starts to fall within the regulatory ambit. This may arise when the possibility that serious crime is in contemplation within the prison, but it may also arise when investigating police officers believe that an inmate may be able to provide valuable information about serious crime which has been committed within and outside the institution.
- 5.14.** The OSC undertakes an annual inspection of the National Offender Management Service, and also inspects a large number of individual state and private sector prisons. On one occasion last year I required an extraordinary inspection to be undertaken when a number of matters (which must for the time being remain confidential) were drawn to my attention within one establishment. But we cannot inspect every prison every year. We have insufficient resources for this purpose.
- 5.15.** Covert surveillance in prison establishments is unusual. In particular the use of CHIS within such a confined setting is extremely difficult. Rumours abound in prisons at the best of times; one inmate may be suspicious of another acting as an informant, sometimes with good reason, and sometimes with none; informants are not popular, and are at risk of physical violence; sadly, corruption is not unknown⁵. None of these features of prison life requires elaboration.
- 5.16.** The deployment of a CHIS in a prison is subject to precisely the same statutory conditions as those which apply outside the penal regime. Given the risks run by CHIS, and the difficulties of ensuring their safety in a prison, it is hardly surprising that some prison governors are not prepared to allow their use. Yet quite unintentionally, and without any deliberate flouting of the

⁵ Extract from NOMS Annual Report and Accounts 2014-2015 (HC15, published 11 June 2015): "During the reporting year (2014-15) there were 23 individuals convicted by the courts and 38 staff were dismissed or resigned as a result of corruption related disciplinary proceedings and investigations. Eighty two non directly employed staff were excluded from prisons."

prohibition, a situation may arise when an inmate may fall within the definition of CHIS⁶ and if so, formal regulation is required, just as it is when CHIS is deliberately deployed. In inspection reports and in meetings with senior officials at NOMS, the OSC has raised concerns over the use of a “disengagement notice”. This was a brief document provided to an inmate to explain that he or she was not going to be granted the status of a CHIS. Of course, an inmate could not be left with the document for obvious reasons, and we felt its meaning might not be understood or was, at least, capable of being misconstrued. At the time of writing this report, and therefore after the year end, I had a meeting with Mr Michael Spurr, Chief Executive of the National Offender Management Service to discuss these issues.

Social Networks and the “virtual world”

- 5.17.** Patterns of criminal planning are changing to embrace technological advances. Criminals and terrorists are less likely to meet in public, in parked up cars, with police officers using binoculars and long sighted cameras to follow their movements. Social media and private electronic communications provide greater anonymity for the criminals, and enable their activities to proceed on a global scale. This issue was addressed by my predecessor in his last two reports, and the Surveillance Commissioners have issued guidance on the need for appropriate authorisations to cover these developments⁷.

⁶ Under section 26(8) of RIPA, a person is a CHIS if:

- (a) they establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph b) or c);
- (b) they covertly use such a relationship to obtain information or to provide access to any information to another person; or
- (c) they covertly disclose information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

⁷ Extract from OSC Procedures & Guidance document:

Covert surveillance of Social Networking Sites (SNS)

288. The fact that digital investigation is routine or easy to conduct does not reduce the need for authorisation. Care must be taken to understand how the SNS being used works. Authorising Officers must not be tempted to assume that one service provider is the same as another or that the services provided by a single provider are the same.

288.1 Whilst it is the responsibility of an individual to set privacy settings to protect unsolicited access to private information, and even though data may be deemed published and no longer under the control of the author, it is unwise to regard it as “open source” or publicly available; the author has a reasonable expectation of privacy if access controls are applied. In some cases data may be deemed private communication still in transmission (instant messages for example). Where privacy settings are available but not applied the data may be considered open source and an authorisation is not usually required. Repeat viewing of “open source” sites may constitute directed surveillance on a case by case basis and this should be borne in mind.

288.2 Providing there is no warrant authorising interception in accordance with section 48(4) of the 2000 Act, if it is necessary and proportionate for a public authority to breach covertly access controls, the minimum requirement is an authorisation for directed surveillance. An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a member of a public authority or by a person acting on its behalf (i.e. the activity is more than mere reading of the site’s content).

288.3 It is not unlawful for a member of a public authority to set up a false identity but it is inadvisable for a member of a public authority to do so for a covert purpose without an authorisation for directed surveillance when private information is likely to be obtained. The

5.18. My Inspectors and the Assistant Surveillance Commissioners pay particular attention to the way this developing method of criminal activity is kept under covert surveillance. The topic forms the basis for numerous requests for guidance. Perhaps the most significant feature is that investigating authorities cannot proceed on the basis that because social networking developed after much of the legislation came into force it is immunised from compliance with it. Requirements for appropriate authorisation may arise from the work done by those whose roles do not traditionally fall within RIPA or RIP(S)A. The necessary training and information must be addressed by the Senior Responsible Officer in each authority.

5.19. Two examples illustrate the issues.

Example 1: In one particular public authority, once a task is allocated to an internet desk officer, that officer undertakes research using a non attributable computer which stands alone from the authority's main network. Although it is said that the staff do not use false personas, the activity they undertake is calculated to be covert so as to minimise the risk of compromise to ongoing investigations. Staff typically undertake research on one occasion, although this singular research activity may extend over several hours and involve research of different social media sites linked to the subject. There is a perception by staff within the unit that investigators are reluctant to, or dissuaded from, making more than one request for research to be undertaken on the same subject. The head of the unit believes that investigators are missing opportunities for securing valuable intelligence by restricting their request to singular research; this is a view shared by the inspection team. Very rarely are any requests for research of open source material or social media supported by an authorisation for directed surveillance. In a twelve month period the unit has processed 3,561 requests for internet research, on just two occasions directed surveillance authorisations supported the activity being undertaken.

SRO should be satisfied that there is a process in place to ensure compliance with the legislation. Using photographs of other persons without their permission to support the false identity infringes other laws.

288.4 A member of a public authority should not adopt the identity of a person known, or likely to be known, to the subject of interest or users of the site without authorisation, and without the consent of the person whose identity is used, and without considering the protection of that person. The consent must be explicit (i.e. the person from whom consent is sought must agree (preferably in writing) what is and is not to be done).

Example 2: In another public authority, one matter absent from the various policy and guidance documents is the use of the internet for investigative purposes. This technique of investigation and research is expanding exponentially with all manner of new technology and although some knowledge and awareness was evident during discussion with staff, further guidance and advice would benefit investigators and Authorising Officers alike. The key consideration when viewing publicly available information where no privacy settings have been applied, often referred to as 'open source' material, is the **repeated** or **systematic** collection of private information. Initial research of social media to establish a fact or corroborate an intelligence picture is unlikely to require an authorisation for directed surveillance; whereas repeated visits building up a profile of a person's lifestyle would do so. Each case must be considered on its individual circumstances and early discussion between the investigator and the Authorising Officer is advised to determine whether activity should be conducted with or without the protection of an authorisation.

CCTV

- 5.20.** As part of their inspections of councils, the Inspectors and Assistant Surveillance Commissioners discuss with appropriate officials, and frequently undertake visits to examine the CCTV facilities which they manage. It is very rare for a council to authorise directed surveillance which includes the use of its CCTV system, but occasionally others, for example the local police force, may wish to do so, as part of covert rather than routine overt surveillance. When this arises, there should be a written protocol in place between the council, as owners or managers of the system, and the body which seeks to use it in a covert manner, so as to ensure that the lines of responsibility are clearly understood, and appropriate arrangements for authorisation are then made.
- 5.21.** During the last year, I have met with the Surveillance Camera Commissioner, Mr Tony Porter, and the head of the OSC Secretariat, Mark Ogunjumo, is a member of his Advisory Council. This meets regularly to discuss issues relating to and arising from the use of CCTV.

Common inspection findings

- 5.22.** The timing of a proposed OSC inspection may sometimes prove to be inconvenient, in relation to local authorities for example, when local or general elections are looming and in relation to law enforcement agencies, when there has been significant turnover in senior officers. The inspections are not postponed unless compelling reasons are advanced. Earlier in this report I provided a very brief summary of our processes. Now is the time to emphasise the value of the inspection process. I have been greatly impressed with the quality of the reports provided to me following the inspections. Save

in the case of small authorities which never exercise the legislative powers anyway, and do not intend to do so in the future, the visit by experienced Inspectors is valuable for what careful study may reveal. Moreover the simple fact that the OSC Inspectors will be coming, of itself, encourages the maintenance of high standards.

5.23. Following the example of my predecessor I shall describe some of the more common areas of criticism revealed in the reports. They must be seen in context. In relation to law enforcement agencies, the standard of applications to and decisions of Authorising Officers for directed surveillance, property interference and intrusive surveillance are generally sound. Much of this is due to increased focus on the statutory requirements, clear internal leadership, investment in training, and quality assurance by officials working in the covert authorities bureaux. After the inspections, the discussions between the Inspectors and the relevant officers are positive. Problems identified by the Inspectors are discussed in depth. Formal recommendations made in the reports to me, and sent to the Chief Constables, are, almost without exception, speedily addressed and a written action plan is provided for me or the Surveillance Commissioner when we make our later visits. The greatest complexity arises in the context of CHIS, whether within or outside a penal establishment. Using a human being rather than a camera or recording device to provide worthwhile information presents greater difficulties, and potential pitfalls. In cases involving CHIS there are many more records, addressing more complex considerations. In the context of social media in particular, it is sometimes difficult to recognise when a CHIS relationship has been established.

5.24. Within this context, and subject to the generally sound standards which obtain:

- Some intelligence cases are too brief, others too long; most are of appropriate length; similarly with reviews, when a pertinent summary of what has happened since the latest update is required with, so far as possible, a simple explanation why the covert activity remains necessary and proportionate;
- Occasional formulaic considerations given to the potential for collateral intrusion; for the OSC it remains a crucial feature that any authorisation for covert surveillance should be confined to those against whom there are grounds for suspicion, not their families or friends;
- Authorisations for surveillance tactics and equipment use which, when reviews and cancellations are examined, appear to have been too widely drawn at the outset;
- The conduct parameters for a CHIS are sometimes unclear and occasionally in such cases, the full extent of risks to the CHIS are insufficiently addressed, or, where the records are required by statute, left incomplete;
- At cancellation, occasionally more detail is required from the Authorising Officer about the activity conducted, the value of the surveillance, the resulting product, and its management, and whether there has been any tangible or beneficial outcome, together with greater attention to any collateral intrusion;

- In relation to public authorities the need for training for those vested with surveillance responsibilities is sometimes overlooked, particularly when budgets have been seriously depleted; in the case of adjacent local authorities training costs could perhaps be shared.

Other matters from the past year

Chatwani

- 5.25.** In this case judgement⁸ was given by the Investigatory Powers Tribunal. It related to activity undertaken by the National Crime Agency. In very brief summary, a search warrant had been sought from the magistrate to permit an overt search of premises, but was in fact intended to include a covert aspect to seek intelligence to assist in a wider investigation. The search warrant failed to include any information about this intended covert activity. In addition, a property interference authorisation had been granted which, in the view of the Tribunal, failed sufficiently to consider that the proposed covert aspect would lead to the obtaining of legally privileged material. These shortcomings led to the quashing of the property interference authorisation, which was unlawfully obtained. This unlawfulness arose from significant nondisclosure of material facts. The nondisclosure was criticised both as wrong in principle, and because of the likelihood that if it had not occurred, the Surveillance Commissioner, whose authorisation would have been required for any covert surveillance, would also have insisted that the issue of legally privileged material should be addressed.
- 5.26.** In my view the decision emphasises that anyone seeking an authorisation for any activity which falls within the OSC's jurisdiction is under a legal obligation to make full disclosure of any fact or situation which may have a bearing on that decision. The duty of candour is fundamental, and therefore the application must include any material which may serve to undermine it, or may lead the Authorising Officer, in the first place, or the Surveillance Commissioner to question or refuse to grant the application. It has always been fundamental to the exercise of the responsibilities of the OSC that all relevant facts should be made available.

Media sources

- 5.27.** Following oversight undertaken by the Interception of Communications Commissioner, in March 2015 paragraph 3.78 of the Code of Practice relating to the Acquisition and Disclosure of Communications Data⁹ was revised.

⁸ Chatwani and Others -v- National Crime Agency; IPT 20 Jul 2015 - October 16, 2015. References: [2015] UKIPTrib 15_84_88-CH

⁹ Paragraph 3.78 states: "In the specific case of an application for communications data, which is made in order to identify a journalist's source, and until such time as there is specific legislation to provide judicial authorisation for such applications, those law enforcement agencies, including the police, National Crime Agency and Her Majesty's Revenue and Customs, in England and Wales with powers under the Police and Criminal Evidence Act 1984 (PACE) must use the procedures of PACE to apply to a court for a production order to obtain

Covert activities for the purposes of identifying any source of journalistic material are, for obvious reasons, very rare and subject to a high level of necessary protection. Any law enforcement agency in England or Wales which wishes to undertake this form of activity can seek authorisation through the Police and Criminal Evidence Act 1984. In Northern Ireland a production order is required under the PACE (Northern Ireland Order) 1989. There is no equivalent statutory provision in Scotland where the law enforcement agencies were advised to use “the appropriate legislation or common law powers” to provide the basis for judicial authorisation of communications data applications.

- 5.28.** With the Surveillance Commissioners from Scotland, this issue has been discussed with a number of relevant interested parties, including the Lord President. With them I visited the Justice Secretary for Scotland. We are concerned that one police force in the United Kingdom finds itself in a different position to its counterparts across the border. We recognise, of course, that Scotland has its own long-standing, separate and independent legal system. If clause 68¹⁰ of the investigatory Powers Bill is enacted, this particular difference should disappear.

this data. Relevant law enforcement agencies in Northern Ireland must apply for a production order under the PACE (Northern Ireland Order) 1989. Law enforcement agencies in Scotland must use the appropriate legislation or common law powers to ensure judicial authorisation for communications data applications to determine journalistic sources.”

¹⁰ **68 Commissioner approval for authorisations to identify or confirm journalistic sources**

(1) Subsection (2) applies if—

(a) a designated senior officer has granted an authorisation in relation to the obtaining by a relevant public authority of communications data for the purpose of identifying or confirming a source of journalistic information, and

(b) the authorisation is not necessary because of an imminent threat to life.

(2) The authorisation is not to take effect until such time (if any) as a Judicial Commissioner has made an order under this section approving it.

(3) The relevant public authority for which the authorisation has been granted may apply to a Judicial Commissioner for an order under this section approving the authorisation.

(4) The applicant is not required to give notice of the application to—

(a) any person to whom the authorisation relates, or

(b) that person’s legal representatives.

(5) A Judicial Commissioner may approve the authorisation if, and only if, the Judicial Commissioner considers that—

(a) at the time of the grant, there were reasonable grounds for considering that the requirements of this Part were satisfied in relation to the authorisation, and

(b) at the time when the Judicial Commissioner is considering the matter, there are reasonable grounds for considering that the requirements of this Part would be satisfied if an equivalent new authorisation were granted at that time.

(6) Where, on an application under this section, the Judicial Commissioner refuses to approve the grant of the authorisation, the Judicial Commissioner may make an order quashing the authorisation.

(7) In this Act “source of journalistic information” means an individual who provides material intending the recipient to use it for the purposes of journalism or knowing that it is likely to be so used.

Investigatory Powers Bill

5.29. This Bill is passing through the Parliamentary processes. As I have already indicated I appeared before the relevant committees, the Joint Committee on the Draft Investigatory Powers Bill on 2 December 2015 and the Public Bill Committee on 24 March 2016. I shall not repeat myself here. I do however underline my wholehearted support for bringing together the current strange structures which govern our oversight processes within a single body. I am however concerned that, at the outset, much of the discussions surrounding the Bill focused almost entirely on issues of interception and communications data and activities for which the Intelligence Services Commissioner and the Interception Commissioner are responsible. Insufficient attention was being paid to the experience of the OSC, particularly in relation to what is now described as the “double lock” process, which from the outset has been the way in which the OSC has managed its responsibilities. I am also concerned, and because I have already indicated that even if I were invited to join the new body, I should be unable to do so, I feel at liberty to emphasise that it should be properly resourced, with the latest technology, in premises which will be appropriate for its combined functions.

6. Conclusion

6.1. I return to the critical principle expressed in his final report by Sir Christopher Rose. To fulfil its supervisory responsibilities in relation to covert surveillance the OSC remains, predominantly, judge based, entirely independent of the executive, with its independence underpinned by legislation. These principles are repeated in the Investigatory Powers Bill. It would be foolish for the arrangements for the new body to be made without recognising and retaining the huge body of experience and corporate knowledge built up over the last 20 years or so, or for the roles either of the Surveillance Inspectors, or the Surveillance Commissioners and Assistant Surveillance Commissioners to be diminished. Between them they have helped to ensure that the delicate balance between the protection of the public from the harm caused by terrorists and criminals, and the protection of the public from inappropriate, unwarranted intrusion from the authorities of the state has been maintained. While the planning and eventual emergence of a single oversight body envisaged by the Investigatory Powers Bill is awaited, this scrutiny will continue.

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

	2013-2014		2014-2015		2015-2016	
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total
Total number of authorisations (not including renewals)	2631	58	2689	2020	71	2091
						64
						2070 ¹¹

PRIOR APPROVALS

	2013-2014			2014-2015			2015-2016		
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total
Number of cases	183	4	187	183	5	188	171	10	181 ¹²
By category:									
• Dwelling	141	3	144	125	5	130	124	6	130
• Office premises	31	1	32	27	0	27	27	4	31
• Hotel bedroom	11	0	11	28	0	28	17	0	17
• Matters subject to legal privilege	0	0	0	2	0	2	3	0	3
• Confidential journalistic material	0	0	0	0	0	0	0	0	0
• Confidential personal information	0	0	0	1	0	0	0	0	0

¹¹ Statistics provided by the law enforcement agencies.

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

Appendix B

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

	2013-2014			2014-2015			2015-2016		
	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)	383	9	392	309	12	321	270	19	289¹³

¹³ Statistics provided by the law enforcement agencies.

Inspection priorities

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
MoD Police and Guarding Agency
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
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

Food Standards Scotland

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

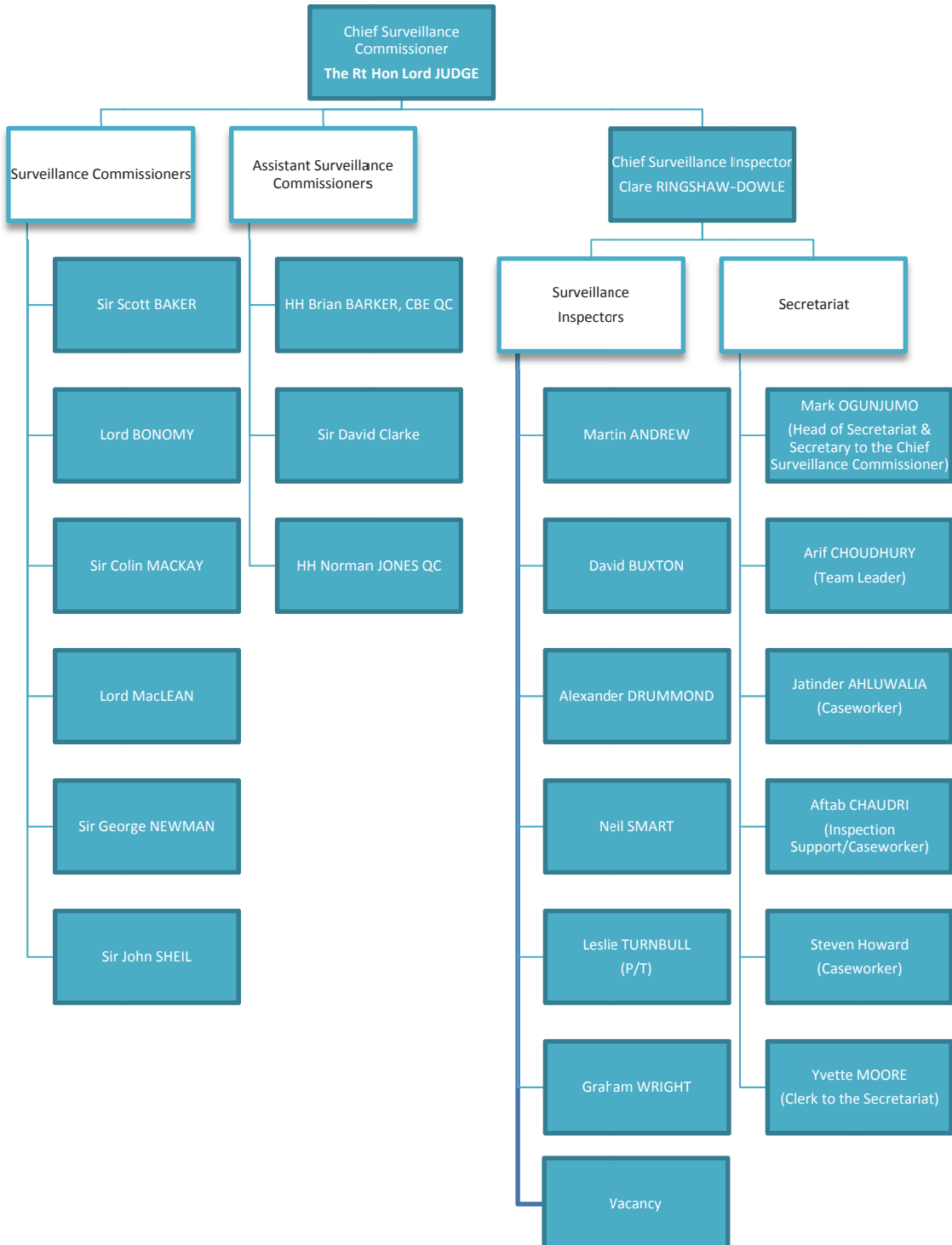
Office of the Information Commissioner

Scottish Accountant in Bankruptcy

OSC expenditure for April 2015 – March 2016

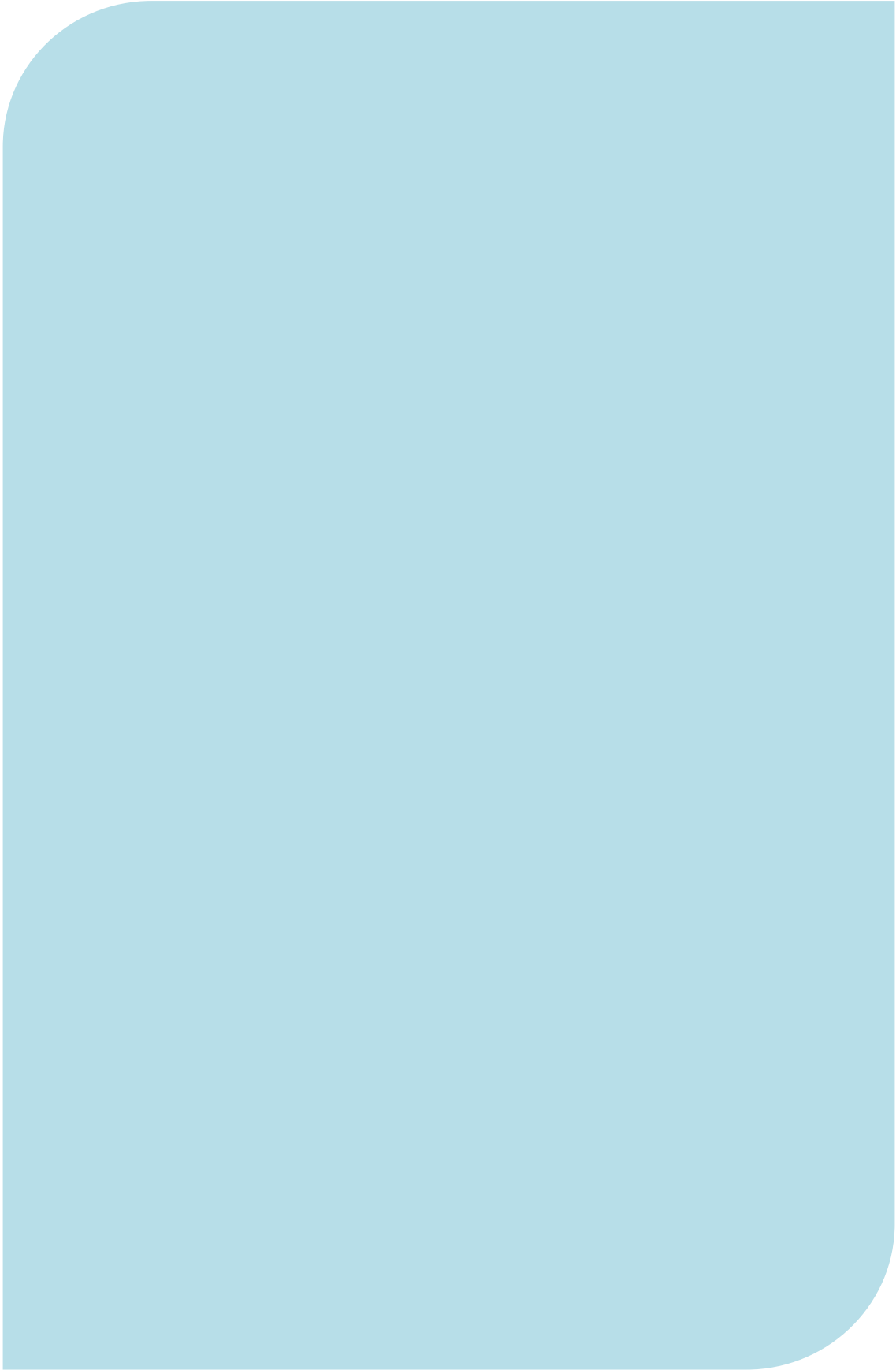
Description	Total (£)
Staff costs, including recruitment and training	1,353,685
Travel and subsistence	116,839
Conferences and meetings	14,129
IT and telecommunications	35,839
Stationery, including printing, postage and publications	26,798
Office and security equipment	378
Accommodation	130,162
Other	1,225
Total	1,679,055

**MEMBERS OF THE OFFICE OF SURVEILLANCE COMMISSIONERS
AS AT 31 MARCH 2016**



Members who have left during the reporting period:

The Rt Hon Sir Christopher Rose
 Sir William Gage
 Mr Andrew Mackian
 Mr Kevin Davis
 Mrs Ruby Durasamy





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