



Home Office

Consultation on the draft Regulation of Investigatory Powers (Covert Surveillance and Property Interference: Code of Practice) Order 2014 and draft Regulation of Investigatory Powers (Covert Human Intelligence Sources: Code of Practice) Order 2014

Comments received from respondents

Comments provided by organisations

All Party Parliamentary Committee on Drones

INTRODUCTION

*'The problem is not that unmanned aerial vehicles are unlawful in themselves, but that their numbers, sophistication, relative cheapness and adaptability offer unparalleled opportunities for secrecy'*¹

*'Where laws intersect with technology, as is strikingly the case with surveillance, the discrepancy between the pace of technological change and the pace of legal change requires lawmakers to consider carefully the risks that arise from the future development and application of technologies'*²

1. This submission is concerned with the proposed amendments to the existing Covert Surveillance Code of Practice ('the Code'), implemented through the introduction of The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013. (RIPO). The submission focuses on three questions:
 - (a) is the Code, and its proposed amendments, relevant to the use of unmanned aerial systems ('drones')³ by Government departments, agents and other state bodies?;
 - (b) does the Code, and its proposed amendments, adequately address issues raised by the use of drones? In particular, how might the Code be clarified and strengthened?; and
 - (c) does the Code, and proposed amendments, adequately cover the collection, storage and use of any data obtained as a result of covert surveillance, via drones operated by or on behalf of Government departments or other state bodies?
2. The APPG on Drones ('the APPG') has limited its submission to the application of Code to drones. No representations are made on the Covert Human Intelligence Sources Code of Practice which, although part of this consultation, falls outside the remit of the APPG.
3. The APPG welcomes the opportunity to engage with the Home Office on this important topic. However, the Code has been written on the assumption that that the overarching regulatory framework is adequate and lawful. The APPG has been advised that by senior counsel that RIPA itself is flawed.⁴ Further, the statutory requirement (s. 71 of RIPA) that the Secretary of State for the Home Department consider representations made on the draft Code is not an adequate substitute for a full review of: 2000 (RIPA)
 - (a) Home Office policy on the use of 'surveillance' drones by state bodies and others as relevant technologies emerge and current research projects completed; and
 - (b) existing domestic legislation as it applies to innovative use of 'surveillance' drones by state bodies, including the use and storage of data acquired by means of such drones as well as integration into civil airspace.
4. The APPG considers that a comprehensive review of the use and broader implications of drones with surveillance capabilities is overdue. The APPG notes that the Defence Committee's report, published 25 March 2014, calls on the Ministry of Defence (MOD) to formulate and set out its policy on the military use of remotely piloted aircraft systems (RPAS) no later than September 2014.⁵ Many points made in the Defence Committee Report on the need for transparency, accountability and a clear policy apply equally to civilian use of drones in the United Kingdom. Adopting this model, the APPG

¹ Defence Committee (2014), Remote Control: Remotely Piloted Air Systems, (paragraph 147, The Association of Military Advocates).

² Wright, J (2013), Technology fuels surveillance harms. In Digital Surveillance: Why the Snoopers' Charter is the wrong approach: a call for targeted and accountable investigatory powers. Open Rights Group, page 52.

³ See paragraph 11 for discussion on nomenclature

⁴ Advice of Jemima Stratford QC and Tim Johnston January 2014: <http://www.brickcourt.co.uk/news/detail/opinion-by-jemima-stratford-qc-and-tim-johnston-makes-front-page-of-the-guardian>

⁵ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/defence-committee/news/remote-control-rpas-substantive/>.

Official

hopes that the Home Office will also publish a policy on civilian use of drones, including for those used for surveillance, within the same time frame. This would significantly increase public confidence in Government use and oversight of this new technology.

BACKGROUND

5. The APPG was established in October 2012.⁶ The APPG currently has five Officers, 20 official members, 10 civil society partners and a range of non-registered MPs and Lords members. The aim of the group is to examine the use of drones by governments for domestic and international, military and civilian purposes. The group uses Parliamentary processes to facilitate greater transparency and accountability on the development, deployment and use of drones. Parliamentarians in all parties have a key role to play in shaping and developing the policy on the use of drones, domestically, internationally and in the application of relevant scrutiny.
6. The level of Parliamentary interest in drones is increasing. To date, Parliamentarians have asked approximately 445 Parliamentary Questions on drones. There have been four debates in Parliament on the subject: two Westminster Hall debates on 6 November 2012 and 11 December 2012 (at the latter, the Minister for Defence Equipment, Support and Technology acknowledged that the debate demonstrated “the increasing interest among not only Members of the House but the public at large about the use of unmanned aerial vehicles”); a House of Commons Adjournment debate on 17 June 2013; and a House of Lords question for Short Debate on 25 June 2013. 2 Early Day Motions have been tabled by members of the APPG including one on 13 March 2014.
7. Questions relating to drone use and the need for updated regulation have been raised in a diverse range of topics, from defence procurement to privacy. Four APPG peers, for example, recently tabled amendments to the Defence Reform Bill which included a proposed definition of ‘drones’: no legal definition currently exists.⁷ Others have tabled amendments to the Immigration Bill which derived in part from concern that two former British citizens had been targeted by lethal drone⁸. Several parliamentarians have raised the question of domestic use of unmanned systems in the context of the broader debate on privacy and surveillance in the United Kingdom⁹.
8. In this context, the Chair of the APPG, Tom Watson MP, sought the expert Advice of barristers Jemima Stratford QC and Tim Johnston ‘In the Matter of State Surveillance’ in January 2014¹⁰. The front page Guardian article¹¹ on the Advice indicates a high level of public interest on the overlap between the surveillance debate and that concerning drone use¹².
9. The same team of experts have provided the APPG with a further Advice on use of surveillance drones in the United Kingdom which is submitted in Annex 1 as part of the consultation document. The Home Office may benefit from the independent legal advice obtained by the APPG on the fundamental question of whether the existing legal framework within which this consultation is taking place is fit for purpose. The APPG notes, in particular, that:
 - (a) RIPA contains no limitation or guidance whatsoever on use or storage of data obtained by surveillance drones;
 - (b) the definitions in RIPA which underpin covert surveillance were not designed for surveillance drones and do not readily apply;

⁶ The Group is chaired by Tom Watson MP (Lab); the Vice Chairs are Zac Goldsmith MP (Con) and Baroness Stern (CB); the Treasurer is John Hemming MP (LD); and the Secretary is Dave Anderson MP (Lab). The Group is staffed by a human rights researcher, which is currently funded, primarily by the Joseph Rowntree Foundation. Please see entry on Parliamentary register.

⁷ <http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0060/amend/ml060-l.htm>

⁸ Bureau of Investigative Journalism (<http://www.thebureauinvestigates.com/2013/02/27/former-british-citizens-killed-by-drone-strikes-after-passports-revoked/>). Amendments tabled to cl 60:

<http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/amend/ml084-V.htm>

⁹ Roger Godsiff MP (Hansard, 10 September 2013 Column 650W), Nicholas Soames MP (16 May 2013 Column 343W), Lord Stoddart of Swindon (Hansard 6 Feb 2013 : Column WA62), Jim Shannon MP (Hansard 21 Jan 2013 : Column 65W), Caroline Lucas (Hansard 3 Sep 2013 : Column 339W)

¹⁰ Annex 1

¹¹ <http://www.theguardian.com/uk-news/2014/jan/28/gchq-mass-surveillance-spying-law-lawyer>

¹² although the focus of the Advice was surveillance through intercepted material which may be available for the purposes of extra territorial lethal targeting by the United States

Official

- (c) it is strongly arguable that the use of surveillance drones to obtain data is unlawful, as the existing legal framework stands. It is strongly arguable that such use constitutes a disproportionate interference with Article 8 of the European Convention on Human Rights (right to privacy);
- (d) that unlawfulness could be resolved if the Home Office formulates a new Code (or comprehensively amends the existing Code) providing restrictions on the use, analysis and retention of data obtained via surveillance drones.
10. It should be made clear that the APPG is not opposed to civil use of drones by Government departments and state bodies. The Group recognises the value offered by drone technology, when used in compliance with domestic and international law¹³. A recent example of this appears to be imagery captured by a drone capture of the flooding in the Somerset Levels¹⁴. However, the Group is concerned that developments in drone technology have now outpaced the existing legal frameworks, which were not drafted with innovative technology or the current use of drones in mind. The APPG considers that the Code under consideration is an example of this recurring problem. This new and diverse generation of technology presents a number of challenges to the current statutory framework. With the exception of authorisations from the Civil Aviation Authority, which focus on safety requirements¹⁵, drone use appears to be taking place in a largely non-regulated framework.

NOMENCLATURE

11. The language and terminology that should be, applied to drone technology has become highly politicised. For simplicity, ease of reference and to enable the inclusion of both unmanned aerial and maritime vehicles, the APPG uses the term 'drone' notwithstanding this is not the preferred military or industry term 'remotely piloted air systems', the focus of which is to convey a message that there is a 'man in the loop'. The APPG does not use the term 'drone' in a pejorative sense. It is not right that the word 'drone' implies autonomy, or lethal use. The Group notes that the Government itself, in its responses to Parliamentary Questions, uses a variety of terms to describe this technology including 'remotely piloted aircraft system', 'remotely piloted air systems', 'unmanned aerial vehicles' and 'drones'¹⁶.
12. The APPG welcomes the identification of four types of drone by the Royal United Services Institute (RUSI) also used by the Defence Committee¹⁷. The Home Office is invited to adopt this model and consider the surveillance capabilities of each type of drone distinctly. They are:
- (a) 'nano' with low resolution image capture such as the Black Hornet;
 - (b) 'miniature' offering short range surveillance using small basic sensors such as Desert Hawk;
 - (c) 'tactical' a long range endurance drone with medium quality imaging such as the Watchkeeper; and
 - (d) 'strategic' large surveillance drone with high resolution synthetic aperture radar and long range electro optical infrared sensors that can cover 100,000km² per day.
13. It would be helpful if the Home Office could enter into dialogue with other Departments with a view to agreeing suggested descriptive terminology for drones and drone types. Ultimately the Air Navigation Order 2005 will need to be updated to ensure that drones, and the extensive support systems required to support operation, are properly defined. This may help ensure 'drones' are clearly covered in existing regimes which regulate drone use, pending comprehensive review. This step will ensure that the unique features of unmanned systems are not ignored by treating them as if they are

¹³ The key human right here is the right to privacy enshrined in international human rights law and incorporated into the domestic legal framework under the Human Rights Act 1998: Article 8 European Convention on Human Rights.

¹⁴ 'UK flooding: special drone captures 360 image of Somerset under water', The Telegraph, 03 February 2014

¹⁵ In January 2010 the CAA introduced a system of permits for those seeking to operate drones in UK controlled airspace based on aircraft mass. The focus is airworthiness and pilot qualification. See CAP 722: <http://www.caa.co.uk/application.aspx?appid=11&mode=detail&id=415>

¹⁶ For example PM used term 'drone' in Ministerial Statement on European Council 6 January 2014: <http://www.theyworkforyou.com/wms/?id=2014-01-06a.6WS.1&s=Cameron+drone#g6WS.2>

¹⁷ From evidence provided by RUSI to the Defence Committee on 25 October 2013 on Remotely Piloted Air Systems; see Defence Committee report at paragraph 11

traditional manned aircraft. In turn, this may also facilitate the Home Office and other Governmental departments when they attempt to give proper and distinct consideration to the novel issues that arise in relation to drone technology, particularly as the technology develops and is used in increasingly diverse ways.

14. Notwithstanding these observations, the APPG is keen to ensure that the debate on nomenclature does not distract from the substantive issues set out below.

THE EVIDENCE CONCERNING COVERT DRONE SURVEILLANCE

15. The APPG has been hampered by the notable paucity of facts in the public domain on state use of surveillance drones in the United Kingdom. This has driven the APPG submission towards a hypothetical critique of the Code focused on the law. It is unfortunate that meaningful consultation on the Code, as it applies to surveillance of drones, is not possible without disclosure from Government Departments and other state bodies on past and existing trials, use and proposed use for drones. Lack of relevant information inhibits oversight and by parliamentarians and prevents informed public debate.
16. The APPG considers that one primary obstacle to parliamentarians accessing reliable and comprehensive information on drone use by the state is that neither the Home Office, nor any other Government Department, collates the information centrally¹⁸. The Rt Honourable Damian Green MP explained the position of the Home Office to APPG Chair Tom Watson MP¹⁹: there is no central collation of information on civilian use of drones. Use of drones is regarded as an operational matter for each chief constable or, presumably, other governmental bodies, with any covert use being subject to RIPA. According to the Minister, any covert use of drones would have to be necessary, proportionate, subject to independent review and individual right to redress. The APPG notes that this answer is only correct insofar as RIPA, the Protection of Freedom Act 2012 and the Data Protection Act 1998 apply to the use of surveillance drones.
17. The absence of any system by which information on drone use is maintained centrally - and made available for scrutiny by members of parliament - is perhaps especially pertinent given the absence of specific Guidance from the Home Office addressing current and planned use of drones by state bodies, officials and others carrying out work for or on behalf of the Department. For the same reason, there is no clarity, at the current moment, concerning the use of data obtained by surveillance drones. The APPG considers that guidance on both aspects (operation and use of data), must incorporate analysis of the emerging technical capabilities of surveillance drones. The use of camera, radar, interception or any other surveillance equipment on the drones will define, to some extent, how drones will be used once authorised.
18. When the APPG Chair asked the Secretary of State for the Home Office whether she would introduce a Code or other Guidance to regulate the collection, storage and use of data obtained by Governmental departments using drones²⁰, the Minister replied that there was 'no plan for further regulation' of surveillance drones. The APPG Chair was informed that existing regulation and guidance includes the Surveillance Camera Code of Practice issued under the Protection of Freedom Act 2012. He was told that this provides a framework of good practice for surveillance by 'camera operators', which applies to drones. The APPG notes this is not correct. The Surveillance Camera Code, which applies to the public and storage of data, would only apply to *overt* surveillance by drones carrying *cameras*. The logistics of how government bodies comply with the 'public warning' requirements for a camera-carrying drone is, in any event, not at all clear.
19. The APPG notes that none of the police forces subject to FOIAs served by the APPG Researcher, which include express request for details of the laws and policies pursuant to which drones were operated, made mention of any of the domestic legislation or any human rights considerations referred to by the Home Office in response to Parliamentary Questions.²¹

¹⁸ There is no requirement on police forces to report the trialling, acquisition or use of drones: hansard 6 Feb 2013, c62WA

¹⁹ Hansard December 31 October c540W

²⁰ House of Commons Debate 5 Feb 2014 column 236

²¹ FOIAs sent 2012-2013 so the APPG acknowledges FOIAs sent now may elicit an updated response

Official

20. The APPG draws the Home Offices attention to the fact that the Department for Environment and Rural Affairs ('DEFRA') has just introduced guidance for staff on the data protection aspects of drone use.²² Specific guidance has been issued even though DEFRA is not acquiring or using drones directly, or receiving video imagery from drones. The answer helpfully identifies which bodies operate drones and pass data to DEFRA, as well as the types of drone used: two fixed wing Quest 200 vehicles, Flysense Ebee fixed wing, Trimble Gatewing, DJI S800 Spreading Wings, Swinglet and Albotix X6 Hexacopter. The APPG welcomes the lead taken by DEFRA.
21. The APPG has frequently highlighted the lack of transparency and accountability about drone use by the Government both in and outside the United Kingdom. The examples raised above are merely case studies of this problem. The APPG invites the Home Office to note, in particular:
- (i) limited responses to Parliamentary Questions²³;
 - (ii) delays and inconsistent or evasive responses to Freedom of Information requests²⁴;
 - (iii) emphasis within responses to Freedom of Information requests to lack of records kept²⁵;
 - (iv) absence of publicly accessible reports, publications and briefings on the development, deployment and use or potential for use of drones²⁶;
 - (v) limitation of debate concerning domestic drone use to inside the Government's cross department Working Group on Remotely Piloted Systems²⁷ ('the Working Group') the remit, briefings and work of which is not accessible to other parliamentarians.
22. The APPG acknowledges that the present dearth of information on civil drone use for surveillance may be, to some extent, because state bodies are carrying out ongoing trials concerning how civil drone capabilities may best be used. However there is no reason why the public and parliamentarians cannot know which trials are being carried out and why, how the trials are funded and the outcome of each trial as it is completed. The current practice of withholding relevant information impedes scrutiny and the role of Parliament in developing and assessing policy on civil drone use, including the Code and other relevant Guidance. APPG members would welcome the opportunity for further dialogue and informed debate on the formulation of Home Office policy, in addition to parliamentary questions, freedom of information (FOIA) requests and ad hoc consultations.
23. Notwithstanding these limitations, the APPG is aware of the following key facts relevant to this consultation:
- (i) at least 11 state bodies have been authorised to use drones in the United Kingdom according to an APPG FOIA,²⁸

²² House of Commons Debate 20 March column 697W

²³ When asked whether the Metropolitan Police Service has ever trialled or used any unmanned aerial surveillance system. The response received was that it was an operational matter for individual police forces, within the regulations set by the Civil Aviation Authority (Hansard 03 February 2013 Column 35W).

²⁴ The APPG submitted FOIAs to each UK police force asking them to provide details on the procurement, testing and use of drones; policies and guidance for use; the number of times drones had been used, and under what legislation. The common responses were that 'no information is held' or 'these searches failed to locate documents.' Essex police revealed a drone was purchased in 2008 but apparently not used and future plans were not clear. Staffordshire Police confirmed they owned an AR 100B, AirRobot purchased in 1998 which had been used in a variety of situations including crime scene investigations and road collisions.

²⁵ The most common response received by Police Authorities, on request of details of unmanned aerial vehicle procurement was 'I can confirm that no information is held by Avon and Somerset Constabulary which is relevant to your request. In addition, the Avon and Somerset Constabulary can neither confirm nor deny that it holds any other information relevant to your request by virtue of the following exemptions: Section 23 (5) - information relating to the security bodies. Section 23 is an absolute class-based exemption and therefore there is no requirement to conduct a harm or public interest test.'

²⁷ The APPG notes that the Group only knows about the existence of the Working Group because the Researcher attended an Arms Fair at which an attendee mentioned this in passing: an example of unnecessary secrecy.

²⁸ According to an APPG FOIA to the Civil Aviation Authority dated 3 September 2013: Hampshire Fire and Rescue; West Midlands Fire Service; Staffordshire Police; Health and Safety Laboratory; Scottish Environment Protection Agency; Merseyside Police; Essex Police; National Policing Improvement Agency; Police Service of Northern Ireland; BBC (Natural History Unit) and BBC (Research/Development).²⁸ Note bodies not susceptible to FOIA which may not be listed.

Official

- (ii) at least two Government Departments appear to have used drones to gather data (either directly or indirectly). The Department of Transport revealed that the Home and Environment Departments had made presentations to the Working Group on the use they have made of drones²⁹;
- (iii) there have been a number of ad hoc reports of police and fire services using or trialling drones for surveillance operations, which have been confirmed in APPG FOIAs. FOIAs have revealed police use includes 'crime scene investigations'³⁰;
- (iv) one police force, Staffordshire, uses a drone for occasional security sweeps and search and rescue;³¹
- (v) one police force, Sussex, is currently running a trial³² to 'monitor a wide area from the sky' funded by the Association of Chief Police Officers ('ACPO')³³. The drone used, Aeryon Skyranger, includes high resolution cameras, an integrated imaging payload and software to enable field and office image processing including an integrated tool for 3D visualisation. It can produce real-time digital imagery to any device³⁴;
- (vi) another police force, Kent, has hosted some trial drone flights as part of the 2 Seas project to assess system performance;³⁵
- (vii) The Northern Ireland Policing Board ('PSNI') have approved purchase of '3 types' of drone to 'support policing' in Northern Ireland. This appears to have started on 13 June 2013³⁶;
- (viii) there are a number of current research projects and development programs, such as those run by Research Councils UK and the ASTRAEA consortium, on a range of potential civil uses which that include security and surveillance. These appear to have some included flights in shared air space³⁷;
- (ix) DEFRA have made use of drones for used unmanned aerial vehicles to support work on flood defence³⁸;

APPLICATION OF THE CODE TO SURVEILLANCE DRONES

24. The Code provides guidance on the use by public authorities of Part II of RIPA to authorise covert surveillance that is likely to obtain private information about a person. The Code also provides guidance on entry or interference with property or wireless telegraphy by public authorities under section 5 of the Intelligence Services Act 1994 or Part III of the Police Act. The Code is issued under section 71 RIPA. It may be admitted in evidence in criminal and civil proceedings. As indicated, the Code assumes the existing regimes are adequate and lawful, which may not be right.³⁹ Detailed analysis is provided in the Advice at Annex 1.

²⁹ House of Commons Debate 11 Feb 2014 column 525, PQ by APPG Chair. Note Home Office have subsequently made guarded denials that (a) it employs drones: House of Commons Debate 25 Feb 2013 column 292 and (b) it uses data collected from drones to monitor or develop policies: House of Commons Debate 19 March 2013 column 607W

³⁰ See FOIA from Staffordshire Police which also mentions road collisions and V music festival; Wiltshire Police made use of a drone (UAV) during the Summer Solstice at Stonehenge in 2009; Derbyshire Police used a drone to Red, White and Blue Festival at Codnor.

³¹ HL Deb 25 March 2014 c94W

³² HL Deb 25 March 2014 c94 : a formal date for the trial is in the near future

³³ <http://www.uasvision.com/2014/03/13/police-deploy-uas-around-londons-gatwick-airport/>

³⁴ <http://www.aeryon.com/products/avs/aeryon-skyranger.html>

³⁵ HL Deb 25 March 2014 c94: Kent are planning to host an event about 2 Seas in July

³⁶ Response to APPG FOIA from PSNI received 29 July 2013. PSNI declined to answer questions on the number and nature of flights undertaken. Note M15 has primacy over PSNI in national security matters, although there is no publically available information on surveillance drones being available for use by the intelligence services Letters from JA Harris dated 5 March and 10 April to APPG give some information on training of pilots and policy to follow the same standards and processes as CCTV such as destruction after 28 days. Exceptionally the PSNI made reference to Article 8 right to privacy and Data Protection Act. Media reports include: <http://www.independent.ie/irish-news/drones-to-work-with-8000-police-at-northern-ireland-g8-summit-29190426.html>

³⁷ <http://www.rcuk.ac.uk/RCUK-prod/assets/documents/submissions/UAVinquiry.pdf>

³⁸ Hansard 25 Feb 2013 Column 284W

³⁹ See Advice Jemima Stratford

Official

25. Surveillance is defined in section 48(2) of RIPA as including ‘*surveillance by or with the assistance of a surveillance device.*’ Although neither RIPA nor the Code makes any specific mention of drones, it is considered that this definition covers surveillance by or with the assistance of a drone.
26. Under section 26(9) RIPA, surveillance is ‘covert’ ‘*only if it is carried out in a manner that is calculated to ensure that persons who are to ensure that any persons who are subject to the surveillance are unaware that it is or may be taking place.*’ Surveillance by drones, with technical characteristics that enable hovering for long periods and the production of detailed imagery, will fall within the existing RIPA definition of ‘covert’ more often than not.
27. The next criterion which establishes the scope of the Code is harder to apply to surveillance drones: RIPA draws a distinction between ‘directed’ and ‘intrusive’ surveillance. Intrusive surveillance is covert surveillance carried out in relation to anything taking place ‘on residential premises’ or in any private vehicle. Directed surveillance is covert surveillance that is not ‘intrusive’ but is carried out in relation to a specific investigation or operation likely to result in obtaining ‘private information about a person.’⁴⁰ This distinction is important because the test under section 32 RIPA that must be satisfied for ‘intrusive’ surveillance is harder to make out.
28. The APPG considers that the critical definitions in the Code were formulated before the development and use of modern drone technology. They do not readily apply to drone surveillance. For example, the Aeryon Skylander, trialled by Sussex Police, includes a camera with a thermal imaging payload designed for night time tactical surveillance.⁴¹ Would high resolution imagery obtained by the Skylander over residential premises be ‘directed’ or ‘intrusive’ surveillance in these circumstances? What degree of collateral intrusion is acceptable? It is not clear how the law applies to the emergent technology. The application of the Code, including types of authorisation required, is uncertain.

RECOMMENDATIONS ON THE CODE

29. The APPG recommends that, pending full review and the introduction of guidance specifically dealing with drone surveillance, the Code should at least be amended to include specific examples detailing how the Home Office contends the following definitions apply, with particular regard to the technical capabilities of existing surveillance drones:
- (i) ‘directed’ surveillance by drone;
 - (ii) ‘intrusive’ surveillance by drone;
 - (iii) whether ‘on residential premises’ applies to operation of surveillance drones over premises;
 - (iv) whether ‘on residential premises’ applies to operation of surveillance drones in the garden of premises;
 - (v) surveillance by drone that is ‘overt’;
 - (vi) surveillance by drone that is considered to be ‘general observation’ and therefore not subject to the Code;
 - (vii) surveillance by drone in any other circumstances that are not considered to be ‘covert’ surveillance subject to the Code.
30. The APPG notes that the Code suggests that it applies to authorisations for all directed and surveillance operations under RIPA when the operation is in the United Kingdom, even where it takes place from military bases or overseas: 1.23 (see also 5.19). This does not appear to be the case with regard to US military bases in the United Kingdom. The APPG recommends that the Home Office amends RIPA section so that US officers are entitled to apply for authorisations for any covert surveillance carried out within the jurisdiction. Pending full review, this will at least bring US officers acting in the UK, including those within US bases, clearly within the scope of RIPA.

⁴⁰ Section 1.11 of the Code.

⁴¹ <http://www.aeryon.com/products/payloads/thermal-imaging-flir.html>

31. The APPG notes that section 42(3) RIPA would in theory enable GCHQ and other intelligence services to carry out intrusive surveillance by drone if authorised by the Secretary of State.

LACUNA: DATA OBTAINED BY SURVEILLANCE DRONES

32. The APPG is concerned that neither RIPA nor the Code (nor any other regime) offers any limitations or guidance on the use or storage of data obtained by means of surveillance drones ('drone data'). This is marked contrast to existing restrictions on (i) intercept data and (ii) the CCTV Code. The Home Office is referred to Annex 1.

33. The effect of this additional lacuna is that the DPA and principles have become the 'default' position. There are two primary difficulties with this, as it relates to use of surveillance drones. First, the DPA principles only apply to 'personal information'. Second, the Secretary of State can issue a section 28 notice exempting material from even the protection of the DPA. If this is done, data obtained by a drone carrying out covert surveillance could be held without any restriction whatsoever on its storage or use. In the view of the APPG, the short section 9.1 of the Code headed 'retention and destruction of material' and general reference to data protection principles is not an adequate redress.

34. The APPG have been advised that this situation is not lawful. This should be remedied as soon as reasonably practicable.

CONCLUSION

35. In the light of the above matters and Advice in Annex 1, the APPG recommends that, as soon as reasonably practicable following receipt of this Submission, the Home Office should:

- (i) disclose information and documentation on all use and trials of surveillance drones by the state bodies and contractors relevant or potentially relevant to any function of the Home Office or Working Group;
- (ii) introduce a system to centrally collate information on the use and trials of surveillance drones by Government departments, non-departmental public bodies and agents;
- (iii) adopt the DEFRA model for answering parliamentary questions in the most transparent and forthcoming way possible;
- (iv) report annually to parliament on use of any drones with surveillance functions by each Government, non-departmental public body or government agency;
- (v) revise and update this Code to explain how the Code applies to drone surveillance and provide specific examples requested at paragraph 26;
- (vi) initiate a consultation on formulating policy and published guidance on domestic drone surveillance which must include provisions governing the use and storage of drone data;
- (vii) adopt the Advice provided by the APPG in Annex 1 and/or take independent legal Advice on adequacy of existing legal regimes to the operation surveillance drones forthwith.

FURTHER ADVICE

INTRODUCTION

1. In January 2014 we were asked to advise Tom Watson MP, Chair of the All Party Parliamentary Group on Drones, on the lawfulness of several possible scenarios concerning state surveillance in the United Kingdom.
2. We are now asked to address a single, narrower question. The APPG is responding to a Home Office consultation concerning the Covert Surveillance Code of Practice. Those instructing ask whether various UK government bodies (including the security services) may lawfully gather surveillance using drones?
3. We are instructed that, in response to a recent Parliamentary question, the Department for the Environment, Food and Rural Affairs disclosed that two Government Departments have used drones to gather data.⁴² By contrast, the Home Office have stated that drones are not used for the purposes of developing or monitoring policy.⁴³ There have been several media reports that police forces have trialled the use of surveillance drones, as one aspect of their crime prevention tools.⁴⁴ We are instructed that FOIAs served on each police force and the Association of Chief Police Officers confirm this, although publically available information is scant. We understand that there are a number of research projects carried out by the Research Council UK and ASTRAE consortium on potential civil use of drones which include security and surveillance.⁴⁵ We note that, overall, there is lack of information concerning current and proposed uses of surveillance drones. Therefore, as with our first advice in January, what follows is based (at least in part) on a presumed scenario.
4. In summary, and for the reasons set out below, UK government bodies are entitled to gather data via the use of surveillance drones. However, there is no published policy or guidance concerning the retention and use of such data. Ordinarily, the use of that data is governed by the Data Protection Act 1998 ('DPA'). However, the Secretary of State is entitled to remove data gathered by the security services from the scope of the DPA. We consider, on balance, that it is a disproportionate interference with an individual's right to privacy for the security services (or another government department) to retain and use surveillance data, without any safeguards concerning its use, storage and destruction. The new Covert Surveillance Code of Practice presents an opportunity for the Home Office (and perhaps other government departments) to address the shortfalls identified above in connection with the storage and destruction of drone data. It may also provide an opportunity to introduce new reporting requirements in relation to drone use.

THE STATUTORY FRAMEWORK

5. Authorisation for surveillance falls within the scope of Part II of the Regulation of Investigatory Powers Act 2000 ('RIPA'). Section 48 of RIPA defines surveillance as:
"(2) (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;
(b) recording anything monitored, observed or listened to in the course of surveillance; and
(c) surveillance by or with the assistance of a surveillance device."
6. For the purposes of what follows, we assume that the surveillance in question is covert. Section 26(9) of RIPA defines covert surveillance:

⁴²http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140211/text/140211w0001.htm#140211w0001.htm_wqn2

⁴³ <http://www.theyworkforyou.com/wrans/?id=2014-03-19a.191664.h&s=remotely+piloted#g191664.r0>

⁴⁴ <http://www.theguardian.com/uk/2010/sep/24/police-unmanned-surveillance-drones;>

http://www.huffingtonpost.co.uk/2014/03/12/uk-police-drones-gatwick_n_4949862.html

⁴⁵ <http://www.rcuk.ac.uk/RCUK-prod/assets/documents/submissions/UAVinquiry.pdf>

Official

“(a) surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place.”

7. Whether or not surveillance is covert, RIPA draws an important distinction between directed and intrusive surveillance (section 26):

“(2) Subject to subsection (6), surveillance is directed for the purposes of this Part if it is covert but not intrusive and is undertaken–

- (a) for the purposes of a specific investigation or a specific operation;*
- (b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and*
- (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Part to be sought for the carrying out of the surveillance.*

(4) For the purposes of this Part surveillance is not intrusive to the extent that–

- (a) it is carried out by means only of a surveillance device designed or adapted principally for the purpose of providing information about the location of a vehicle; or*
- (b) it is surveillance consisting in any such interception of a communication as falls within section 48(4).*

(5) For the purposes of this Part surveillance which–

- (a) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle, but*
- (b) is carried out without that device being present on the premises or in the vehicle, is not intrusive unless the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.”*

8. The following provisions must be satisfied before directed surveillance may be carried out. An authorised person (as defined pursuant to section 30) may issue an authorisation for directed surveillance (section 28):

“(2) A person shall not grant an authorisation for the carrying out of directed surveillance unless he believes–

- (a) that the authorisation is necessary on grounds falling within subsection (3); and*
- (b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.*

(3) An authorisation is necessary on grounds falling within this subsection if it is necessary–

- (a) in the interests of national security;*
- (b) for the purpose of preventing or detecting crime or of preventing disorder;*
- (c) in the interests of the economic well-being of the United Kingdom;*
- (d) in the interests of public safety;*
- (e) for the purpose of protecting public health;*
- (f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, Contribution or charge payable to a government department; or*
- (g) for any purpose (not falling within paragraphs (a) to (f)) which is specified for the purposes of this subsection by an order made by the Secretary of State.”*

9. The requirements that must be satisfied before an authorisation can be issued for intrusive surveillance are more restrictive (section 32):

“(2) Neither the Secretary of State nor any senior authorising officer shall grant an authorisation for the carrying out of intrusive surveillance unless he believes–

- (a) that the authorisation is necessary on grounds falling within subsection (3); and*
- (b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.*

(3) Subject to the following provisions of this section, an authorisation is necessary on grounds falling within this subsection if it is necessary–

- (a) in the interests of national security;*
- (b) for the purpose of preventing or detecting serious crime; or*
- (c) in the interests of the economic well-being of the United Kingdom.*

...

(4) The matters to be taken into account in considering whether the requirements of subsection (2) are satisfied in the case of any authorisation shall include whether the information which it is thought necessary to obtain by the authorised conduct could reasonably be obtained by other means.

(5) The conduct that is authorised by an authorisation for the carrying out of intrusive surveillance is any conduct that—

(a) consists in the carrying out of intrusive surveillance of any such description as is specified in the authorisation;

(b) is carried out in relation to the residential premises specified or described in the authorisation or in relation to the private vehicle so specified or described; and

(c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.”

10. Section 42(3) provides that the Secretary of State may authorise the Intelligence Services or GCHQ to carry out intrusive surveillance, in the interests of national security or the economic wellbeing of the country.
11. We are not experts in drone use and capabilities. We understand that it is possible that that surveillance drones could provide information about activity taking place inside a vehicle or on a private residential premises. Therefore, drones could provide both directed and intrusive surveillance. The APPG's submission suggests that a drone of sufficient sophistication could identify what is going on inside a vehicle, perhaps using infra-red technology. It could certainly identify what was happening on a residential premises, if that activity was taking place outside (for example in a garden). However, for the purposes of what follows we focus on the possibility that drones are being used for the purpose of carrying out directed covert surveillance.
12. That being the case, the uses to which drones may be put are comparatively narrow. Directed surveillance must seek to obtain private information about a person. Intrusive surveillance (if it can be obtained using drones) must be targeted at a particular vehicle or premises.
13. The statute places a series of restrictions on how long an authorisation may last: 72 hours in the case of an oral/urgent application or three months in other cases (section 42). Intelligence services' authorisations for intrusive surveillance are subject to slightly different time limits: they cease to have effect after the second working day following the issue of the warrant if issued by the service itself and after six months if signed by the Secretary of State (section 43).

THE LAWFULNESS OF THE STATUTORY FRAMEWORK

14. Surveillance drones do not appear to have formed part of the thinking of policymakers when RIPA was drafted.
15. Nonetheless, we cannot see any principled reason why data obtained from drones should be treated differently from other directed surveillance. We do not consider that there is any relevant legal distinction between a government employee (or secret agent) sitting outside a premises taking photographic images and a drone taking images from the sky. Much the same could be said about images obtained via satellite, which have long been a feature of the information landscape.
16. Therefore, in principle we consider that the use of surveillance drones, in order to carry out surveillance in the United Kingdom, is not in and of itself unlawful or problematic.
17. However, we consider that at least some issues arise in relation to the use, storage and destruction of that data. RIPA provides no guidance concerning how long data obtained via surveillance may be retained. Nor are there any restrictions on the use to which such data may be put (beyond questions of admissibility in court). That stands in contrast to the position in respect of data obtained via interception of communications.
18. Furthermore we are not aware of any departmental or other guidance concerning the use of data obtained by surveillance drones. By way of counter-example, the Information Commissioner's Office

Official

has issued a detailed set of guidelines for the use of data obtained via Closed Circuit Television Cameras ('CCTV').⁴⁶

19. As a result, the use of data obtained via surveillance falls outside of RIPA under the scope of the DPA.

20. Section 28 of DPA provides:

(1) Personal data are exempt from any of the provisions of—

(a) the data protection principles,

(b) Parts II, III and V, and

(c) sections 54A and 55,

if the exemption from that provision is required for the purpose of safeguarding national security.

(2) Subject to subsection (4), a certificate signed by a Minister of the Crown certifying that exemption from all or any of the provisions mentioned in subsection (1) is or at any time was required for the purpose there mentioned in respect of any personal data shall be conclusive evidence of that fact.

(3) A certificate under subsection (2) may identify the personal data to which it applies by means of a general description and may be expressed to have prospective effect.

(4) Any person directly affected by the issuing of a certificate under subsection (2) may appeal to the Tribunal against the certificate.

...

21. Where she considers issues of national security are raised, the Secretary of State may issue a notice removing personal data, obtained via surveillance, from the scope of DPA.⁴⁷ In those circumstances, surveillance data may be retained, processed and used without being subject to any statutory restrictions. Furthermore, as we noted above, there is no guidance from the Information Commissioner or any other source, concerning the use of that information.

22. In our previous opinion we advised, in some detail, on the lawfulness of the RIPA guidelines concerning the retention, use and destruction of interception evidence. The interception of an individual's correspondence, and its retention and use, is an interference with their Article 8 rights to private life. The lawfulness of the original interception is determined, in part, by the statutory guidelines concerning its subsequent use. In *Kennedy v United Kingdom* (Application No. 26839/05), the European Court of Human Rights ('ECtHR') specifically referred to the RIPA guidelines concerning data retention and use, when determining the lawfulness (or otherwise) of one aspect of the RIPA framework (para 161).

23. The lawfulness, or otherwise, of the surveillance regime (RIPA plus the DPA) will be determined, at least in part, by reference to the same factors.

24. We consider, on balance, that it is probably unlawful for the UK government to collect data concerning a private individual, pursuant to a section 28 RIPA authorisation, and then hold it without any restrictions, subject to a section 28 DPA notice. The unlawfulness arises out of the disproportionate interference with the individual's private life: the UK government has obtained data about them that it may hold without restriction. If, as may be the case, that position is unlawful, the unlawfulness could be remedied via amendments to the Code currently under review. The Code, as

⁴⁶

http://www.ico.org.uk/for_the_public/topic_specific_guides/~media/documents/library/Data_Protection/Detailed_specialist_guides/ICO_CCTVFINAL_2301.ashx

⁴⁷ The latest evidence we could identify concerning use of section 28 concerns a Freedom of Information Request made to the Home Office in 2005. It indicates that at that point, at least, a significant number of section 28 notices had been issued: <http://amberhawk.typepad.com/amberhawk/>

Official

it currently exists does not properly address itself to the retention, use, storage and destruction of data obtained via drones in sufficient detail. Chapter 8, in particular, does not address the destruction of records at all. A new Code, which deals with those topics, would be a more valuable and more complete document. . We also consider that the new Code may provide an opportunity for the Home Office (and potentially other government departments) to introduce reporting mechanisms on the use of drones to obtain data. Those changes would bring the position on data obtained via drones in line with the situation that already prevails in respect of other forms of data capture, such as CCTV.

Association of School and College Leaders

The association is in a position to consider this issue from the viewpoint of the leaders of secondary schools and of colleges.

As such it has only one general concern. Schools and colleges are public authorities and would expect to be covered by regulations such as these, though this is not entirely clear. Normal practices in schools and colleges aimed at protecting young people include a degree of surveillance. For example the use of CCTV cameras on the approaches to buildings, and the monitoring of student and staff email traffic and web-usage. These practices are not covert in the normal sense of the word because they are well known to be happening, and the people concerned know that they are applicable to them. There is no significant concern from students, parents or staff about such monitoring.

However, this would not be the first time that codes of practice aimed at maintaining liberties have as an unintended consequence affected very reasonable behaviour by schools and colleges that do not in fact infringe the liberty of their students, staff and visitors. School and college leaders would therefore seek reassurance that monitoring similar to that mentioned above will not be within the scope of these codes of practice.

I hope that this is of value to your consultation. ASCL is willing to be further consulted and to help in any way that it can.

Australian Research Council Centre of Excellence in Policing and Security

SUBMISSION:

Relevant Section:

Part 2: Scoped of 'use' or 'conduct' authorisations

Part 3: Necessity and Proportionality

Summary of Issue:

The draft revised Code at parts 2 and 3 seeks to give guidance to authorising officers on their obligations under RIPA that undercover deployments are (1) duly authorised and (2) necessary and proportionate. However, the draft revised Code fails to highlight and provide express guidance on how authorising officers should exercise their judgment in cases involving the long-term or "rolling deployments" of undercover officers (UCOs). It is advisable that these long-term rolling deployments require different and enhanced levels of scrutiny and oversight. This is aptly revealed in the case of Mark Kennedy, who worked as a UCO with the National Public Order Intelligence Unit (NPOIU) for nearly seven years.⁴⁸ As part of his deployment, Kennedy formed part of a number of policing operations across the UK and in addition operated in 11 other countries.⁴⁹ Since the introduction of RIPA in 2000, Kennedy's deployments were authorised by a number of different authorising officers.

As part of their review into certain aspects of undercover policing operations in the UK, Her Majesty's Inspectorate of Constabulary noted⁵⁰:

No single authorising officer appears to have been fully aware either of the complete picture in relation to Mark Kennedy or the NPOIU's activities overall, or of the other intelligence opportunities available to

⁴⁸ HMIC: "A review of national police units which provide intelligence on criminality associated with protest." (2012).24

⁴⁹ Ibid.

⁵⁰ Ibid. 23-25

negate the need for an undercover officer. Additionally, it was not evident that the authorising officers were cognisant of the extent and nature of the intrusion that occurred; nor is it clear that the type and level of intrusion was completely explained to them by the NPOIU. This would have made it difficult for them to assess accurately whether deployments were proportionate.

This leaves open the real possibility that had the full extent of the activities of Kennedy (and possibly other UCOs) been known to the officers who considered and authorised specific undercover operations and tactics within their relevant jurisdictions, such applications could well have been considered on balance and in their totality, neither necessary nor proportionate. There is nothing in the draft revised Code that either acknowledges or seeks to provide guidance on how to manage what has been identified as a clear gap in authorisations.

In January 2011 the three intelligence gathering units that had been under the control of the Association of Chief Police Officers were moved to the Metropolitan Police Service to operate under a lead force arrangement.⁵¹ While further organisational and structural changes followed, a core capability within the MPS has been retained. These structural circumstances lead to the real possibility that the issues identified by the HMIC could recur.

Recommendation:

The draft revised Code be amended to ensure authorising officers in considering the necessity and proportionality of the proposed deployment or tactics under consideration are required to be provided with and consider the totality of the covert deployment of the officer being authorised.

General Comments:

Concepts of Necessity and Proportionality

Consultation on the revised draft Code raises the fundamental question as to whether it is opportune and desirable to overhaul the concepts of necessity and proportionality altogether. ‘Use’ and ‘conduct’ are two different things and therefore must be considered separately by an authorizing officer (this poses practical difficulties in relation to “relevant sources” while is much easier to do with an informer): use = deployment; conduct = individual actions undertaken whilst deployed. Any given investigation might be a case for which UCO deployment is necessary and in general terms proportionate but the test of proportionality goes deeper: is the product of any given individual action/conduct (undertaken pursuant to the general deployment) proportionate to the particular intrusion required to obtain this particular product?

Recommendation:

The draft revised Code be amended to include practical examples of the different concepts of necessity and proportionality that will provide additional guidance for authorising officers on the concepts of necessity and proportionality.

Use of Gender-Neutral Language

It may be opportune for the revised draft Code to be updated to remove gendered language.

Big Brother Watch

Big Brother Watch is a privacy and civil liberties campaign group founded in 2009. We work to expose the scale of the surveillance state, highlight privacy intrusions and to develop policy that protects civil liberties.

⁵¹ Ibid.

Official

We have conducted several pieces of research in the fields of covert surveillance, from polling to Freedom of Information Act requests. Where relevant this research is cited.

Overall

1. Fundamentally we believe the entire CHIS/intrusive surveillance regime should be put onto a judicial authorisation framework, with the deployment and renewal of authorisations approved by a judge. A public advocate should be able to challenge the proportionality of the authorisation in such a court process.
2. Secondly the public should be given far more information about how these powers are used. Any force using a RIPA authorisation – under any section – should publish an broad statistical picture of how often, why and to what effect powers have been used.
3. Suggestions of harm by publicising such statistics have been disproven in the United States, where detailed statistics are published by the US Court Service to Congress detailing the offences investigated, duration and requesting police force for each wiretap. The report also includes a consideration of the impact of disclosure on the effectiveness of the capabilities and it has consistently found there is not a negative impact. (<http://www.uscourts.gov/Statistics/WiretapReports/wiretap-report-2012.aspx>)

As many of the issues arise in both the code for Covert Surveillance and Property Interference and the code for CHIS, we have addressed both codes in one response.

Main points:

1. We feel that there should be recognition of social media and newer technology in the Codes. The current draft fail to recognise where a personal relationship could make accessing information possible, if directed, where in the absence of a personal relationship such access would not be possible. For example, a member of staff who is a 'Facebook Friend' of another employee in a public authority is directed to retrieve information from a private profile, which they may only have access to because of their personal relationship. Equally accessing information in a semi-public context that requires a positive act (ie registering to allow access to an online messageboard to assess information connected to a specific target). Such a direction in our opinion should require authorisation.
2. The codes should incorporate the role of private investigators and the potential for them to be instructed without a RIPA authorisation. In such cases it should be a contractual requirement that the activity undertaken would not constitute anything that would require an authorisation if it were commissioned directly by the authority. We also hope this issue will be addressed in the forthcoming regulatory framework for private investigators.
3. We believe that there should be a recognition in the code of where a CHIS or covert surveillance operation is used to gather intelligence, rather than to investigate a specific suspected criminal offence (particularly if the intelligence deployment is concerned with public order offences) there should be a higher threshold for deployment and if there is not a strong probability of an offence being committed we feel a CHIS authorisation would therefore not be appropriate. Recent disclosures about the potential recruitment of student CHIS in Cambridge highlights why this is a necessary change.
4. We feel the code should reflect that where there is no evidence of criminal activity or any likelihood of criminal activity, a CHIS authorisation would be inappropriate.
5. We feel that there should be more regular and independent review of authorisations for long term CHIS deployment or covert surveillance – potentially through an expanded and more public-facing surveillance commissioner process.

Official

6. The protection of privileged material would be strengthened with a positive obligation on a CHIS and those conducting covert surveillance to not acquire information covered by privilege without a specific direction from their controller. The 2010 order should apply to all privileged information.
7. Much greater auditing of CHIS deployment and covert surveillance operations should be undertaken to allow assessment of their effectiveness, what offences are being investigated, length of authorisation, prosecution rates and other relevant information. This could be used to reassure the public and also monitor organisational use of powers. Statistics on this auditing should be published.
8. We believe a 12 month period of authorisation is excessive and this should be reduced to 90 days.
9. We also believe allowing the authorising officer to set the review time period is a serious conflict of interest and an independent check should be introduced for authorisations extending beyond 60 days.
10. The duty to retain documents should extend to eight years to provide for any legal action brought. Three years is insufficient given many legal actions are possible after three years have elapsed.
11. Where an authorisation is renewed, the process should record why at that stage a decision to arrest and charge is not being taken.
12. There should also be a process to record any errors made which led to directions being given focussing on the wrong individuals or if a CHIS has acted beyond their authorisation or if covert surveillance has intruded significantly on the privacy of an unconnected individual. Statistics on such errors should be published.
13. There should also be a proactive duty to notify a court if a CHIS authorisation or covert surveillance operation has impinged upon a court process.
14. Every organisation conducting RIPA authorisations should be required to publish its surveillance report.

Bindmans LLP Solicitors

The significant problems concerning the use and deployments of CHIS under RIPA can not be resolved by an amendment to the codes of practice.

The primary purpose of RIPA was to ensure the establishment of a regulatory framework for intelligence gathering that was compatible with ECHR.

It is now clear that RIPA is outdated in failing in this primary purpose and needs a radical overhaul to address a number of matters that have recently come to light. This includes industrial scale 'snooping' on phone and internet activity by GCHQ and intelligence agencies, and the deployment of CHIS to spy on political groups, unions and justice campaigns often using unethical and abusive techniques.

The establishment and/or maintenance of an intimate sexual relationship for the covert purpose of obtaining intelligence would, if permitted, be the most intrusive form of cover investigatory technique and would amount to a gross invasion of an individual's fundamental common law rights to personal security.

This self evident truth is not reflected in the statutory framework. The framework sets out the regulatory requirement for the use of six covert investigatory powers and also arranges them in a hierarchy with the powers considered most intrusive available in far more limited circumstances, to far few public bodies and subject to significantly more stringent requirements than those considered to be the least intrusive. The hierarchy is as follows:

1. Interception of Communications.
2. Intrusive Surveillance
3. Demands for Decryption

Official

4. Covert Human Intelligence Source (CHIS)
5. Directed Surveillance
6. Acquisition of Communications Data

The three investigatory powers considered the most intrusive have the following distinctive requirements:

1. Warrants signed in person by Secretary of State, authorisations from the SoS or prior approval from a Surveillance Commissioner or judge
2. Use only by a discrete core of investigating authorities (for interception only the intelligence services, the police, HMRC and SOCA and in addition for the other two powers, the OFT, HM forces and MoD.
3. Use only for the purpose of national security, the prevention or detection of serious crime and the economic well-being of the UK;
4. The statute provides that those authorising the use of the power must consider whether the information could reasonably be obtained by other means.

By contrast, the three investigatory powers considered the least intrusive, which include CHIS:

1. Have no requirement for warrants or prior approval;
2. Can be authorised by relatively low-ranking officers in an extremely wide range of public authorities;
3. Can be used for a wide range of purposes such as non-serious crime, public safety and public health;
4. Have no requirement on the face of the statute for those authorising the use of the power to consider whether the information could reasonably be obtained by other means.

In terms of intrusiveness the establishment and/or maintenance of an intimate sexual relationship for the covert purpose of obtaining intelligence significantly surpasses the interception of post and telephone calls and the placing of recording devices in people's homes or cars.

The current weakness of the regulatory framework permits low-level operatives within numerous public authorities empowered to deploy CHIS are charged with determining the necessity and proportionality of its use for a wide range of purposes, many of which are not of vital importance. The potential for wholly disproportional, grossly invasive authorisations is enormous.

The Court of Appeal judgment [2013] EWCA Civ 1342 found that sections 26 and 29 of RIPA (relating to CHIS) could cover the use of intimate sexual relationships to obtain evidence although it was accepted by the court (paragraph 32) that "...there is certainly nothing to suggest that Parliament contemplated that surveillance by a CHIS might be conducted by using the extraordinary techniques that are alleged to have been used in the present case."

There is an urgent need for legislative clarification. Either a CHIS is not to engage in in the forming/ or maintenance of an intimate sexual relationship for the covert purpose of obtaining intelligence (which we submit is the correct position and one now seemingly adopted by the Metropolitan Police) or there needs to be a fundamental overhaul of the statutory framework such that this kind of intrusive conduct does not have a weaker regulatory framework than a postal interception.

Neither the 2002 or 2012 Code of Practice make any mention of the use of sexual relations as an undercover investigatory technique and certainly not one that falls within the regulation of RIPA. It is astonishing that this latest consultation also fails to address this issue despite the Home Office being aware of the reports, complaints, investigations and litigation concerning the use of this technique.

Official

In short this representation is that the proper regulation of CHIS needs to be dealt with by primary legislation and not by an amendment to the codes. With this in mind we respond to the particular paragraphs being consulted upon in the consultation as follows:

2.14 – the use and conduct of CHIS should be subject to the same level of stringent requirements in place for the interception of communications and the use of sexual conduct as a tool to gather evidence or build a legend is never acceptable or should be in a democratic society.

3.12 – the moderate improvement in regulation here is no substitute for a properly regulatory framework as submitted above.

3.26-3.27 – these proposals still fails to address the fundamental disparity between the regulation of intercept and regulation of CHIS which needs to be properly addressed given the use and conduct of CHIS.

4.3 there is a need for a proper statutory framework (see above)

4.31 there is a need for a proper statutory framework (see above)

5.10 there is a need for a proper statutory framework (see above)

5.23-5.26 there is a need for a proper statutory framework (see above)

5.30-5.31 there is a need for a proper statutory framework (see above)

7.5 there is a need for a proper statutory framework (see above)

Birnberg Peirce and Partners Solicitors

Birnberg Peirce and Partners represent eight women who are bringing claims against the Commissioner of Police of the Metropolis arising from their being deceived by undercover police officers into entering long term intimate sexual relationships. Three of those women had such relationships after the enactment of RIPA. Our clients have produced the attached submission for your consultation which I am forwarding to you on their behalf with accompanying documents.

Birnberg Peirce strongly endorse the very serious submission made by our clients. We should add by way of relevant background that Birnberg Peirce together with Tuckers solicitors acted for the Claimants in defending a strike out application by the Commissioner of Police for the Metropolis in relation to claims brought under the Human Rights Act, on behalf of our clients, where it was asserted that the appropriate jurisdiction was the Investigatory Powers Tribunal, as provided for by RIPA. The case, which has also been considered by the Court of Appeal (*AKJ and others v The Commissioner of Police for the Metropolis and others* [2013] EWHC 32 (QB)), contains relevant discussion on the issue. It was argued by the Claimants that, in essence, the IPT could not be the appropriate jurisdiction for their claim, because Parliament never intended that sexual relationships could be authorised under RIPA. This argument has, so far, been rejected by the courts, although we are shortly to lodge an application for permission to appeal to the Supreme Court. However, as far as the Courts are concerned to date, there is nothing in the legislation that makes clear that such conduct by undercover officers is expressly or impliedly prohibited.

One document we have relied upon, which is included together with our clients' submission, is a summary of some of the confusing and contradictory statements that have been made by senior police and politicians in relation to the question of whether such conduct can ever be permitted. If one thing is clear, there is a lack of clarity about whether there are any circumstances in which undercover officers may be permitted to enter into any form of intimate sexual relationship whilst in their role. Given the publicity that has been generated by the exposure of misconduct in this area by undercover officers, we were extremely surprised to discover that your consultation makes absolutely no mention of this.

Our submission is made without prejudice to our view that a more major overhaul of the RIPA legislation is now required. However, in the absence of this, it is surely a greatly missed opportunity not to incorporate clear guidance to any agencies and particularly the police, that entering into intimate sexual relationships whilst undercover is conduct that is prohibited.

Official

Submission attached to Birnberg Peirce response:

We are a group of 8 women bringing a legal action against the Commissioner of the Metropolitan Police arising from the intrusion into our lives by undercover officers and we are responding to the consultation on proposals to update the Covert Human Intelligence Sources Code of Practice and the Covert Surveillance Code of Practice.

The following points for the consultation are made without prejudice to our view that there are profound structural flaws within RIPA, which suggest that the whole Act requires a radical overhaul. Nor does our participation in this consultation constitute tacit acceptance of the use of undercover policing against political dissent. We simply wish to try and ensure that the abuses we experienced cannot happen again.

We note that despite the controversy over the issue of undercover relationships in the past couple of years, the Codes of Practice fail to make any mention of intimate and sexual relationships.

On your website it states that "both codes of practice have greatly improved control and oversight of the way public authorities use covert investigatory techniques, in order to protect our right to privacy." Having had our privacy intruded upon to a huge and damaging degree we feel that these guidelines fail to address the issues raised by our claims and fail to offer any increased protection to the public.

The changes proposed to the Codes of Practice are not sufficient to prevent the kinds of abuses that have been perpetrated by undercover officers like Mark Kennedy and Marco Jacobs, who were operating under very similar Codes of Practice. It is irrational and represents a dereliction of duty for new guidelines to ignore this behaviour, which has been called "unacceptable and grossly unprofessional" by Jon Murphy, head of ACPO (January 2011).

In the light of inconsistent statements by senior police and ministers⁵² on the subject of sexual relationships, a duty is owed by the government to the public (and to officers) to ensure the regulations are clear. The situation as it stands currently gives free reign to officers and their handlers, and in view of the fact that women have been disproportionately affected by these relationships, a failure to introduce measures to prevent further abuse, amounts to institutional sexism.

Proposed addition to Codes of Practice

In our view, in order to provide protection to the public against this abuse, the Codes of Practice need to incorporate a clear statement so officers know from the start of their deployment that sexual and intimate relationships while undercover are not acceptable. We propose that the following statement be added to the text of para 2.13 (p7):

"Officers are expressly forbidden from entering into intimate or sexual relationships whilst in their undercover persona."

Such a statement is necessary for the following reasons:

1) Intimate and sexual relationships by undercover officers concealing their real identity from the other person/s in the relationship/s represent a clear violation of the right to respect for private and family life (Art 8) and the right not to be subject to inhumane and degrading treatment (Art 3). When used by officers infiltrating campaigning and political organisations, they also represent a violation of the right to freedom of expression (Art 10) and freedom of assembly and association (Art 11).

⁵² ** Inconsistent statements on the policy in respect of sexual conduct by undercover officers can be found detailed here: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/837/837we02.htm>

Official

2) Intimate and sexual relationships by undercover officers concealing their real identity from the other person/s in the relationship/s causes serious long-term harm and psychological trauma to those persons and others close to them.

3) Such relationships additionally harm the officers' families and the officers themselves.

4) Intimate and sexual relationships by officers concealing their true identity from other person in the relationship amounts to a gross invasion of an individual's fundamental common law right to personal security.

5) The tactic as it has been used, plainly has had and will have a discriminatory effect on women and is thus prohibited by Article 14 ECHR.

6) Under Section 74 of the Sexual Offences Act 2003, a person can only consent to sex if she "agrees by choice, and has the freedom and capacity to make that choice". Recent case law adds strength to the argument that undercover officers would be committing sexual offences if they enter into a sexual relationship. (*Assange v Swedish Prosecution Authority* [2011] EWHC 308 and *R v McNally* [2013] 2 Cr.App. R.28). It has also been suggested by Chief Constable Mick Creedon in Operation Trinity Report 2 that offences of Misconduct in Public Office may apply. This means that sexual relationships *cannot* be permitted under these codes, whatever the level of authorisation. This needs to be made clear.

7) Sexual relationships may produce children and have done in at least two of the reported cases. This means that the tactic poses a risk to women's bodies and could also have a profound effect on the rights of a child as contained in the UN Convention on the Rights of the Child (UNCRC). Article 7 of the UNCRC requires children to be given the right to know their parents. It is difficult to see how the use of a tactic which carries with it the risk that a child will be born to an undercover police officer who will disappear into thin air at a certain stage in the child's life could be compatible with the UNCRC.

8) Conversely, where relationships are long-lasting, and the officer is unwilling to have children, they have an effect on a woman's right to have children, as protected by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), since women's fertility is so much more short-lived than that of men.

9) There is clearly a disproportionate use of the tactic against women. The failure to provide any guidance in relation to sexual relationships itself has a discriminatory impact on women because it makes it more likely that their rights will be unjustifiably interfered with. The impact on women also gives rise to the need to conduct an equality impact assessment in relation to the publication of any new Code of Guidance. No such Equality Impact Assessment has to our knowledge been produced.

Further background

1) Article 3 rights are absolute or unqualified human rights – it is not possible to authorise someone to violate an unqualified human right under any circumstances. We note that in a recent High Court judgement, Justice Tugendhat stated that a physical sexual relationship, which is covertly maintained, is more likely to fall into the category of degrading treatment, "depending on the degree and nature of the concealment or deception involved".

2) Article 8, 10 & 11 rights are qualified rights, but interference with qualified rights is permissible only if:

a) there is a clear legal basis for the interference with the qualified right that

Official

people can find out about and understand.

We note that there is nothing in law which states that if a police officer suspects an individual of involvement in a crime or with a political movement, that officer is entitled to have a sexual relationship with the person to try to find out.

b) the action/interference is necessary in a democratic society.

Sexual and intimate relationships cannot be said to be necessary – It was asserted by Nick Herbert in June 2012 that “to ban such actions would provide a ready-made test for the targeted criminal group to find out whether an undercover officer was deployed among them.” We believe this to be a ludicrous argument designed to allow abuse to continue. There are a multitude of reasons why any individual might decline to become intimate with another person. Such reasons are given in every day life and would not lead to an assumption that the person declining was an undercover officer.

In any event, such an argument would not be tolerated in respect of murder or child abuse, so why should it be tolerated in respect of abuse of women? Further a defence of necessity and self-defence already exists in British law therefore any officer genuinely in fear of his or her life and forced by circumstances into breaking the prohibition would be able to argue this in their defence.

c) the action/interference is proportionate to what is sought to be achieved by carrying it out. The action or interference must be in response to ‘a pressing social need’, and must be no greater than that necessary to address the social need. Given the level of invasion of privacy and the serious psychological harm caused by such relationships they would clearly fail the hurdle of proportionality.

3) The rights of women to autonomy in reproduction are protected by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 16(1) of which provides: States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

4) Article 3 of the UNCRC provides that “*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*” Article 7 states: “*The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*”

5) German Police internal guidelines expressly forbid the use of intimate or sexual relationships for the purpose of gathering information because this would violate basic privacy rights (“Kernbereich privater Lebensgestaltung”). This applies to undercover

Official

investigators as well as informants employed by the federal authorities. If it is possible to ban this tactic in another European country without risking a “ready-made test” for a targeted group then there is no reason not to implement such a ban here.

Section on Collateral Intrusion (p12)

In our experience the depth of the intrusion into our lives also meant a deep intrusion into the lives of family members and close friends. For example, undercover police officers “infiltrated” deeply emotional family gatherings such as funerals, weddings and birthday celebrations. The psychological harm inflicted, not only on us, but on close members of our family (including infirm, elderly relatives) cannot be justified.

Such intrusion is referred to in the guidelines as “Collateral Intrusion” and, perversely, its authorisation appears to require less rigorous tests than intrusion into the lives of “suspects”. Collateral Intrusion is, it seems, a euphemism for violating the fundamental human rights of people who are not even the specific subjects of surveillance, without any real consideration of the psychological damage that such deep deceptions might cause.

As can be seen from some of the authorisations for the activities of Mark Kennedy, it was considered that any “like minded activist” was a valid target for infiltration, and so further authorisation was not sought for their inclusion into the operation, regardless of their relevance to any investigation (and despite such an approach being a clear interference with Article 10 & 11 rights). It is also evident from documents that have come to light thus far that the extended family of political activists were also considered ‘fair-game’. The Codes of Practice have not altered in any meaningful way to ensure that this behaviour does not continue.

In the same way that we don’t consider that forming intimate sexual relationships could ever be considered necessary or proportionate, it is always wholly inappropriate for a police officer to insert themselves into extended families, in the way that being part of long-term relationships would necessitate.

In our view every individual whose Article 8 Human Rights may be breached by an operation should be afforded the respect of having the merits of that intrusion specifically considered and recorded, including the specific reasons why it is considered necessary and proportionate.

Levels of authorisation

In terms of intrusiveness, entering into deceitful long-term relationships and/or moving into people's homes and becoming party to the most intimate details of their private lives is quite clearly more intrusive than the interception of post and telephone calls, and the positioning of recording devices in people's homes or cars. The authorisation requirements should therefore be at least as stringent. It is inconceivable that despite increases in levels of authorisation provided for in these codes of practice, it is still the case that a phone tap needs greater authorisation than a CHIS.

It is still the case that whilst ‘Warrants signed in person by the Secretary of State, authorisations from the Secretary of State or prior approval from a Surveillance Commissioner or judge’ are required for what are considered the most intrusive methods of surveillance, it is not a requirement for the deployment of Covert Human Intelligence Sources. Whilst it is never acceptable to form intimate long-term relationships whilst operating undercover, it is still plainly absurd to consider a CHIS less intrusive than a phone tap in many cases.

To assist with understanding the impact of this type of intrusion on people's lives, we attach our evidence presented to the Home Affairs Select Committee, as well as our Letter before Claim Given this evidence it is clear that the most intrusive methods of surveillance used to date are not adequately dealt with by RIPA. These Codes of Practice should be changed to ensure that the abuses we have suffered would not be allowed in future.

ACCOUNTABILITY

This public consultation is taking place in the shadow of a consistently obstructive approach by the police to any public criticism. Their attitude to our cases has been to refuse to provide a properly pleaded defence or standard disclosure, even refusing to confirm or deny that the officers involved were in fact working for the police. Combine this with the recent allegations of corruption and cover-ups surrounding inquiries into cases such as Stephen Lawrence and Hillsborough, amongst others, and revelations about the shredding of documents pertaining to controversial police activity, the public perception of police accountability is low.

It is clear that the Codes of Practice as they applied to the NPOIU and the Kennedy operation, and as they now stand, will not be enough to ensure accountability. They must not be used to provide immunity from public scrutiny when wrong decisions are made, as has so patently happened in the past.

We must never lose sight of the fact that intrusive surveillance violates fundamental human rights. The test of whether something is 'proportionate or necessary' alone hasn't been sufficient to prevent abuse of position by undercover officers in the past.

The most rigorous standards possible must be applied to ensuring the enforceability of these guidelines and other laws relating to the use of CHIS. Those who make the decision to violate someone's Human Rights under these Codes of Practice must be fully accountable to the public.

Chartered Institute of Environmental Health

I refer to your consultation paper on revisions to the Department's Codes of Practice on covert surveillance and covert human intelligence sources.

By way of preamble, though the proposed revisions may not be great, the background subject matter is complex and we regret the contraction from the customary 12 weeks consultation period; that, really, is not a long time for the Department to wait for considered views. It would help in any event if the consultation paper bore commencement and closing dates.

We also regret that the Department has resiled from an undertaking made to the Chartered Institute during the passage of the Protection of Freedoms Bill to consult us on changes to RIPA guidance; merely including us in this public consultation does not, in our view, fulfil that.

Covert human intelligence sources

As to the Code on covert human intelligence sources, local authorities have raised with us the question of whether householders asked to operate noise monitoring equipment (such as 'DAT' recorders) covertly to provide information for the purpose of neighbour noise investigations are caught by the CHIS provisions. Though 'tasked' by the authority, our view is that the relationship between such householders and the noise-makers (more or less, 'neighbours') is one established and maintained by geography rather than the authority and, hence, a CHIS authorisation is not appropriate.

Given the uncertainties which attach in this context to noise investigations, however, we suggest this could provide a useful second example under para 2.21 of the CoP.

Covert surveillance and property interference

The Department will recall the discussions we have had in the past about the obstacles RIPA potentially presents to routine neighbour noise investigations. Whereas local authorities are looking for the comfort of knowing that their practices are not caught by RIPA we continue to have difficulties with this revised guidance.

Considering the third bullet point in para 2.29, the phrase '...at a level which does not exceed that...with the naked (unaided?) ear...' makes no sense to us technically and the explanation then offered for the significance of that level – that there is 'normally' no claim to privacy in readily-audible content – seems

Official

both inconsistent with the advice given in para 2.5, and, as we understand it, has no basis in the Act, s.26(10) defining `private information` by reference solely to its content, not its audibility.

The qualifications `normally`, and another in the final sentence (`...an authorisation is *unlikely* to be required.`), are also at odds with the apparent certainty of the heading to para 2.29 (`...situations *not requiring*...authorisation`). Such ambivalence really leaves us no wiser about the lawfulness of listening to, and sometimes recording, persons` speech and activities in circumstances when it is often impossible to have predicted reliably whether private information might be obtained, albeit unintentionally.

Effective guidance needs to say what readers need to know and what is needed is unequivocal advice covering the range of techniques employed by local authorities in pursuance of their statutory duties. Despite its revision, this guidance unfortunately fails to give that.

Department for Environment, Food and Rural Affairs (DEFRA)

In light of your current consultations on the RIPA Codes of Practice we would like to advise that a change is needed to the authorisation levels in Annex A of both documents. Our legal colleagues at Defra now work for Treasury Solicitors and as such we no longer have the role of `Head of Defra Prosecution Service` which is listed in both these Annexes.

Please could you replace this title with `Head of Better Regulation`. This is our current Senior Responsible Officer so we feel this is an appropriate replacement.

Please note that the references to Head of Defra Investigation Services can remain as this role still exists.

East of England Trading Standards Association

This response represents a consensus view of the East of England Trading Standards Association (EETSA) members to the consultation paper on the Covert Surveillance for CHIS Consultation. It does not necessarily reflect the opinions of the employing authorities.

EETSA welcomes the clarity and guidance provided to Local Authorities by the amended Codes. There are suggestions we would make that would benefit parties affected by RIPA.

In the Covert Surveillance and Property Interference Code of Practice General Observations 2.24 on Page 13 states at Example 3

Intelligence suggests that a local shopkeeper is openly selling alcohol to underage customers, without any questions being asked. A trained employee or person engaged by a public authority is deployed to act as a juvenile in order to make a purchase of alcohol. *In these circumstances any relationship, if established at all, is likely to be so limited in regards to the requirements of the Act, that a public authority may conclude that a CHIS or a directed surveillance authorisation is unnecessary.* However, if the test purchaser is wearing recording equipment but is not authorised as a CHIS, consideration should be given to granting a directed surveillance authorisation.

EETSA feels that this is not entirely compatible with the most recent Office of Surveillance Commissioner Procedures and Guidance (published December 2011) relating to test purchasing by a young person. The extract below is taken from page 35 of aforementioned guidance,

261. When a young person, pursuant to an arrangement with an officer of a public authority, carries out a test purchase at a shop, he is unlikely to be construed as a CHIS on a single transaction but this would change if the juvenile revisits the same establishment in a way that encourages familiarity. If covert recording equipment is worn by the test purchaser, or an adult is observing the test purchase, it will be desirable to obtain an authorisation for directed surveillance because the ECHR has construed the manner in which a business is run as private information (see also note 279 and Covert Surveillance and Property Interference Code of Practice paragraphs 2.5 and 2.6) and such authorisation must identify the premises involved. In all cases a prior risk assessment is essential in relation to a young person.

Official

Local authorities have experienced problems because of the differing interpretations between the Codes, the OSC and the Better Regulation Delivery Office (BRDO) Code of Practice on Age Restricted Products. We therefore feel that it is absolutely essential that agreement is reached across these for a common approach so that necessary clarity is obtained for local authority enforcement.

Furthermore EETSA also feel it would be beneficial to include in the CHIS Code some reference to the consequences of sending a young person to the same premise on multiple occasions. Perhaps alongside specific reference to Local Authorities on page 15 of that Code.

There are two further areas of Local Authority activity that, give rise to regular legal challenges, which would benefit from inclusion in the Code(s) by way of examples. These are

- Premises set up solely for surveillance purposes and not occupied or in current use for residential purposes

And

- Internet investigations

Both subject areas are addressed in the most recent OSC guidance at points 242 and 256 respectively. The increased level of internet trading means an increasing number of Trading Standards investigations are conducted and consistent guidance to regulators and the general public would provide benefit to all parties.

Investigatory Powers Tribunal (IPT)

Although the code cannot make new law and the statutory time basis for the Tribunal's jurisdiction over RIPA complaints is within a year of the conduct under complaint taking place, this is an opportunity to address the difficulty that can present itself:

(a) when the Tribunal agrees to consider a complaint relating to earlier conduct where good reason is given for the delay; and

(b) when conduct complained of within the previous 12 months is said to constitute continuing conduct over an earlier period of years.

The Tribunal considers that a balance must be kept in those circumstances between the obvious need not to keep records for too long and the need not to prejudice those investigations which do thus on occasion go back further in time. It would suggest a period of three to five years to be desirable - and would therefore favour reproducing the words in the RIPA CD code at 6.2 and its footnote together with a new final sentence:

RIPA records must be available for inspection by the Commissioner and retained to allow the Investigatory Powers Tribunal, established under Part IV of the Act, to carry out its functions. The Tribunal will consider complaints made up to one year after the conduct to which the complaint relates and, where it is equitable to do so, may consider complaints made more than one year after the conduct to which the complaint relates (see section 67(5) of the Act), particularly where continuing conduct is alleged. It is thus desirable if possible to retain records for up to five years..."

Kent and Essex Police

COMMENT 1

Page 21 Para 4.31 Foreign UCOs

Myself and a colleague have interpreted this differently. Is this formalising that foreign UCOs are authorised (as per all others at ACC level) or is the higher level proscribed by the 2013 Order at Chief Constable level? If the former, this is in line with UK UCOs and is supported. If the latter, I am unclear why it needs CC authority and would ask that this is challenged / clarified.

The draft codes are clear regarding who should renew ie Chief Constable at twelve months. It is not clear who then carries out reviews after 12 months other than saying it is the AO. From experience, it is very challenging to get into the Chief Constables diary to carry out the few operations that run 12 months. To conduct reviews by the CC will be a challenge, and whilst accepting that the law makers do not always take practicality into their decisions, I would seek clarification (and hopefully confirmation) that after annual renewal at Chief Constable level, then reviews should revert back to ACC. As the OSC only consider the renewal and give prior approval at annual renewal, I would hope that the Chief Constable will only be required to carry out annual renewal. I have already submitted one renewal after CCs authorisation and he included in his authorisation the fact that reviews would be conducted by the ACC, with next renewal, if required, being conducted by the Chief. The Surveillance Commissioner, approved this as part of his prior approval.

COMMENT 2

Basically, the new procedures which have been brought in, for quite understandable reasons, are to tighten up the scrutiny on long term undercover operations. However, this appears to have had the unintended and unnecessary by product of capturing ALL undercover operations in its net, however minor and brief, and incorporating them in the reporting process to OSC. Now that all UC activity is authorised at ACC level, including even controlled deliveries using a UCO to deliver a package, I would estimate that probably 90% or more of our operations will be completed within 6 months of authorisation. However, despite the fact that the 90% or more have little or no chance of becoming 'long term' and some are in fact cancelled within a week of authorisation, they still get caught up in the process of having to send copious amounts of paperwork to OSC both at the authorisation stage and the cancellation stage.

OSC have introduced the 9 month flagging point where operations are highlighted that might run to the 12 month stage, but if instead of the original notification to OSC at the authorisation stage of an operation, we were to replace this with a requirement to first notify them at the 6 month stage, it would remove the pointless administrative burden of sending all the paperwork for operations that will never become long term operations requiring OSC prior approval. If the OSC were informed at the 6 month stage, that would flag up neatly for the 9 month process that is already in place to review them before they reach the prior approval stage.

Lancaster Council

The only concerns that the Council have concerning the updated codes is the requirement in 3.27 of the CHIS code and 3.34 of the covert surveillance code of:

'In addition, elected members of a local authority should review the authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on use of the 2000 Act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose.'

This Local Authority has seen the number of application for directed surveillance and CHIS greatly reduced in recent years, particularly with the need for Magistrates approval. If an authority is only approving a few cases a year it is disproportionate to bring a report to members 'on at least a quarterly basis'. With the financial pressures that Councils are facing it is inappropriate to suggest quarterly reports should always be produced where there will be no updates to report and in effect wasting members and officers time. It is suggested that the wording is amended to something along these lines:

'In addition, elected members of a local authority should review the authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on use of the 2000 Act where directed surveillance or use of a CHIS has been applied for and once completed (if authorised) on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose.'

Liberal Democrat Home Affairs, Justice and Equalities Parliamentary Committee

Introduction

The Liberal Democrats believe that the privacy of the individual is a fundamental right which all too often is taken for granted or infringed upon. Yet we understand that there will always be a question about how we balance the competing principles of freedom and security. Covert surveillance is a key tool used in keeping the public safe and ensuring law and order is preserved, but these tools should be used proportionately and be suspicion-led.

Recent investigations and allegations have shown that in the past covert surveillance techniques have not got this balance right and we are glad that measures have been taken to address these flaws. We welcome the steps that have been taken in the Freedoms Act 2012 and further legislation around RIPA to tighten up oversight and monitoring.

Covert Human Intelligence Sources

The use of CHIS are often invaluable in building a case or adding to an ongoing investigation. We are pleased to see that the Regulation of Investigatory Powers (Covert Human Intelligence Sources: relevant sources) order 2013 raises the internal level of authorisation required to deploy undercover officers. Requests for authorisation should clearly demonstrate why the use of CHIS is necessary and explain why the achievements sought to be gained are unlikely to be achieved otherwise. The decision to use CHIS should not be taken lightly and the risk assessment must show why this is necessary and proportionate – as defined by Article 8 case law in the European Court of Human Rights.

Recent misconduct by undercover officers has damaged public confidence and trust in this technique of surveillance and we hope that the College of Policing's Code of Ethics which is currently being developed will have robust guidelines to ensure good conduct. The HAJE PPC believes that this code should be put on the same statutory footing as PACE.

The use of legend building in particular must be handled sensitively. Moreover, the intrusion into someone's life and the impact it could have on those not under investigation must be a key criterion during the process of risk/impact assessment.

The HAJE PPC welcomes the Home Secretary's announcement that a judge-led inquiry will be launched into the use of undercover officers but changes can be made immediately too.

There have been a recent slew of allegations that officers have used intimidation to recruit informers, most recently a young protester felt forced to abandon her campaign work because she felt intimidated by a covert police officer who attempted to recruit her as an informer. Recruitment of students, for example in Cambridge, to inform against their peers without any direction is worrying and gives the impression that the practice is not targeted and widespread – neither of which should be the case.

Office of the Surveillance Commissioners

The role of the Surveillance Commissioners cannot be overstated. As an independent body responsible for oversight of UK surveillance operations they should be involved in the authorisation process. The Code of Practice states that the Commissioner should provide "comments" to the authorising officer within seven days of the authorisation. The choice of the word comment here does not give us faith that the Surveillance Commissioner has the strong enforcement powers we believe he/she should have.

The HAJE PPC is also of the view that 12 months without a Surveillance Commissioners involvement is still too long. Authorising officers should have some view as to how long an investigation will run. We therefore propose that if the authorising officer believes this is likely to be a long-term (i.e. over 12 months) they should involve the Office of the Surveillance Commissioners at that point.

These new requirements which are being introduced are welcome; however, they do stretch the Office of the Surveillance Commissioners resources. Its "modest budget" (the words chosen by the Office itself), restricts its ability to scrutinise in depth. This ability is likely to be strained further if the Surveillance Officers are given even greater responsibilities. Most recently the Chief Surveillance Commissioner, introducing his 2013 annual report, stressed that "the capability of [his] office has been reduced to a

Official

point where regular and frequent publication of guidance [was] not possible.” The Code of Practice must be realistic and therefore we would encourage the Home Office to look again at the budget allocated to the Office of the Surveillance Commissioners.

Conclusions

The changes being introduced in the Code of Practice documents are extremely welcome and reflect the ongoing realisation that these most sensitive aspects of law enforcement require stringent oversight and monitoring. The right to privacy is fundamental in a democratic society but the Liberal Democrats understand that this is not an absolute right. As Nick Clegg recently stated in a speech on surveillance and privacy the right requires a “balancing test – [where] the public interest in preventing crime has to justify the level of intrusion that the state wishes to impose.” The HAJE PPC believes that the way to achieve this is through independent oversight and therefore we reiterate our call that the Office of Surveillance Commissioners requires a bigger budget and more resources and that authorisation should always be at the highest level practicable.

London Assembly Green Group

I should like to propose an amendment to the Codes of practice for Covert Human Intelligence Sources (CHIS) which explicitly bans CI-US from engaging in sexual relationships.

Chief Constable Creedon of Derbyshire, the officer who is investigating Operation Herne, said in his report on 6 March 2014:

“...there are and never have been any circumstances where it would be appropriate for such covertly deployed officers to engage in intimate sexual relationships with those they are employed to infiltrate and target. Such an activity can only be seen as an abject failure of the deployment, a gross abuse of their role and their position as a police officer and an individual and organisational failing.”

The Metropolitan Police Commissioner, Sir Bernard Hogan-Howe has stated on many occasions that the Metropolitan Police Service would never give pre-authorisation for a sexual relationship and that such authorisation would be unacceptable.

Undercover police preauthorisation for a sexual relationship

Question No: 201 4/1426

Jenny Jones

Would the MPS ever preauthorise a sexual relationship between an undercover officer and an individual who is not the subject of their deployment but is peripheral to that deployment?

Written response from the Mayor

The MPS would not pre-authorise a sexual relationship between an undercover operative and the subject(s) of their deployment.

It is not clear how this existing policy is communicated to officers or their supervisors. The Metropolitan Police have refused to confirm that it is written into the Terms of Deployment for officers.

The Metropolitan Police Commissioner has said the MPS has always had such a policy banning sexual relationships. However, this existing policy has not been effective. There are a significant number of examples of undercover police from different units who have engaged in sexual relationships:

1. Special Demonstration Squad — Bob Lambert has self-disclosed that he engaged in a sexual relationship which led to him fathering a child,

Official

2. National Public Order and Intelligence Unit — Mark Kennedy has been named by Her Majesty's Inspectorate of Constabulary as having a sexual relationship and also gave evidence to the Home Affairs Select Committee confirming he engaged in a sexual relationship

3. Special Branch — the BBC documentary from 2002 True Spies shows that sexual relationships were used by West Midlands Police Special Branch to obtain information about the British National Party

If the police themselves are clear that such behaviour should never take place then I can see no valid reason against amending the Codes of practice to explicitly ban CHIS from engaging in sexual relationships.

In light of the civil claims being brought by women who claim they were deceived into forming long-term intimate relationships with undercover police and the recently announced public inquiry into undercover policing I would suggest now is the appropriate time for the government to strengthen the rules and guidance to CHIS and make crystal clear to officers and their supervisors and managers that sexual CHIS should never engage in sexual relationships

Amending the Codes of practice to explicitly rule out undercover police from engaging in sexual relationships would make it clear to officers what is and is not acceptable, it would also help prevent a culture developing within undercover policing which has shown to have occurred within the SDS, and it would prevent the police from making the mistakes of the past.

London Assembly Police and Crime Committee

The Committee wishes to raise a specific technical point about how confidential information is handled. The codes of practice for Covert Human Intelligence Sources state that those conducting surveillance must take care in cases where confidential information is involved. Confidential information applies to communications between a Member of Parliament and another person on constituency matters. References to a Member of Parliament include references to Members of both Houses of the UK Parliament, the European Parliament, the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly.

London Assembly Members also communicate with constituents regarding constituency matters and might reasonably expect a high degree of privacy where such confidential information is involved. We believe that the codes of practice should be amended to so that communication between Assembly Members and their constituents is also treated as confidential information. The codes of practice for Covert Human Intelligence Sources and Covert Surveillance and Property Interference should be amended so that references in section 4.1 to a Member of Parliament are extended to include Members of the London Assembly.

London Assembly Labour, Green and Liberal Democrat Groups

London Assembly Members of the Labour, Liberal Democrat and Green Groups would like to raise three specific points to be taken into consideration by this consultation.

Official

- 1) Mark Ellison's report^[i] into the Stephen Lawrence Inquiry highlights the risks involved in undercover policing and covert surveillance when the proper procedures are not in place. We ask that this report and its findings are fully taken into account when the Codes of Practice are redrawn.
- 2) Specifically recognising the issues highlighted in the Ellison report regarding the failure of the MPS to keep historic records of the intelligence gathered by Operation Othona^[ii], which then became highly relevant to later inquiries, we query whether records regarding covert surveillance should be kept for longer than the proposed three years. We would suggest that intelligence relating to covert policing should be kept for a much longer period.
- 3) With regard to the current cases involving MPS undercover officers who engaged in sexual relationships with individuals under surveillance; we ask that the Code of Practice should explicitly rule out undercover police officers engaging in sexual relationships while they are engaged in covert activities, as is the law in other European countries such as Germany.

In addition, it is our view that the public inquiry into undercover policing called by the Home Secretary should have the power to review this Code of Practice and make further recommendations. It is also our view that the government should issue guidance to Police and Crime Commissioners regarding their role and responsibilities in maintaining oversight of undercover operations.

London Criminal Courts Solicitors' Association

The LCCSA has decided to only respond to those questions which are pertinent and within the ambit of knowledge and concerns.

The significant problems concerning the use and deployments of CHIS under RIPA can not be resolved by an amendment to the codes of practice.

The primary purpose of RIPA was to ensure the establishment of a regulatory framework for intelligence gathering that was compatible with ECHR.

It is now clear that RIPA is outdated in failing in this primary purpose and needs a radical overhaul to address a number of matters that have recently come to light. This includes industrial scale 'snooping' on phone and internet activity by GCHQ and intelligence agencies, and the deployment of CHIS to spy on political groups, unions and justice campaigns often using unethical and abusive techniques.

The establishment and/or maintenance of an intimate sexual relationship for the covert purpose of obtaining intelligence would, if permitted, be the most intrusive form of cover investigatory technique and would amount to a gross invasion of individuals fundamental common law rights to personal security. This self evident truth is not reflected in the statutory framework. The framework sets out the regulatory requirement for the use of six covert investigatory powers and also arranges them in a hierarchy with the powers considered most intrusive available in far more limited circumstances, to far few public bodies and subject to significantly more stringent requirements than those considered to be the least intrusive. The hierarchy is as follows:

1. Interception of Communications.
2. Intrusive Surveillance
3. Demands for Decryption
4. Covert Human Intelligence Source (CHIS)
5. Directed Surveillance
6. Acquisition of Communications Data

^[i] The Stephen Lawrence Independent Review: Possible corruption and the role of undercover policing in the Stephen Lawrence case, Mark Ellison QC, 6th March 2014

^[ii] Ibid, pp 16,17

Official

The three investigatory powers considered the most intrusive have the following distinctive requirements:

1. Warrants signed in person by Secretary of State , authorisations from the SoS or prior approval from a Surveillance Commissioner or judge
2. Use only by a discrete core of investigating authorities (for interception only the intelligence services, the police, HMRC and SOCA and in addition for the other two powers, the OFT, HM forces and MoD.
3. Use only for the purpose of national security, the prevention or detection of serious crime and the economic well-being of the UK;
4. The statute provides that those authorising the use of the power must consider whether the information could reasonably be obtained by other means.

By contrast, the three investigatory powers considered the least intrusive, which include CHIS:

1. Have no requirement for warrants or prior approval;
2. Can be authorised by relatively low-ranking officers in an extremely wide range of public authorities;
3. Can be used for a wide range of purposes such as non-serious crime, public safety and public health;
4. Have no requirement on the face of the statute for those authorising the use of the power to consider whether the information could reasonably be obtained by other means.

In terms of intrusiveness the establishment and/or maintenance of an intimate sexual relationship for the covert purpose of obtaining intelligence significantly surpasses the interception of post and telephone calls and the placing of recording devices in people's homes or cars.

The current weakness of the regulatory framework permits low-level operatives within numerous public authorities empowered to deploy CHIS are charged with determining the necessity and proportionality of its use for a wide range of purposes, many of which are not of vital importance. The potential for wholly disproportional, grossly invasive authorisations is enormous.

The Court of Appeal judgment [2013] EWCA Civ 1342 found that sections 26 and 29 of RIPA (relating to CHIS) could cover the use of intimate sexual relationships to obtain evidence although it was accepted by the court (paragraph 32) that "...there is certainly nothing to suggest that Parliament contemplated that surveillance by a CHIS might be conducted by using the extraordinary techniques that are alleged to have been used in the present case."

There is an urgent need for legislative clarification. Either a CHIS is not to engage in in the forming/ or maintenance of an intimate sexual relationship for the covert purpose of obtaining intelligence (which we submit is the correct position and one now seemingly adopted by the Metropolitan Police) or there needs to be a fundamental overhaul of the statutory framework such that this kind of intrusive conduct does not have a weaker regulatory framework than a postal interception.

Neither the 2002 or 2012 Code of Practice make any mention of the use of sexual relations as an undercover investigatory technique and certainly not one that falls within the regulation of RIPA. It is astonishing that this latest consultation also fails to address this issue despite the Home Office being aware of the reports, complaints, investigations and litigation concerning the use of this technique. In short this representation is that the proper regulation of CHRIS needs to be dealt with by primary legislation and not by an amendment to the codes.

With this in mind we respond to the particular paragraphs being consulted upon in the consultation as follows:

Official

2.14 – The use and conduct of CHIS should be subject to the same level of stringent requirements in place for the interception of communications and the use of sexual conduct as a tool to gather evidence or build a legend is never acceptable or should be in a democratic society.

3.12 – The moderate improvement in regulation here is no substitute for a properly regulatory framework as submitted above

3.26-3.27 – These proposals still fails to address the fundamental disparity between the regulation of intercept and regulation of CHIS which needs to be properly addressed given the use and conduct of CHIS.

4.3 There is a need for a proper statutory framework (see above)

4.31 There is a need for a proper statutory framework (see above)

5.10 There is a need for a proper statutory framework (see above)

5.23-5.26 There is a need for a proper statutory framework (see above)

5.30-5.31 There is a need for a proper statutory framework (see above)

7.5 There is a need for a proper statutory framework (see above)

Manchester Metropolitan University

In recent years a number of instances have come to light whereby male police officers have conducted sexual relationships with women they have been investigating. These relationships are entirely deceitful, unprofessional and grossly inappropriate. The Sexual Offences Act 2003 makes it clear that sexual consent is vitiated where that consent is obtained by deception as to the nature of the sexual act. The nature of these (repeated) acts was entirely deceitful. They purported to take place in the course of loving relationships but were actually a cheap way of obtaining sexual congress with women who were being investigated. This is little short of state-sanctioned rape.

It is vital that the codes of practice should be amended to make it clear that sexual relationships are not sanctioned as part of investigative work. No officer should be under any misunderstanding. If they engage in this form of violation of privacy and dignity then they should be subject to gross misconduct procedures. Please ensure that the final code of practice reflects this.

Metropolitan Police

Surveillance Codes of Practice

- The urgency criteria for Property Interference should be made more consistent with directed and intrusive surveillance. The codes presently mention one of the reasons for urgency as "*be likely to endanger life or jeopardise the investigation or operation for which the authorisation was given*" this is included within the sections for directed at 5.6 and intrusive at 6.8 but not included anywhere within 7.15-17 for intrusive.
- Could an index be provided at the rear of the codes for quick referencing?

CHIS Codes of Practice

At present the only mention of undercover operatives within the code appears under the section headed 'Handlers and Controllers' at 6.6 Oversight and management arrangements for undercover operatives, whilst following the principles of the Act, will differ, in order to reflect the specific role of such individuals as members of public authorities.

- Much national debate within the UC community has taken place about the terminology of the handler and controller equivalent within the UC management process, Cover Officers and Covert Operational managers. The danger of using the same terminology for both is that they are training to

Official

manage their CHIS in very different ways and if they are not differentiated in the legislation there is a danger senior managers at a later time may think they are saving money by joining the source handling team with a UC handling team assuming because of the name they perform the same role. UC cover officers additionally act as tactical advisors and may get involved in the evidential chain, which source handlers will never do. Could the role performed for managing and supervising undercover operatives be made more distinct to that of 'normal' CHIS.

- Additionally within SI 2725 at section 3, The following matters are specified for the purposes of paragraph (d) of section 29(5) of 2000 Act (as being matters particulars of which must be included in the records relating to each source) (k) makes reference to 'all contacts or communications between the source and a person acting on behalf of any relevant investigating authority. This is potentially problematic for 'undercover operatives' as when they are not 'active' as an operative they will still be in communication with the staff who perform the role of cover officer and covert operational manager and it would be impractical and potentially create additional risk (potentially identify the organisation of origin the operative belongs) if such records have to be maintained additionally and for no apparent good reason. It is fully understood why such a system is required for sources who are not members of public authorities, but do not seem to make any sense for relevant sources. This issue was also previously raised when the CHIS Codes were circulated for consultation in 2010.
- It there a need to clarify that a 'relevant source' is what was previously referred to as and 'undercover operative'. The terminology 'undercover operative' is mentioned at 3.11 example 1 and 6.6 but not anywhere else.
- There had been lots of requests for clarification about who conducted reviews after relevant sources had been renewed, but this has been clarified by Home Office and reinforced by the OSC. Could an index be provided at the rear of the codes for quick referencing?

Network for Police Monitoring

There are significant public concerns about the use of Covert Human Intelligence Sources (CHIS). According to a 2011 Justice report⁵³, 39,815 covert human intelligence sources were recruited between 2000 and 2010, including 1,814 by non-law enforcement bodies such as government departments and local authorities. Between 2001 and 2010, some 1120 complaints were made to the IPT concerning unwarranted or excessive surveillance by public bodies. Out of more than 1,000 complaints over the last decade, only 10 have been upheld by the Tribunal.

In addition, a number of very serious allegations have been made relating to the behaviour of undercover officers infiltrating protest groups.

Damian Green, Minister of State for Policing, Criminal Justice and Victims, claims that 'significant changes' have been made to the Covert Human Intelligence Sources Code of Practice published for public consultation.

These include:

- enhanced judicial oversight of all undercover law enforcement deployments, requiring prior approval by the Office for Surveillance Commissioners for all long term deployments;
- the definition of 'relevant source' as a particular type of CHIS, being a source holding an office, rank or position within relevant public authorities;
- enhanced authorization for the use of 'relevant sources' at the level of Assistant Chief Constable, and at the level of Chief Constable / Assistant Commissioner for long term authorization (more than 12 months).

Given the widespread public concern about "undercover policing" the scope and extent of the proposed amendments is disappointing. While we welcome improvements to authorisation arrangements and

53 Justice: 'Freedom from Suspicion: Surveillance Reform for a Digital Age', October 2011

Official

oversight, the amended code does not add any detail regarding who constitutes a legitimate subject of surveillance, nor does it tackle the nature of the relationships that officers and other covert human intelligence sources (CHIS) are permitted to engage in.

The broad nature of the authorisation criteria continues to provide excessive latitude in decision making, and provides insufficient guidance for interpreting the proportionality of CHIS deployments. In short, the amendments provide little in the way of reassurance that the 'historic' cases of unethical use of surveillance will not be repeated.

Maintaining relationships

The Metropolitan Police Operation Herne report by Creedon and Mackay⁵⁴ found ““there are and have never been any circumstances where it would be appropriate for such covertly deployed officers to engage in intimate sexual relationships with those they are employed to infiltrate and target.”

The report also concluded there had been “an abject failure of the deployment, a gross abuse of their role and their position as a police officer and an individual and organisational failing,”

It is therefore surprising and concerning that there are no amendments to the CHIS code under the section *Establishing, maintaining and using a relationship* (2.13 of code). The description of a 'relationship' as the inoffensive and largely atypical example of the relationship between shopkeeper and customer is grossly inadequate.

The code fails to recognise the compelling allegations of inappropriate intimate and sexual relationships entered into by undercover police. There is no guidance on whether such relationships are permitted, or the circumstances in which they may be considered proportionate.

A new section of the CHIS code '*Legend building*' (2.14 of the code), states that, in relation to activities required to 'build up their cover profile' consideration should be given to an authorisation under the 2000 Act. There are no limitations on the actions that may be taken for this purpose, or the circumstances in which a prior authorisation would be considered necessary.

Whilst appreciating the sensitivity of the subject, we believe the Code must provide some clarity in this area. We would like to see a categorical statement, reflecting the position adopted in the Herne Report quoted above, that entering into sexual relationships for the purposes of obtaining information or building/maintaining cover is neither acceptable nor lawful. If that is not the position adopted by the government, the code must reference the extent to which, and the broad circumstances in which police officers are permitted to engage in such behaviour.

Authorisation Criteria

The Code of Practice provides no additional or revised guidance on the application of authorisation criteria laid down by section 29(3) of RIPA. This is a particularly disappointing omission.

Section 29(3) authorises CHIS for (amongst other purposes) the prevention or detection of crime and the prevention of disorder. Preventing and detecting crime goes beyond the prosecution of offenders and includes actions taken to avert, end or disrupt the commission of criminal offences.

This category of offences is extremely broad, potentially permitting the use of long term CHIS deployment to disrupt minor offences.

The Act does not differentiate undercover police officers from other categories of CHIS. The creation of the definition, in the Code of Practice, of a distinct group of CHIS – 'relevant sources' – provides an opportunity to present more detailed guidance on the types of criminality that would justify the use of undercover officers.

54 Operation Herne - Report 2: Allegations of Peter Francis (Operation Trinity)

Official

We consider that it can never be proportionate to deploy undercover police officers to in relation to minor crime or disorder. We therefore suggest that the Code should contain explicit guidance restricting the use of 'relevant sources' to the prevention or detection of serious crime.

Infiltration of political groups

The Operation Herne report, published in March 2014, stated;

'A source known as 'Officer A' claimed in The Observer in March 2010 that the SDS [Special Demonstration Squad] 'targeted black campaigns' that had been formed in response to deaths in police custody, police shootings and serious racial assaults. 'Officer A' also added that 'once the SDS got into an organisation it is effectively finished. This effectively made justice harder to obtain.'

Operation Herne has identified that undercover officers were tasked into groups to provide intelligence regarding potential public disorder. This included both left and right wing groups and organisations and animal rights groups. A tactic of 'entryism' was used by activists to promote their own political agendas. It was inevitable that undercover officers would find themselves reporting on these groups that would become embroiled with their target organisation.

There are occasions where undercover officers sought and recorded material that would now be considered as 'personal information'. At that time, there was no relevant legislation to regulate such action, in the absence of a definition of the concept of 'collateral intrusion', SDS undercover officers were not gathering evidence to support criminal investigations, but intelligence to prevent public disorder and criminality.

We do not consider this to be a historic problem. Activists have expressed their belief that undercover officers working up until 2009 also collected personal information on political activists uninvolved in criminality, disrupted the lawful functioning of groups, and the engagement of individuals in lawful activity.

In addition we are concerned at reports⁵⁵ that individuals associated with protest groups are being recruited as CHIS. People engaged in lawful protest are subject to unacceptable levels of doubt over the circumstances in which they or their colleagues can be approached by police to provide information. Such acts have a significant chilling effect on the right to protest.

Remarkably, considering that the police have particular responsibilities to refrain from unnecessary interference with rights to freedom of assembly and expression, there is no guidance in the code relating to CHIS and political activity. We consider that this is a serious omission, and that the responsibility of police to respect the right, set out in the Human Rights Act, to peaceful protest should be made explicit in the guidance.

North East Trading Standards Association (NETSA)

Overall Response Summary

Thank you for giving us the opportunity to comment on the above consultation. We have focussed our response on the key priority areas for NETSA rather than answer each detailed question.

The biggest impact the CHIS Codes have relate to the work of Local Authority Trading Standards services (LATSS) in the prevention of sales of illegal products (cigarettes, alcohol, fireworks etc.) to those underage. In order to deal with this important issue to the satisfaction of elected Members, residents and those businesses operating within the law, LATSS utilise the services of child volunteers to carry out test purchasing exercises.

NETSA is particularly pleased to note the slight change of interpretation described by Example 3. This follows the views that most Heads of Service hold which is that a standard test purchase in which a

⁵⁵ See for example The Guardian, 'Police techniques for recruiting and running informants revealed' 21st March 2014

Official

young volunteers, watched by an officer attempts to buy a restricted product is unlikely to result in the formation of any relationship or the gain of any private information and does not therefore fall within the definition of directed surveillance.

However, previously problems have been caused for local authorities because the Office of Surveillance Commissioner Guidance seems to impose stricter requirements than these codes. This has been further complicated via a Code of Practice issued by the Better Regulation Delivery Office (BRDO). Code-of-practice-ag e-restricted-products.pdf

NETSA would therefore urge, in the strongest possible terms, that the Home Office, the OSC and BRDO collectively discuss and agree the approach to ensure their guidance is not contradictory.

We note the main change is the formal inclusion of Magistrates provisions, but local authorities have been operating to that anyway.

We also note that details of the Magistrates hearing, dates of attending and the Order issued by the Court all need to be documents held as part of the central register to be examined by the OSC as part of their audits and that the code now specifies that LA should review their use of RIPA and policy on an annual basis, and quarterly reports should be produced outlining authority's use of provisions. NETSA has no objections to this approach.

North Lincolnshire Council

My suggestion relates to paragraph 3.27 and the reports that are provided to elected members. Whilst I fully agree that elected members should be aware of RIPA within their own authority, in my experience quarterly reports appear slightly excessive. My own local authority's use of RIPA has decreased, and sometimes there is in fact nothing to actually report to elected members. Would a half- yearly report to members be more appropriate? This would be in addition to elected members setting the Authority's RIPA Policy, which is done once a year.

Office of the Surveillance Commissioner (OSC)

Paragraph/ Section	Comment	Other observation
CHIS Code of Practice		
Between 2.4 and 2.5	There is still reference to Use or Conduct. This has always struck us as strange, as we don't see how you can have one without the other. Should it not be 'Use and Conduct'?	
2.12	Should include that a public authority should not <u>induce</u> someone to act as a CHIS without an authorisation being in place. (We often still encounter officers (in all public authorities) who think that just because they have not tasked someone for information, this means they are not a CHIS. It might be worth providing advice that the emphasis must be on the <u>relationship</u> that exists, not the tasking or otherwise by which the intelligence is being obtained)	
2.14	Para 2.14 has good reference to legend building and the need to bring to attention of OSC, irrespective of whether authorised under RIPA. This should helpfully state that this should be brought to the attention of the OSC inspector <u>at the next OSC inspection.</u> Who should be responsible for the audit trail? Is it part of SI 2725/2000 (Source Records)? Is it the responsibility of the AO or SRO? The word 'should' is always weak, and we invite the Home Office to consider whether 'must' in the current climate is perhaps more advisable.	
3.12	Refers to subsequent renewals but should also include reviews.	

Official

3.22	Still does not make clear that this is a person specific, and not activity specific, authorisation	
4.1	Consideration should be given to further define what ARE private constituency matters and what ARE NOT – specifically, as with legally privileged information, consideration should be given to making it clear in the <u>Codes</u> that communications or items held, or oral communications made with the intention of furthering a criminal purpose are not “private constituency matters”. You may consider this to be an important matter of public confidence for inclusion.	
5.10	You may also wish to consider whether further guidance is necessary in the event that any comments are provided to an LEA by a Surveillance Commissioner regarding a notification (as opposed to a prior approval renewal) and merits further action – for example, recently one of our Commissioners was not happy with the quality of the risk assessment submitted by an authorising officer, and required a more relevant document to be completed. This was a “notification” of an initial use and conduct and the authorising officer was therefore at liberty to disregard these comments, but given the role of the Surveillance Commissioners under the new Statutory Instrument and public/Parliamentary/Ministerial expectations, it might be worth stating that whilst the Surveillance Commissioner has no power to quash at a notification stage, the authorising Officer should be advised promptly of such comment so that he may consider it as appropriate. It may, after all, have a bearing upon his or her future reviews and any subsequent renewal by an SAO.	
5.15	It would be useful here to make clear that local authorities can no longer grant urgent oral authorisation (this is clearly stated in the Covert Surveillance Code at para 3.30) It should also prescribe that ‘out of hours arrangements should be in place with HMCS to deal with out of hours applications’.	
5.21	<i>Except where enhanced arrangements exist, the authorising officer who granted the authorisation should renew the authorisation.</i> It is important to reflect that practitioners who refer to the Codes will know that frequently the original authorising officer who granted the authorisation may no longer be an authorising officer in that public body as people’s careers move on - in which case an officer currently undertaking this function should renew the authorisation.	
5.23	There is still room for confusion as to the sequence of events regarding the 12 month renewal process. We should be clear that the SAO grants the authorisation and sends it for prior approval to the OSC, as they do currently for some PI and all IS. The document issued by OSCT about how the new system works makes it sound at paragraph 26 like the SAO does their bit after approval, but in Annex B of that document it sounds like the SAO grants the authorisation and submits this to the OSC at 11 months for approval. The Code makes it sound like prior approval must be sought before the renewal is granted. We need to be clear – SAO <u>grants</u> the renewal and sends it in at the eleven month point; the Surveillance Commissioner <u>approves</u> it (or not); it becomes <u>effective</u>	

	thereafter (again, very similar to the intrusive surveillance renewal process).	
5.25	<p><i>When deciding if the 'relevant source' is authorised as part of the 'same investigation or operation' in calculating the period of total or accrued deployment or cumulative authorisation periods, consideration should be given as to whether there is a common subject or subjects of the investigation or operation; the nature and details of relationships established in previous or corresponding relevant investigations or operations; and whether or not the current investigation is a development of or recommencement to previous periods of authorisation, which may include <u>a focus on the same crime group or individuals</u>. Consideration may also need to be given to any periods of legend building undertaken by the relevant source that have a bearing by way of subject, locality, environment or other consistent factor.</i></p> <p>The Codes should keep this very simple and enable the use of lawful and reasonable professional judgment on the part of authorising officers whilst providing effective oversight.</p> <p>Therefore consider adding the following entry to para 5.29: "Whenever and wherever an authorising officer is of the view that whereas a "relevant source" has not been deployed on an operation or investigation bearing the same operational name or title for a 12 month period, but is deployed in operational circumstances where there is in his/her view there is a consistent factor associated with the deployment beyond a 12 month which should be notified to the OSC, then the matter must be brought to the attention of the OSC together with details as to the supporting rationale.</p> <p>All such cases so considered by an authorising officer in these circumstances should be notified to an OSC Inspector as part of the annual inspection programme <u>regardless as to the decision made.</u>"</p>	
5.29	This should give some expectation by the AO to satisfy themselves in respect of welfare issues from the role, and when there are matters to address, to make appropriate direction in that regard.	
6.5	Should there also not be some reference to Section 29 (4)?	
Page 22 Footnotes	<p>You may wish to consider taking the opportunity of this review to correct an anomaly within the footnotes on pg 22, which provides:</p> <p>12 One of the functions of the Security Service is the protection of national security and in particular the protection against threats from terrorism. These functions extend throughout the UK. An authorising officer in another public authority should not issue an authorisation under Part II of the 2000 Act where the operation or investigation falls within the responsibilities of the Security Service, as set out above, except where it is to be carried out by a Special Branch, <u>Counter Terrorist Unit</u> or where the Security Service has agreed that another public authority can authorise the use or conduct of a CHIS which would normally fall within the responsibilities of the Security Service.....</p> <p>This should read....." Counter Terrorism Unit or</p>	

Official

	Counter Terrorism Intelligence Unit”.....these is no such thing as a” Counter Terrorist Unit” and therefore an issue of credibility – presumably a counter terrorist unit targets a terrorist – whereas the Counter Terrorism Units and Counter Terrorism Intelligence Units provide an holistic approach to targeting the phenomenon and ideology of <u>terrorism</u> .	
Example 1 (relevant sources)	Consider whether any additional guidance is necessary to make the difference between “all CHIS authorisations must be for 12 months”, but CHIS authorisations for relevant sources have specified periods for their lawful duration?	
Surveillance Code of Practice		
Example 3, paragraph 2.24	<p>This is sometimes quoted on inspections as justification for not using RIPA DSA for these operations. It may be based on our old guidance, which suggested that DS should be used if the juvenile is wearing recording equipment. Our 2011 guidance, (para 261) widens this to “if wearing recording equipment <u>or an adult is present observing</u>”.</p> <p>There is always an adult present observing. Furthermore, the government now clearly agrees that authorisation is appropriate, (a) by exempting alcohol and tobacco sales from the serious crime threshold and (b) by issuing the BRDO Code which expressly quotes our paras 261 and 262.</p> <p>Example 3 also confuses DS and CHIS, by suggesting that both are unnecessary because there is no “relationship” formed. This is the reason why CHIS is unnecessary but is irrelevant to DS. The argument about DS is whether private information is likely to be obtained, and our guidance is based on the breadth of the definition of private information.</p>	nb - This input has come directly from an Assistant Surveillance Commissioner (a judge)
8.1	<p>It would be useful to be more specific regarding ‘details of attendance at magistrates’ court’. i.e. who attended, the dates of attendance at court, the details of the determining magistrate(s), the decision of the court and the time and date of that decision.</p> <p>The Codes might also helpfully advise on the setting of <u>effective</u> time periods by an Authorising Officer following judicial concurrence. It would appear that the forms in use now record the time and date an AO signs an application, but does not have a section to record the eventual <u>effective</u> time period. We suggest a prior approval type arrangement should be put in place by LAs, as some authorisations we have inspected had defective renewal periods as the authorisation should have begun once concurrence had been granted.</p> <p>Care needs to be taken that an AO is made aware of any comment recorded by a Magistrate. There was evidence in a recent inspection that a Magistrate had questioned an applicant and from the note made by the Magistrate, discussion had taken place with the applicant regarding the reliability of the intelligence source (as you know, it is the OSC’s contention that it should be the Authorising Officer who attends to see the magistrate). The application to the AO had simply recorded intelligence has been received. Again a process similar to the prior approval</p>	

Official

	requirements whereby an AO will be advised of a Commissioner's comments and subsequent recording of the effective time period should we suggest, be considered by LAs.	
8.2	<p><i>"The following documentation should also be centrally</i></p> <ul style="list-style-type: none"> <i>• for local authorities a copy of the order approving or otherwise the grant or renewal of an authorisation from a Justice of the Peace (JP)".</i> (Some may be declined or quashed). 	
Appendix A	The lists in App A of both Codes do not seem to have been revised. Royal Pharmaceutical Society still appears there even though it is no longer a RIPA scheduled body. Also, under HSE, nuclear installations are going to be outside HSE from 1.4.14. The Home Office is invited to revise those Appendices to reflect changes in public authorities. There may be more than we have highlighted here.	
Further observations		
	Whilst not true in every case, the OSC has identified from inspections this year that in general, magistrates and their Clerks have very limited knowledge of the requirements of the POF Act.	
	Para 4.23 of CHIS Code of Practice. Definition of a vulnerable person should be reviewed. Many CHIS are illiterate, have serious drug/alcohol issues or debt/depression or social/domestic challenges. The payment to these individuals may well be seen in the future as the exploitation of the vulnerable in society. Understand and support the use of such individuals by LEAs however the OSC sees the risk assessments and are aware of the chaotic life-styles many CHIS pursue. Is there a potential for an HRA challenge at some point in the future?	
	I have no observations on the substance of the specific revisions to the codes. Both codes refer to separate guidance "on these provisions" (i.e. the new provisions, I assume) issued to Scotland and Northern Ireland. See para 3.32 of the Surveillance Code and 3.26 of the CHIS code. I am not aware of this guidance, and I did not think these changes applied there. This should be clarified.	nb - This input has come directly from an Assistant Surveillance Commissioner

Police Spies Out of Lives

INTRODUCTION

We are a group of 8 women bringing a [legal action](#) against the Commissioner of the Metropolitan Police arising from the intrusion into our lives by undercover officers, and we are responding to the consultation on proposals to update the Covert Human Intelligence Sources Code of Practice and the Covert Surveillance Code of Practice.

The following points for the consultation are made without prejudice to our view that there are profound structural flaws within RIPA, which suggest that the whole Act requires a radical overhaul. Nor does our participation in this consultation constitute tacit acceptance of the use of undercover policing against political dissent. We simply wish to try and ensure that the abuses we experienced cannot happen again.

Official

We note that despite the controversy over the issue of undercover relationships in the past couple of years, the Codes of Practice fail to make any mention of intimate and sexual relationships.

On your website it states that *“both codes of practice have greatly improved control and oversight of the way public authorities use covert investigatory techniques, in order to protect our right to privacy.”* Having had our privacy intruded upon to a huge and damaging degree we feel that these guidelines fail to address the issues raised by our claims, and fail to offer any increased protection to the public.

The changes proposed to the Codes of Practice are not sufficient to prevent the kinds of abuses that have been perpetrated by [undercover officers like Mark Kennedy and Marco Jacobs](#), who were operating under very similar Codes of Practice. It is irrational and represents a dereliction of duty for new guidelines to ignore this behaviour, which has been called “unacceptable and grossly unprofessional” by Jon Murphy, head of ACPO (January 2011).

In the light of inconsistent statements by senior police and ministers** on the subject of sexual relationships, a duty is owed by the government to the public (and to officers) to ensure the regulations are clear. The situation as it stands currently gives free reign to officers and their handlers, and in view of the fact that women have been disproportionately affected by these relationships, a failure to introduce measures to prevent further abuse, amounts to institutional sexism.

** *Inconsistent statements on the policy in respect of sexual conduct by undercover officers can be found detailed [here](#).*

PROPOSED ADDITION TO CODES OF PRACTICE

In our view, in order to provide protection to the public against this abuse, the Codes of Practice need to incorporate a clear statement so officers know from the start of their deployment that sexual and intimate relationships while undercover are not acceptable. We propose that the following statement be added to the text of para 2.13 (p7):

“Officers are expressly forbidden from entering into intimate or sexual relationships whilst in their undercover persona.”

Such a statement is necessary for the following reasons:

1) Intimate and sexual relationships by undercover officers concealing their real identity from the other person/s in the relationship/s represent a clear violation of the right to respect for private and family life (Art 8) and the right not to be subject to inhumane and degrading treatment (Art 3). When used by officers infiltrating campaigning and political organisations, they also represent a violation of the right to freedom of expression (Art 10) and freedom of assembly and association (Art 11).

2) Intimate and sexual relationships by undercover officers concealing their real identity from the other person/s in the relationship/s causes serious long-term harm and psychological trauma to those persons and others close to them.

3) Such relationships additionally harm the officers’ families and the officers themselves.

4) Intimate and sexual relationships by officers concealing their true identity from other person in the relationship amounts to a gross invasion of an individual’s fundamental common law right to personal security.

5) The tactic as it has been used, plainly has had and will have a discriminatory effect on women and is thus prohibited by Article 14 ECHR.

6) Under Section 74 of the Sexual Offences Act 2003, a person can only consent to sex if she “agrees by choice, and has the freedom and capacity to make that choice”. Recent case law adds strength to the argument that undercover officers would be committing sexual offences if they enter into a sexual

Official

relationship. (*Assange v Swedish Prosecution Authority* [2011] EWHC 308 and *R v McNally* [2013] 2 Cr.App. R.28). It has also been suggested by Chief Constable Mick Creedon in Operation Trinity Report 2 that offences of Misconduct in Public Office may apply. This means that sexual relationships *cannot* be permitted under these codes, whatever the level of authorisation. This needs to be made clear.

7) Sexual relationships may produce children and have done in at least two of the reported cases. This means that the tactic poses a risk to women's bodies and could also have a profound effect on the rights of a child as contained in the UN Convention on the Rights of the Child ([UNCRC](#)). Article 7 of the UNCRC requires children to be given the right to know their parents. It is difficult to see how the use of a tactic which carries with it the risk that a child will be born to an undercover police officer who will disappear into thin air at a certain stage in the child's life could be compatible with the UNCRC.

8) Conversely, where relationships are long-lasting, and the officer is unwilling to have children, they have an effect on a woman's right to have children, as protected by the Convention on the Elimination of All Forms of Discrimination Against Women ([CEDAW](#)), since women's fertility is so much more short-lived than that of men.

9) There is clearly a disproportionate use of the tactic against women. The failure to provide any guidance in relation to sexual relationships itself has a discriminatory impact on women because it makes it more likely that their rights will be unjustifiably interfered with. The impact on women also gives rise to the need to conduct an equality impact assessment in relation to the publication of any new Code of Guidance. No such Equality Impact Assessment has to our knowledge been produced.

FURTHER BACKGROUND

1) Article 3 rights are absolute or unqualified human rights – it is not possible to authorise someone to violate an unqualified human right under any circumstances. We note that in a recent High Court judgement, Justice Tugendhat stated that a physical sexual relationship, which is covertly maintained, is more likely to fall into the category of degrading treatment, “depending on the degree and nature of the concealment or deception involved”.

2) Article 8, 10 & 11 rights are qualified rights, but interference with qualified rights is permissible only if:

a) there is a clear legal basis for the interference with the qualified right that people can find out about and understand.

We note that there is nothing in law which states that if a police officer suspects an individual of involvement in a crime or with a political movement, that officer is entitled to have a sexual relationship with the person to try to find out.

b) the action/interference is necessary in a democratic society.

Sexual and intimate relationships cannot be said to be necessary – It was asserted by [Nick Herbert in June 2012](#) that “to ban such actions would provide a ready-made test for the targeted criminal group to find out whether an undercover officer was deployed among them.” We believe this to be a ludicrous argument designed to allow abuse to continue. There are a multitude of reasons why any individual might decline to become intimate with another person. Such reasons are given in every day life and would not lead to an assumption that the person declining was an undercover officer.

In any event, such an argument would not be tolerated in respect of murder or child abuse, so why should it be tolerated in respect of abuse of women?

Further a defence of necessity and self-defence already exists in British law – therefore any officer genuinely in fear of his or her life and forced by circumstances into breaking the prohibition would be able to argue this in their defence.

Official

c) *the action/interference is proportionate to what is sought to be achieved by carrying it out.* The action or interference must be in response to ‘a pressing social need’, and must be no greater than that necessary to address the social need. Given the level of invasion of privacy and the serious psychological harm caused by such relationships they would clearly fail the hurdle of proportionality.

3) The rights of women to autonomy in reproduction are protected by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 16(1) of which provides: States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

4) Article 3 of the UNCRC provides that *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”* Article 7 states: *“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.”*

5) German Police internal guidelines expressly forbid the use of intimate or sexual relationships for the purpose of gathering information because this would violate basic privacy rights (*“Kernbereich privater Lebensgestaltung”*). This applies to undercover investigators as well as informants employed by the federal authorities. If it is possible to ban this tactic in another European country without risking a “ready-made test” for a targeted group then there is no reason not to implement such a ban here.

SECTION ON COLLATERAL INTRUSION (p12)

In our experience the depth of the intrusion into our lives also meant a deep intrusion into the lives of family members and close friends. For example, undercover police officers “infiltrated” deeply emotional family gatherings such as funerals, weddings and birthday celebrations. The psychological harm inflicted, not only on us, but on close members of our family (including infirm, elderly relatives) cannot be justified.

Such intrusion is referred to in the guidelines as “Collateral Intrusion” and, perversely, its authorisation appears to require less rigorous tests than intrusion into the lives of “suspects”. Collateral Intrusion is, it seems, a euphemism for violating the fundamental human rights of people who are not even the specific subjects of surveillance, without any real consideration of the psychological damage that such deep deceptions might cause.

As can be seen from some of the authorisations for the activities of Mark Kennedy, it was considered that any “like minded activist” was a valid target for infiltration, and so further authorisation was not sought for their inclusion into the operation, regardless of their relevance to any investigation (and despite such an approach being a clear interference with Article 10 & 11 rights). It is also evident from documents that have come to light thus far that the extended family of political activists were also considered ‘fair-game’. The Codes of Practice have not altered in any meaningful way to ensure that this behaviour does not continue.

Official

In the same way that we don't consider that forming intimate sexual relationships could ever be considered necessary or proportionate, it is always wholly inappropriate for a police officer to insert themselves into extended families, in the way that being part of long-term relationships would necessitate.

In our view every individual whose Article 8 Human Rights may be breached by an operation should be afforded the respect of having the merits of that intrusion specifically considered and recorded, including the specific reasons why it is considered necessary and proportionate.

LEVELS OF AUTHORISATION

In terms of intrusiveness, entering into deceitful long-term relationships and/or moving into people's homes and becoming party to the most intimate details of their private lives is quite clearly more intrusive than the interception of post and telephone calls, and the positioning of recording devices in people's homes or cars. The authorisation requirements should therefore be at least as stringent. It is inconceivable that despite increases in levels of authorisation provided for in these codes of practice, it is still the case that a phone tap needs greater authorisation than a CHIS.

It is still the case that whilst '*Warrants signed in person by the Secretary of State, authorisations from the Secretary of State or prior approval from a Surveillance Commissioner or judge*' are required for what are considered the most intrusive methods of surveillance, it is not a requirement for the deployment of Covert Human Intelligence Sources. Whilst it is never acceptable to form intimate long-term relationships whilst operating undercover, it is still plainly absurd to consider a CHIS less intrusive than a phone tap in many cases.

To assist with understanding the impact of this type of intrusion on people's lives, we attach our evidence presented to the Home Affairs Select Committee, as well as our Letter before Claim. Given this evidence it is clear that the most intrusive methods of surveillance used to date are not adequately dealt with by RIPA. These Codes of Practice should be changed to ensure that the abuses we have suffered would not be allowed in future.

ACCOUNTABILITY

This public consultation is taking place in the shadow of a consistently obstructive approach by the police to any public criticism. Their attitude to our cases has been to refuse to provide a properly pleaded defence or standard disclosure, even [refusing to confirm or deny that the officers involved were in fact working for the police](#). Combine this with the recent allegations of corruption and cover-ups surrounding inquiries into cases such as Stephen Lawrence and Hillsborough, amongst others, and revelations about the shredding of documents pertaining to controversial police activity, the public perception of police accountability is low.

It is clear that the Codes of Practice as they applied to the [NPOIU](#) and the Kennedy operation, and as they now stand, will not be enough to ensure accountability. They must not be used to provide immunity from public scrutiny when wrong decisions are made, as has so patently happened in the past.

We must never lose sight of the fact that intrusive surveillance violates fundamental human rights. The test of whether something is 'proportionate or necessary' alone hasn't been sufficient to prevent abuse of position by undercover officers in the past.

The most rigorous standards possible must be applied to ensuring the enforceability of these guidelines and other laws relating to the use of CHIS. Those who make the decision to violate someone's Human Rights under these Codes of Practice must be fully accountable to the public.

Staffordshire Police

Consultation on Covert Surveillance and Property Interference Code of Practice (Code)

Official

Submission to the consultation process in relation to the application of the Code to the use of ANPR by the police and other law enforcement agencies (LEAs) by the policing lead for ANPR. This submission also takes account of counsels advice that has been obtained in relation to compliance with regulatory requirements, including RIPA in respect of ANPR.

Provisions for the regulation of ANPR use by LEAs have been significantly enhanced since the last issue of the Covert Surveillance and Property Interference Code of Practice as a result of the publication of the Surveillance Camera Code of Practice pursuant to section 30 (1) (a) of the Protection of Freedoms Act 2012 (SCC).

The SCC states at para 1.4 that:

“The government is fully supportive of the use of overt surveillance cameras in a public place whenever that use is: in pursuit of a legitimate aim; necessary to meet a pressing need; proportionate; effective, and; compliant with any relevant legal obligations”,

And, establishes at para 1.5 a principle for overt surveillance to be characterised as ‘surveillance by consent’

“The government considers that wherever overt surveillance in public places is in pursuit of a legitimate aim and meets a pressing need, any such surveillance should be characterised as surveillance by consent,”

LEAs using ANPR systems are bound by the Human Rights Act 1998 and are therefore required to demonstrate a pressing need when undertaking surveillance as this may interfere with the qualified right to respect for private and family life provided under Article 8 of the European Charter of Human Rights. The guidance provided within the SCC is consistent with the statutory obligations arising under provisions of the Data Protection Act 1998 (DPA) and in fact are reinforced by the requirements described within the 12 guiding principles of the SCC.

LEAs have established National ANPR Standards for Policing (NASP) that are consistent with the requirements of SCC.

NASP includes provision for a structured approach to the development and review of infrastructure. This requires that all ANPR cameras are deployed at locations following consideration of a pressing need and assessment of the privacy impacts of a deployment, which includes appropriate consultation. The continued deployment is subject to regular review with a requirement that it should cease when the need for that deployment no longer arises. There is transparency with regard to the use of ANPR by LEAs with information, including access to NASP, available on nationally⁵⁶, with similar information included on local LEAs internet sites. Information regarding ANPR is also provided through other local communication channels including consultation groups, newsletters and through signage.

NASP also provide for access control to the data collected by ANPR systems. The first level of safeguard is established by role based access, with staff authorised to access national systems only able to do so on behalf of another person. The second level is based on the level of seriousness of offences and the time elapsed since the data was collected with a requirement for authorisation of a senior officer for the data to be accessed. NASP also includes requirements for audit.

The significance of the SCC is that it is an indication of what the public’s reasonable expectations of the operation of ANPR are. The effect of the guiding principles and NASP is that the impact of ANPR on the Article 8 right to respect for private and family life is properly considered, (which includes provisions for consultation that are impracticable within RIPA procedures). It means that there is no need to give RIPA and the RIPA Code an overbroad interpretation in fear that otherwise the overt use of ANPR would be unregulated.

⁵⁶ www.police.uk/information-and-advice/automatic-number-plate-recognition/

Official

It is therefore appropriate for the RIPA Code to be subject to more comprehensive revision in the context of Overt Surveillance regulated by the SCC and in particular in relation to ANPR.

Section 1

In order to add clarity the heading prior to Para 1.3 should be amended to “*Basis for lawful covert surveillance activity*”

Section 2

Private Information

Para 2.6 should be reviewed to provide greater clarity, particularly taking account of the SCC as it applies to ANPR.

The premise for this paragraph is that private information may be obtained as a result of aggregation of information obtained in public, so that something that is not immediately obvious is detected, such as a person's pattern of behaviour.

It does not follow that the mere subsequent aggregation of data in order to detect underlying (and potentially private) information requires RIPA authorisation. For example the research of published materials in a library or on line, or the aggregation of financial or communications data obtained under authority of DPA exemptions, may enable an LEA to build up a coherent picture of someone's pattern of life amounting to private information, but that would not be as a result of covert surveillance.

The private information (if it meets that definition) would be obtained through analysis. Information obtained through lawfully regulated overt surveillance (ANPR) similarly should not be subject to DSA requirements. The key question underlying this aspect of the code should be whether the activity that is likely to obtain private information is covert surveillance, rather than some other later activity. Any requirements for a DSA to be in place to authorise the research of ANPR data would also create a level of bureaucratic demand that could not be sustained within LEAs. Provisions for the regulation of ANPR data collection and analysis (later activity) are fully met by the SCC and NASP, as previously indicated.

Para 2.8 should be clarified in relation to ANPR. As an overt surveillance capability it will normally only provide information regarding the presence of a vehicle at a particular location which in itself does not amount to private information. If a device is deployed at a location for the purpose of allowing live monitoring of an individual at that location then a DSA may be required.

The examples provided within the Code with regard to private information all involve the obtaining of additional information beyond simply the presence of a person, let alone a vehicle, at a location. The examples are appropriate and taking account of the regulatory provisions of the SCC and DPA, this section should be explicit in relation to ANPR in that simply recording the presence of a vehicle at a location does not amount to the obtaining of private information.

Para 2.21 – overt use of ANPR should be referenced as a ‘bullet point’ in its own right and not linked to CCTV. Whilst ANPR and CCTV have similarities the capabilities are different such that the consideration of RIPA should be in the context of each.

CCTV and ANPR section (para 2.27 onwards) This should be revised into 2 sections one dealing with each type of technology.

In respect of ANPR it should be stated that the use of ANPR cameras by *public authorities* does not normally require an *authorisation* under the 2000 Act. Regulation of ANPR use by LEAs is provided in the Surveillance Camera Code of Practice issued under the Protection of Freedoms Act 2012 (SCC). This sets out a framework of good practice, identified as guiding principles, which includes existing legal obligations, including the processing of personal data under the Data Protection Act 1998. National ANPR Standards for Policing (NASP) provide detailed guidance in support of the SCC which have been implemented by LEAs, such that members of the public should be aware that such systems are in use and the controls that are in place to ensure the ANPR development is in response to a pressing need,

Official

taking account of privacy concerns, and that access to and the use of data obtained is proportionate in each case.

ANPR is as described within SCC an overt surveillance capability. The use of ANPR does not generally result in the obtaining of private information. Registration plate details is not private information in itself, and even if linked to a particular vehicle and thereby to a particular individual in live time, is done in circumstances where that is simply a hazard of driving a car on the roads. A registration number plate is a deliberately overtly displayed marker which can be seen, and is intended to be seen. Every person who drives a car voluntarily accepts that they are likely to be capable of being linked to a particular vehicle. In general, road users have no reasonable expectation of privacy in relation to ANPR being able to determine their presence on the road. Both the Strasbourg Court in *PG v United Kingdom* and the Supreme Court in *Kinlock v HM Advocate* [2013] 2 WLR 141 have expressly accepted that CCTV in public places is a part of everyday life and that the use of CCTV does not of itself give rise to private life considerations (noting that normal CCTV is able to capture not simply the fact of an individual's presence in a vehicle but their behaviour, appearance etc). These cases are clearly relevant to ANPR.

In light of the judicial clarifications paragraph 2.28 should be revised. In the context of ANPR the system records details of the presence of a registration mark at a location which is not automatically attributed to a person or group of people. The information obtained is from overt public systems in circumstances where there is not reasonable expectation of privacy and therefore even if this on analysis provides a record of a person's movements it does not amount to the obtaining of private information.

Counsel's advice has provided a useful outline to support consideration of whether a Directed Surveillance Authorisation (DSA) is required for ANPR and it is therefore suggested that the following should be included within the code in respect of ANPR:

Determination of whether an authorisation is required will depend on the particular facts in each case. Most ANPR use will not require a DSA but authorising officers should always consider the precise circumstances, to assess whether the use amounts to covert surveillance which is likely to result in the obtaining of private information. Circumstances in which a DSA may be required (are where:

1. There is a live monitoring through ANPR of an individual's movement in real time (i.e. covert surveillance going beyond what an individual would routinely expect from ANPR use); and
2. The individual has not been informed that this type of live monitoring is being or will be conducted; and
3. The purpose of the live monitoring is not simply to take executive action in response to live events; and
4. The information that is being obtained in real time amounts to private information because the individual has a reasonable expectation of privacy in relation to that information.

Trading Standards Institute

The trading standards profession always follows the best practice suggested by the police when dealing with covert human intelligence sources and covert surveillance; indeed, trading standards officers are usually trained by the police in this regard.

Our main concern is that any activity in which a trading standards officer might be involved in an attempt to replicate the consumer experience should not be restricted.

These activities include test purchasing, the use of a property as the address to which goods and services are to be delivered, and the use of assistants/actors to facilitate such activities.

For example, a trader suspected of selling "dodgy" suites in a newspaper might be asked to deliver a suite to a residential premises where trading standards officers act as the residents in order to replicate in its entirety the consumer experience of dealing with that trader. The trader takes them to be consumers and treats them accordingly.

This practice is alluded to in the proposed covert surveillance and property interference code of practice, page 11:-

Official

"...residential premises occupied by a public authority for non-residential purposes, for example trading standards 'house of horrors' situations or undercover operational premises"

In compiling this response, TSI has canvassed the views of its Members and Advisers.

The Training Consultants Ltd

1. In Paragraph 5.5 of the draft Code of Practice for Covert Surveillance and Property Interference, it states that the applicant AND the aunt origin officer should both make a record of what has been authorised yet in the draft Code of Practice for Covert Human Intelligence Sources paragraph 5.5 has a similar wording but only requires the applicant to records what has been authorised.

Is this intentional to have different requirements or would it be more appropriate to have the same requirement for both activities?

2. The Code of Practice for Covert Surveillance and Property Interference makes several references to the Office of Fair Trading (OFT), however with effect from the 1st April 2014, this organisation will cease to exist and become part of the Competitions and Markets Authority (CMA). Should references to the OFT be replaced with CMA?

3 Ref Code of Practice Covert Surveillance & Property Interference. Postscript 46 on page 36. Although the statutory instrument mentioned is still valid, the contents are now factually incorrect as HM Prison Service now forms part of the National Offender Management Service (NOMS) and this organisation now reports to the Ministry of Justice not the Home Office.

4 Ref Code of Practice Covert Surveillance & Property Interference. Glossary on page 55 re Secretary of State. This is not necessarily the Home Secretary as the Secretary of State for Justice has responsibility, in the first instance, for authorising activity for the National Offender Management Service

Wales Heads of Trading Standards (WHOTS)

WHOTS welcomes the amendments to the 2010 code of practice. We wish to make the following comments and observations:

2.27: WHOTS accepts that it is appropriate for this section to include that when overt CCTV cameras are used, then the cameras or signage should be clearly visible and that users should refer for guidance to the Surveillance Camera Code of Practice.

2.29: WHOTS welcomes the clearer guidance that covert recordings for noise nuisance are unlikely to require an authorisation when the recording is in decibels, or constitutes non verbal noise, or is of verbal content made at a level which does not exceed that which can be heard with the naked ear.

3.7: WHOTS welcomes the removal of the previous examples 2 and 3 relating to surveillance for school admissions and littering/ dog fouling, since these types of surveillance would not meet the requirement of a maximum sentence of at least 6 months imprisonment, before a local authority can authorise directed surveillance. In any case suitable guidance on using RIPA to investigate low-level offences is still included in 3.31.

3.18: WHOTS welcomes the clearer guidance that when a public authority directs the activities of an individual or non-governmental organisation, then that individual or organisation is acting as their agent and the public authority should consider authorising under RIPA any activities of the agent.

3.30 & 3.31: WHOTS agrees with the inclusion of information about the judicial approval procedure for local authority surveillance authorisations. WHOTS welcomes the confirmation that local authorities are no longer able to orally authorise RIPA techniques and cannot authorise surveillance to prevent disorder unless this involves a criminal offence punishable by a maximum sentence of at least 6 months imprisonment.

3.33 & 3.34: WHOTS agrees with the inclusion of guidance on the roles of the senior responsible officer and elected members. We are disappointed that section 3.34 does not include the statement “They should not, however, be involved in making decisions on specific authorisations” that was part of section 3.26 in the 2010 CHIS Code of Practice. The inclusion of such a sentence would give greater clarity about the proper role of elected members.

8.1 WHOTS accepts the additional requirements to include in the central register information about details of attendances at the magistrates’ court and the dates of any reviews. Although this will involve making changes to our central registers, the relevant information will be readily available from the judicial approval orders and review forms. WHOTS assumes that “details of attendances at the magistrates’ court” only means the dates of the judicial approval hearings, but greater clarity would be helpful, especially if anything else is expected to be recorded.

8.2 WHOTS accepts the additional requirement to centrally retain a copy of the judicial approval order for the grant or renewal of an authorisation, since it would be normal and sensible practice for a local authority to do this.

Covert Human Intelligence Sources Code of Practice

Most of the changes to the code relate to ‘relevant sources’, so these parts do not affect local authorities. Consequently WHOTS has no comments to make on most of the changes. However we wish to make the following comments and observations:

3.26: WHOTS agrees with the inclusion of information about the judicial approval procedure for local authority authorisations of a CHIS. However WHOTS is surprised that the wording differs from the equivalent wording in section 3.30 of the Covert Surveillance and Property Interference Code of Practice. In effect 3.26 excludes the sentences about local authorities no longer being able to orally authorise the use of RIPA techniques; the authorisations must be in writing and require judicial approval; and the authorisation not being able to commence until judicial approval has been obtained. WHOTS considers that the inclusion of these sentences would give greater clarity and maintain consistency with the Covert Surveillance and Property Interference Code of Practice

3.27: WHOTS agrees with the inclusion of guidance on the roles of elected members. We are disappointed that section 3.34 does not include the statement “They should not, however, be involved in making decisions on specific authorisations” that was part of section 3.26 in the 2010 CHIS Code of Practice. The inclusion of such a sentence would give greater clarity about the proper role of elected members.

Wirral Council

The Council’s Audit and Risk Management Committee on 18 March 2014 considered the amendments which you are proposing to the Code of Practice on covert Surveillance and Property Interference. The Committee were content with all of your proposed amendments subject to the following observations;

- (1) In paragraph 2.29 the wording of the amendment could be improved by making it clear that “the recording of verbal content is made at a level which can be heard from the street outside or adjoining property with the naked ear”. As presently drafted the amendment could be interpreted as requiring the recording of verbal content to require directed surveillance authorisation if it exceeds that which can be heard from a street outside or adjoining property. Clearly that is not the intention of the amendment.
- (2) In paragraph 3.31 the third bullet point could cite as an example the appropriate Local Authority use of directed surveillance “the investigation of behaviour which would constitute the offence of harassment of for example a neighbour”. The offence of course attracts a custodial sentence of six months or more and covers targeted and persistent behaviour which causes alarm and distress to persons against whom it is directed.

Women Against Rape

We were horrified to learn that undercover officers not only infiltrated community organisations, but used sex and intimate relationships in order to extract information. Women were tricked into consenting to sexual activities they would not have consented to had they known the men were working for the police, and their aim was to spy on the women's actions.

We consider this to be rape by individual officers and by the State.

We believe the officers took advantage of women by engaging in fake relationships as a tactic for making the women vulnerable and letting their guard down. Information they would never have given willingly was therefore stolen.

Some of these officers went as far as to have children with the women they spied on. This is an outrageous abuse both of the women and their children and violated their human rights. The children will grow up knowing that their birth was the result of an undercover operation by the State to undermine their mother and her organisation.

There is nothing in these proposed codes of practice to prevent the intimate sexual relationships by police officers in their undercover roles.

The government and the police must take responsibility for the behaviour of these undercover officers. If their behaviour was unauthorised they must publicly disassociate themselves. Either way the officers and their handlers must be prosecuted for abuse of power and the women must have their rapes fully compensated.

The same undercover practices were used by police spying on the Lawrence family, with the aim of smearing their character and thereby protecting a gang of racist murderers.

These same RIPA powers have also been used to spy on women who reported rape (including by police officers). Covert surveillance has been used in order to gather evidence to discredit and/or prosecute them for a false report while their attacker went free.

Comments provided by individuals

I wish to respond to the consultation on Covert Surveillance, specifically to the code of practice for the use of covert human intelligence sources (CHIS).

I am concerned at the use of CHIS in campaigning organisations. This is not to prevent crime, but is to interfere with legitimate, democratic protest and is an extremely subversive use of CHIS. It is political policing and is not proportionate.

I am also very concerned at the catch-all phrase "domestic extremist" used to justify the use of CHIS within campaigning organisations. This term is meaningless, without official definition, and is extremely dangerous when used as a blanket cover for anyone who expresses an opinion about government policy, and used to justify invasive measures such as CHIS.

I am concerned that the code at 2.10 does not make reference to the importance of compliance with Article 10 of the European Convention on Human Rights - the right to freedom of expression - especially when CHIS are known to frequently infiltrate campaigning groups with the intention of disrupting them.

I believe all records relating to CHIS should be kept for a minimum of 20 years, not 3 as stated in 7.1. Cases such as the infiltration of the campaign to seek justice for the Lawrence family show that 20 years should be a minimum.

However the aspect of the code I am most concerned about is that, despite all the huge amount of controversy, the ongoing litigation, the obvious damage it causes and the condemnation from senior level police officers, there is absolutely no mention of the use of sexual relationships with targets or those close to targets.

It is absolutely critical that there is a clear, unequivocal, complete, outright ban of all sexual and / or romantic relationships. It is extraordinary this is not included in the code. The use of sexual relationships with targets is never acceptable and is deeply exploitative. This needs to be made absolutely clear in the code, and all sexual relationships should be completely banned.

I am concerned that the proposed changes to codes of practice relating to Covert Human Intelligence Sources do not go far enough in a significant aspect: ensuring that undercover officers do not enter into long-term intimate relationships, and ensuring that the full command structure behind the officer ensures that relationships do not take place. Such relationships are a profound abuse of power and have taken place repeatedly, despite the current structure of RIPA. Police lawyers have even argued in court that RIPA allows such relationships.

While I strongly disagree with this claim, it is my view that if any parliamentary legislation or code of practice leaves a shred of doubt in this matter then such abuses may continue. Not only would this be morally unacceptable, but would be in itself an illegal breach of human rights.

The number of relationships that have taken place seem to indicate that undercover officers have little understanding that it is grossly immoral and unprofessional to simply use women's lives props in consolidating an undercover identity. Any code of practice must now therefore make this clear.

Supervision of undercover officers must also ensure that such long-term intimate relationships do not take place in any circumstances, regardless of the nature of the investigation. In particular, it is utterly unacceptable that so many undercover relationships took place with women who were politically active, suggesting that undercover officers and their command units have little grasp of the nature of democracy and the right of everyone to participate in political activity. I am deeply concerned that the disruptive and psychological abuse of these intimate relationships may have been a deliberate tactic of political policing. I hope that a full public inquiry will uncover how on earth this was allowed to happen, but in the

Official

meantime the codes of practice must be utterly unambiguous that formation of intimate relationships is not permitted.

Please review and consider the points below

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

Thank you.

Consultation feedback on:

Covert Surveillance and Property Interference
Code of Practice

Having read the code on Covert Surveillance, there can be found not a shred of evidence in that said code which allows the disproportionate use of a person's private information.

There is no information in that code that supports action against a person having undertaken no criminal activity, enables the authorisation of such a draconian, abusive, humiliating, the indignity, discriminatory, institutionalism of sexuality, inhumane and degrading treatment that particular affects women.

Intrusive intelligence has no place in taking away rights of a person to choose who to form a sexual relationship with. To hear that police officers had sexual relationships with 8 woman is an abhorrence and a violation of their human rights under Articles 3 & 8 of the ECHR 1998. The significant mental abuse and torture psychologically when balanced with proportionality is an affront to the women's dignity and the UN, EU Directives allows no discrimination on any grounds whatsoever. Therefore where does this Country's understanding of the ECHR lie, it is questioned.

The word used in the document at paragraph 1.11 is "obtaining" and not using women in sexual acts. There was no consent in use of the tort of deceit. Deceit is fraud no matter how you put it.

It gives that private information is being attained by having to sleep with a person to get it. This is not "James Bond". These are people's lives. This is not about the movie characters as these are real people with real rights in having the ability for utilising freedom of speech and association.

Nowhere in section 1.2 does it give a right to treat a woman as a piece of chattel and/or property, therefore you are in breach of the Equalities Act by discriminating, particularly against women, and it has been a long time since a woman had to undertake a process in a man's name.

There is nowhere in that policy to use a person to form their private life as it gives that information is sought to found what they are doing in their private life. People choose who they want in their private life.

Furthermore this policy uses the words "observe" and "respond". I would not call the use of those words to interfere intimately with women in the absence of knowledge of what is been deceptively done to them.

Therefore, where is the application of your less intrusive means as found in that policy at 3.5 ?
Its seems to be the case that when no crime is committed the individual is a target. Even where no evidence of crime to be committed, the person is a target, again disproportionate use of resources and a violation of human rights and civil liberties.

Official

It seems that the State acts in excess of its powers when it writes the documents it claims are invoked correctly. On interpretation of the wording, there is no right to violate the human rights giving fundamental protection to individuals.

Covert Human Intelligence Sources Code of Practice

With regard to the effect of the code, where it is used in criminal proceedings/civil proceedings then the cases against the State brought by individuals must be heard. If not, there is a disproportionality here where the use of the confirm or deny defence is used. It then stands that whatever takes place in the use of the code must also be heard in a court and/or tribunal.

If a person as given in section 2.2 & 2.3 is unaware of the purpose and would give not consent in the tort of deceit then there is a clear conflict with the law as it stands. Therefore whatever happens in the forming of this sexual relationship with the woman is to her detriment. When the law is conflicting it stands to the side of the affected in their favour.

The Home Office admits at para 2.11 that ECHR, Art 8 is engaged and conflicts with the policy, so why continue in the tort of deceit ? The law invoked is incompatible with ECHR as it stands.

The State would not allow the tort of deceit and/or a sexual offence in deceiving a woman in anyway in any other circumstances relating to sexual relationships, so why should the State be afforded that exemption?

This Country cannot derogate from Article 3 for this inhumane and degrading treatment and cannot begin to do so, therefore women should not be treated with such disdain in the use of state interference in the use of gathering intelligence, as you are a public authority and as such must comply with the ECHR.

Furthermore people have the right to see what the surveillance has been undertaken against them as a human right under Article 8 and Article 1. When a person has not been prosecuted, information has been gathered disproportionately.

There are significant infringement reasons why these policies should not stand as against an individual as it is damaging long term.

It is time to resolve the conflicting legislations and actually afford the protection the citizen deserves. Your policies are utterly flawed as throughout.

Think about R v Burstow and R v Ireland to see how the persistent effects of the damage caused when the issues enter the mind of the victim....

With regard to the codes of practice relating to undercover officers (known in these codes as "Covert Human Intelligence Sources").

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

It is mainly because of the actions of the force in the past gives me great reason for concern that they would fail to conduct themselves in a proper and fair manner, and be very likely to bend the rules to obtain a conviction.

Official

As a black person issues like that involved in the cases against members of the West Indian community in the past have shown the force to be untrustworthy.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.* The practice of forming intimate sexual relationships is unprofessional and unacceptable.* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

Undercover police officers tricking people into sex. Extremely unprofessional and cruel- I'm shocked to learn that there isn't even anything in the codes of practice saying this in unacceptable. How could this possibly even help whatever it is they are meant to be doing? Change the code.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

My comments on this "consultation" are encapsulated by Police Spies out of Lives. I support them entirely and there is no point in my rewording them. These are listed at the link below.

<http://policespiesoutoflives.potager.org/submission-on-new-covert-human-intelligence-sources-code-of-practice-and-covert-surveillance-code-of-practice/>

The Home Office ignored me when it was introducing RIP. I don't suppose the Home Office has got any better at paying attention in the subsequent 15 odd years. However, events have demonstrated that my concerns at the time, which were dismissed, were spot on.

Please note my objections to the codes of practice covering covert human intelligence sources.

1) There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

2) The practice of forming intimate sexual relationships is unprofessional and unacceptable.

3) It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

Official

I note that there is a current consultation regarding your codes of practice for undercover officers.

It has come to my attention that there is nothing in these revised codes to prevent undercover officers from entering intimate sexual relationships with people. I find this very shocking, as it seems obvious to me that people can not give their informed consent to have sex with someone if they do not know the person's true identity. Given that sex without informed consent equals rape, this amounts to allowing state-sanctioned rape.

The government has given contradictory statements about whether such relationships are authorised and sanctioned. It is time that the situation is clarified.

The powers of the security services to spy on law abiding citizens must be more effectively monitored, controlled and made more transparent, with much greater powers of accountability and redress afforded to citizens.

The present situation is unacceptable in any state which has aspirations to be thought of as a meaningful democracy.

We know that our security services are out of control and accountability is inadequate. Britain has always been a secretive state and the culture within the security and civil service apparatus is self-serving and ever-defensive of protecting itself from inspection and accountability.

It is a sad state of affairs when a citizen has cause to fear the habitual excesses of the state more than the very occasional outrages perpetuated by terrorists.

Protesters should not be subject to undercover police officers inveigling themselves into their lives through deception. This is totally unacceptable, an invasion of privacy, state sanctioned rape (as one victim called it) and an over-reaction to people carrying out their legitimate right to protest.

* There's nothing in the new codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I am concerned that there is nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

This is, quite simply a barbaric abuse of power and authority.

If you trick a person into having sex with you by deliberately pretending to be someone you are not, who would never have had sex with you if they'd known, that is NOT consensual sex. Non consensual sex is rape.

But people in authority have a long history of legitimizing rape don't they? Is it not time that changed?

Please include the following contribution in your consultation.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

Official

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I am responding to the consultation about the undercover surveillance. I am appalled to note that - despite the recent highly publicised cases - sexual relationships with surveillance targets have not been explicitly forbidden.

In my opinion, sexual relationships with surveillance targets - or people who are not the targets but serve to facilitate greater access to surveillance targets - constitutes state endorsed rape.

As a tax payer and a decent human being, I do not agree to this kind of activity and urge you to alter the policy to forbid this kind of activity and make it a criminal offence. It is not in the public interest for our security services to behave in such an immoral manner and can only serve to increase the animosity that 'extremist' communities feel towards mainstream British society and the security forces themselves. Not only is it immoral but also counter productive.

While I welcome the public consultation of undercover police officer's behaviour, I find it alarming that there is nothing new in the codes of practice which prevent the kind of intimate sexual relationships that have come to light in the media over the last few years.

It cannot be argued that in any of these cases, the undercover work was proportional to any threat whether real or perceived that the victims posed, or even that they themselves were targets. In reality, they have been treated in a terrible fashion and the current recommendations do nothing to address this.

There is nothing that prevents the practice of forming intimate sexual relationships, which is wholly unprofessional, unacceptable, inappropriate and indecent. What possible justification can there be for such behaviour?

I would like to see the government take this opportunity to clarify the situation and the position of the police force on this issue and to make it clear that these gross violations of privacy are not authorised. The police force has a huge amount of public support and most people trust the police force. This behaviour undermines the core principles of policing and by its nature public trust, by making victims of the innocent and I'm certain that the APCC will do everything in their power to make clear that this behaviour is not sanctioned and will not be tolerated.

I am responding to the consultation around the codes of practice for undercover officers, and I have some concerns.

There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

The practice of forming intimate sexual relationships is unprofessional and unacceptable. There have been too many cases of police officers engaging in intimate and sexual relationships during covert work - their sexual partners are not told their true identity or their true reason for being there - they are engaging in intimate and/or sexual relationships under false pretences, so any consent given cannot be valid, and sex without consent is rape.

It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

Official

I'm writing to make suggestions for updating old policies on Covert surveillance and cover human intelligence sources codes of practice. I feel I am particularly qualified to make recommendations for the following reasons:

-I am currently directing a documentary film on the topic of undercover police, and have spoken to literally dozens of people who have been targets or close "friends" of former British undercover police

-I have also been personally targeted by the well-known British undercover officer Mark Kennedy

-I have served as an elected Vice Mayor, which gave me four years experience in the role of creating laws and guidelines for police to follow, and held personal responsibility for working with the police in our jurisdiction to enforce such laws as we saw fit.

My suggested guideline changes:

1. Undercover police should be banned from using sex, or any type of sexual intimate relations, as is the case in Germany. Head of German federal police (BKA) Joerg Zierke has spoke publicly in the German Parliament explaining that German police are banned from using sex. German MP Andrej Hunko has specifically written to numerous UK politicians, including MP Keith Vaz and GLA Member Jenny Jones, on this topic. EU Human Rights law also provides protections to EU citizens protecting their privacy, and this needs to be taken into consideration as well. A ban could prevent future lawsuits against UK police.

2. Undercover police should be banned from breaking laws of either the UK or foreign countries when they are working outside UK. Concretely, it has been reported that UK undercover Mark Kennedy officer committed crimes abroad, including an arson he was arrested for in Berlin. This specific topic has been discussed already in government buildings in Berlin and London, and should be clear in your guidelines.

3. Before working abroad, UK police should be familiar with differing rules and regulations governing the country in which they will be performing their undercover activities It has been said that undercover police and covert surveillance officers have no specialised training regarding the regulations of police in foreign countries. When acting in such an important role, such officers need to receive specialised training before embarking on specialised foreign operations that may end in harm caused to citizens of that nation, as well as liability and/or lawsuits against UK police.

4. Police and security officials should be forbidden from selling, or providing in any way, information to outside individuals or agencies. It has been widely reported about the "McLibel" case in the 1990's that police worked illegally with private security firms in the employee of the McDonald's corporation. This and other similar cases are well documented in books such as "Undercover: The True Story of Britain's Secret Police", and "Secret Manoeuvres in the Dark: Corporate and Police Spying on Activists".

5. Maintaining personal relationships with targets, or any of other persons, after the end of undercover operations. Police officers who become private security workers should be banned from contact with past targets of police operations The case of Mark Kennedy has been widely reported. He mentioned even himself that after he ended his work as a police officer, he returned to his unknowing activist girlfriend and circle of activist friends in Nottingham. He admits that during this time he had been working for the private security corporation Global Open.

6. There should be a ban on general intelligence gathering, criminal activities only should be the main pursuit of undercover and covert police work. Former undercover office Peter Francis discussed spying on the family of Stephen Lawrence, where he was told to get information about the family that could be used against them. Other recent undercover cases, like those of Mark Kennedy, were supposedly not against existing criminals, but were said by police to often be general information gather cases.

I look forward to hopefully seeing my recommendations being incorporated into your codes of practice. The documentary film I am currently making will also cover these issues, and I will continue to be in touch with ranking British politicians on these issues.

Official

I believe that covert surveillance is all too often used for purposes that only masquerade as 'terrorism prevention'.

To further invade people's privacy by forming intimate relationships with them is beyond acceptable in a functioning democracy.

The codes of practice recommended by this consultation do nothing to prevent further abuses of a similar nature.

As an elected government it beholds you to clearly legislate against such practices.

As someone who is against both racism and the destruction of the environment, I read Bob Lambert's story with nothing but disgust and fear. The idea that my beliefs might lead me to be impregnated or even touched by the state seems utterly dystopian. Please consider adding a clause to your codes of practice to prevent this from happening in the future, or the police will lose their legitimacy in the eyes of many women and men.

I work with a young woman who had the misfortune of this happening to her just because she had an active role in peaceful protests against various issues - mainly environmental - most of which I also wholly support - however I am unable to have time to go out and protest as the price of living is rising however my wages have increased by a mere 1% despite the cost of my everyday living rising by on average 50% in the past 10 years.

This woman is a beautiful human being who wouldn't harm a fly.....however I couldn't say the same about the police officer who deceived her.

I wonder what sort of future we are heading towards - our rights as citizens seem to erode daily and no-one has the energy to care anymore it seems.

Our leaders and I use that term loosely are self absorbed, ego maniacs - so completely out of touch with most peoples day to day reality it is nothing short of mind boggling.

So I send another signed email petition in the hope that my voice will be heard and some positive change may be made.

I have listed the relevant points below for this petition.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I have been shocked and appalled to hear the ongoing revelations about the behaviour of intelligence officers and the targetting of communities. I am deeply worried about the lack of regulation over this conduct in intelligence officers. My key concerns are as follows.

There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

The practice of forming intimate sexual relationships is unprofessional and unacceptable.

Official

It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I am very concerned that there is nothing in the proposed new codes of practice to prevent the kind of intimate long-running personal and sexual relationships by police officers in their undercover roles that have come to light over the last few years.

I read the book 'Undercover' by Rob Evans and Paul Lewis and have listened to the stories of a few of the women affected on Dispatches and various radio programmes. I think that what they have suffered is abominable, deeply distressing and ought never to have happened. What they have suffered is utterly disproportionate, indefensible and amounts to abuse.

In light of that, I am aghast that the new codes of practice do not seek to prevent such abuses happening again and I write to ask you to remedy this.

The government urgently needs to clarify the situation regarding relationships and make it crystal clear that such gross violations of privacy are not authorised or tolerated.

Without such basic clarification or safeguards you undermine our democracy and infringe upon basic personal freedoms of privacy and liberty.

There can be no excuses or justifications for doing anything less. This consultation document falls far short of any decent response to the horrors that so many women have already undergone and shows insufficient learning and recognition.

Helen Steel, whose life has been destroyed by her relationship with the undercover police officer John Dines and the trauma of discovering the truth about his identity, powerfully argued that there can be no justification for what the police have done to her and other women. I'll copy her salient arguments below my email for your attention and consideration.

Helen Steel, speaking under pseudonym Clare, at this hearing:

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/837/837.pdf>

Clare: Can I just say that one of the things that I found very, very distressing about what has happened since this has come to light and come out on the public arena is the number of people who are trying to justify it by making comments about, "Oh we have to prevent terrorism", or things like that? There was an interesting interview with Peter Bleksley, who was an undercover policeman, on Radio 5 a couple of months ago. He said that he had slept with a target in his investigations. He mentioned on the radio that she was a very attractive woman, and the radio presenter said, "Would you have slept with this person if it had been a man?" and he said, "No, I'm not gay." I think that answers the question. This is not about a need to do it. It is about a desire to do it. They have the power and they think they can get away with it. That is what it is about. It is deeply distressing, and I do not think it should be allowed in any circumstances. It is so intrusive into people's lives, and, as my friends have said, it turns your life upside down. Everything that you thought you knew suddenly becomes unreal; everything changes. You do not know who you can trust any more. It destroys everything.

Official

Clare: I do not see how having sex or intimate relationships would ever prevent anything, to be honest, because either you know something is going to happen, in which case you can investigate it, or you are doing it on a speculation and anybody could end up trapped in your web. The other thing about it is that we are supposed to have a legal system in this country where you are innocent until proven guilty and that you get a fair trial. What happens with police officers going in and having relationships with people is that they act as the judge, the jury and the person who sentences. They can do what they like to you. There is no oversight. You do not get a trial. It is really quite offensive to suggest that someone could deserve this just on the basis of what they may or may not be involved with.

...

Clare: How anyone can contemplate sanctioning this and why it isn't stopped immediately. It is really outrageous that it can go on in this country. My experience was that I found the marriage certificate of my former partner in his real name — I had not known he had been married — and that said "police constable". When I talked to friends and family it was like, "You're just jumping to too many conclusions that he is a police spy. You are being paranoid. That wouldn't happen in this country." People find it absolutely outrageous that something like that can happen in this country, and yet some people seem to make excuses for it. Why isn't anybody saying, "Stop it right now. It should not happen again. It is abuse."?

...

Clare: I agree. I do not think there are any circumstances in which it can be justified. I think the other thing is there has been talk about damage and things like that. There is probably more damage and violence that happens on a regular basis on a Friday night in town centres when people get drunk, but there is not a proposal to infiltrate every pub in the country on the off-chance that you are going to be able to prevent violence and damage. This is about political policing and trying to interfere with what is actually a recognised right to freedom of association and freedom of expression.

...

Clare: What I just wanted to say, because this has kept coming up, is that people say if you did not allow officers to have sex, there would be a ready-made test to find out if they were an undercover officer. It is absolutely ludicrous, because in any movement there are some people who have relationships and there are some people who do not. People have all sorts of reasons for refusing to have sex with someone: they don't fancy them, they have a partner already — it is just ludicrous.

...

Mark Reckless: To clarify the response to James Clappison's question, have any of you ever supported the use of violence in a political cause?

Clare: I have already answered this question, and I feel that these questions are a bit like a woman walking home in a short skirt or late at night. Does that make it her fault if she gets raped? It is not a relevant question. The eight of us are from a variety of backgrounds and none of us —

Chair: Sure. Clare, the reason why we ask these questions is that we are going to test other witnesses and whether you regard them as relevant or not it is a question that members wish to ask. It does not criticise you. It does not denigrate you. We are trying to get to the truth of this. That is why we are having these hearings. In my view, it is a legitimate question for Mr Reckless to ask, and you have answered it extremely well, if I may say so.

Clare: Okay. Well, I was involved with London Greenpeace, which campaigned against violence and oppression and was actually trying to create a fair and more just society for everybody.

Official

The practice of forming intimate sexual relationships is unprofessional and unacceptable.

It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I'm concerned that nowhere in these new codes of practice is it mentioned that citizens have the right not to be sexually abused by the state, and that 'covert human intelligence sources' should not be involved in intimate and/or sexual relationships with those they are spying on.

Considering the coverage around this issue, it seems unlikely to be an oversight, but please, Mr Green, do not be involved in continuing the practice. The new codes promise new oversight; a code banning sexual relationships would be the tip of the iceberg to preventing abuse in future.

I am concerned that this consultation needs to be sufficiently wide-ranging to address the following issues:

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional, unacceptable and abusive.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

Further the general issue of the apparent criminalisation of dissent and the heavy handed tactics of the police and the state to monitor and disrupt non violent protesters should be investigated.

There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

The practice of forming sexual relationships is unprofessional, deeply immoral and unacceptable as a practice used by the state against its own people.

The government must clarify the situation, to make it clear that these gross violations of privacy are not authorised.

I have many issues with the use of police spies, but one of the most pressing is the fact that undercover officers have slept with and engaged in intimate relationships with the activists they're spying on. This amounts to rape by deception, violates every principle of informed consent, and the fact that it has happened with the knowledge and sanction of senior offices amounts to state-sanctioned sexual abuse.

I am deeply concerned that there's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years. It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

Please take action on this and make it clear that it is not acceptable for officers to sleep with their targets.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

Re. The issue of sexual relations between undercover officers and members of the public.

While officers are on duty or under their assumed identities, it can never be permissible that they have sexual relations with members of the public, whether "targets" or otherwise.

In these circumstances, they are holders of public office carrying out their duties, and potentially exercising significant powers while they do this and interacting with vulnerable persons.

The law for misconduct in public office should be amended to specifically make it clear that relations are unacceptable under these circumstances, and I agree with the Government that there should be consideration given to a separate offence of misconduct of police officers, which this behaviour should include.

There are no cases when it is acceptable for undercover police officers enter into sexual relationships with people they are sent in to infiltrate. To do so is a complete abuse of human rights.

Close friends of mine have been affected by this practice and I have seen at first hand the devastation that it has wrought to their lives, causing severe psychological trauma. It is both unprofessional, unacceptable and abusive. Women affected have compared the effect on them as 'like being raped'.

There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I am writing to you because I am very concerned over the issue, widely reported in recent years, of the inexcusable behaviour and highly dubious operations of undercover police officers.

It's laudable that this issue is being addressed in some way. However, as far as I can tell, the draft updates to the codes of practice for these operations has failed to address the issue of sexual relations.

The idea that the state can leave itself free to authorize the deceptive formation of intimate sexual relations with its own citizens, destroying people's bonds of trust and caring, wasting vast portions of people's emotional lives, even to the extent of producing children from such relationships, founded on calculating and devious intentions, is truly frightening.

The fact that the operations involved in cases that have come to light have been, as far as I can tell, carried out against peaceable citizens devoted to fighting against corporate greed, environmental devastation and gross injustice, adds insult to injury, and further tarnishes the state's reputation.

It seems imperative that codes of practice are updated to CLEARLY define the state's position on such matters. If there is clear support for such practices, OK, at least we will know where we stand.

Obviously, though, the denunciation and prohibition of such practices is the best course of action, for the state's reputation and the public's faith in the state to serve the public, rather than serve itself.

I'm deeply concerned that there is seemingly nothing in the draft codes of conduct that would prevent Covert Human Intelligence Sources from once again forming sexual relationships with members of the public while misleading them regarding their identity. This should surely be considered completely unacceptable.

The requirement of consent to sexual activity is a core right and ordinary violations of that are considered criminal behaviour. I would argue that morally (I'm not familiar with or concerned with the legal technicalities, nor should you be) consent is not something we give to specific acts at specific times to

Official

specific people. That the consent is specific to the person and not, for example, their body. Except in unusual circumstances of extremely casual sex people do not normally consent on the basis of the persons body regardless of how the person is. They consent on the basis of a personality. If you deliberately pretend to be someone you are not then I would argue that it is impossible for you to gain consent. For example, if someone pretended to be their identical twin in order to have sex with their twins partner then it seems blatantly obvious that they've done something very wrong.

If a Covert Human Intelligence Source builds up any sort of social relationship with someone while undercover and then engages in sexual activity with them then it has to be assumed that consent was only given to the fictional person the CHIS was pretending to be and they have not consented to sexual activity with the CHIS. There is thus no relevant consent and ideally the sexual activity should be considered criminal offence. It should at any rate be ruled as unacceptable according to the code of practice.

I recognise that this will impact the efficiency of CHISs and thus the justice system. However, the justice system is in place to protect society from evil practices and it cannot in the long term effectively do so in a grossly hypocritical manner. There are many things that could be made legal that would improve the efficiency of the justice system. Summery execution for people caught in a criminal act for example would be very efficient but it would also critically undermine the free and just society that our justice system should be aiming to create. My view is that allowing CHIS to have sex without consent similarly undermines our free and just society, all be it in a less extreme manner, and must not be considered acceptable.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

Please take these views on board

Your codes of practice should clarify that forming intimate relationships (even to the point of having children) is a gross invasion of privacy and should be banned in law. This kind of surveillance is reminiscent of post war Communist states and should have no place in this country.

I wish to contribute to the consultation on covert surveillance.

There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years. The practice of forming intimate sexual relationships is unprofessional and unacceptable. It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I wish to register my views on Covert Human Intelligence Sources and how they are regulated.

I'm disappointed but not surprised that the drafts do not address the following points:

There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

The practice of forming intimate sexual relationships is unprofessional and unacceptable.

It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

Official

While these issues remain unaddressed, there is little to stop repeats of the gross violations of human dignity that have occurred in recent years. While this continues to be the case, the police and the security services will continue to be viewed with the utmost suspicion and disdain by those involved in expressing their right to peaceful protest.

There is nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

The practice of forming intimate sexual relationships is unprofessional and unacceptable.

It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I am appalled that the new code appears to do nothing to stop CHISs from forming intimate sexual/romantic relationships with unsuspecting members of the public. It is simply untrue that this is necessary. Some officers have tried to make out that a ban on such relationships would make for an easy test for exposing CHISs, they should know better; firstly, the undercover squads (eg SDS & NPOIU) have always had a strategy for dealing with this: the absent partner; secondly, the idea that an activist group would jump to the conclusion that someone is a police officer because they refused to have sex with someone would be laughable if it wasn't such a serious matter, people turn each other down for sex all the time.

I have seen 1st hand the damage these relationships have done to people, particularly women (and wider than the 8 currently engaged in legal action). I am yet to see a decent justification for the particular actions officers such as Boyling & Kennedy took or even a valid justification for the general principle that such relationships are necessary ever.

Sexual relationships between undercover officers and their targets are illegal in Germany. What does Germany suffer that the UK is protected from because of this discrepancy? The answer would appear to be 'nothing'.

It is the most complete invasion of privacy possible, causing sustained, in some cases lifelong, damage to the citizens that officers are supposed to protect.

If, as senior officers have said, it is 'grossly unprofessional' then any code of practice should say so in unequivocal terms.

There have been cases in recent years of undercover officers engaging in intimate relationships and sexual relationships with people during the course of their work. The nature of their work necessarily meant that they were engaging with these relationships under false pretences, concealing from the other person in the relationship both their true identity and their true reason for being in that circumstance. Thus their consent to intimate and/or sexual relationships was based on falsehoods - it was not valid consent. For police officers to proceed with these relationships without valid consent constitutes rape. Rape, by a police officer, at work. That this has happened at all is horrifying. Any code of practice for police officers must make very clear the nature of consent, how this relates to covert work, and must lay down very clear boundaries for relationships formed during covert work and consequences for crossing these boundaries. This site might help, from within your own ranks: www.wecanstopit.co.uk

The law of this country convicts those who enter our homes with deceive us. A confidence man or trickster is a felon, the is fact, it has been the law since time began. Yet, the very servants of the State is permitted to perpetuate a deceitful fraud upon us.

Official

Psychologists call this type of emotional manipulation done under every other guise is called abuse.

These women had a shyster come into their home, behave as though they were their partners, integrated themselves with family and friends, for the sole purpose of causing harm. What does anyone think really happens when a fraudster comes into your life, and, through you, deceive your family and friends? It leaves a stigma behind. You must feel so stupid and humiliated, hurt and ashamed at what that person did and for that length of time, it surely amounts to a malicious invasion of privacy.

In R V Brown [1999], it is said that an act can be so immoral that the State must protect others, this act is of that essence.

In the Devlin-Hart debate, the very essence of State control came under scrutiny, we, the majority of the people who gave legitimacy to this Government through the Electoral Mandate, are against balancing the benefit of this type of policing against the interest of many.

Professor Hart was of the opinion that before the State can legislate to curtail our liberty, it should carefully analyse the long term effects of doing this.

It is Universal law that 'the needs of the many outweigh the needs of the few'

I would beg you to consider this email when making your decision. A policeman, by definition, may not break the law, including the Common Law, to serve a legal cause, this is why evidence tampering is a convictable offence.

Everyone one of the 8 women deserve an apology and our protection, however, no one has considered the position of these police officers, they are just normal human beings, they bleed like us and hurt emotionally, mentally and physically like us.

The Police must always be regarded as our protectors, the profession is an honourable one, expecting these police officers to do this is harmful to them, psychologists report a high number of mental health problems among police officers who are subject to long periods of undercover work.

We are forcing them to go beyond the call of duty. Any claim for damages by these officers due to post-traumatic stress syndrome is fully justified. They are not trained along the lines of spies, nor are they 007 James Bond, he is a fictional character, they are real people.

I am strongly opposed to the practise, deliberate or permitted, of under cover police forming sexual relationships within that role.

I am concerned that the govt. is not taking this seriously enough; that the suggested codes of practise would not alter anything.

It ruins lives and is completely immoral - there is no greater good that can be served through these means.

you have been endorsing legalised rape.....this must stop.

We would urge our supporters to contribute to this consultation, which ends on March 27th. To make a rapid contribution, the key points we are keen for supporters to make are as follows....

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

There is no situation in which it can be regarded as morally, ethically or legally acceptable for an undercover policeman to form a sexual relationship with the subjects of their investigations. Sexual intercourse in such circumstances is statutory rape.

I would like to make the following points about the current consultation on covert surveillance:

I refer to CISHs as undercover officers throughout my response.

No mention of current sexual and intimate practices by undercover officers
The code of practice does not mention the current situation where undercover officers are engaging in intimate sexual relationships.

Are undercover officers authorised to have sex with unknowing members of public or not?

The document does not clarify in any way whether undercover police officers are currently empowered to have sex with or form physically and emotionally intimate relationships with targets (or bystanders), or whether they will be in the future.

There is no mention that current sexual and intimate practices by officers are wrong

The consultation documents fail to mention or make any suggestion that that it may be appropriate to prevent officers continuing to have sex with or forming physically and emotionally intimate relationships with unknowing members of the public - people who are unaware of the officer's true identity.

The lack of clarity in the document implies that officers are indeed currently empowered to have sex with and form physically and emotionally intimate relationships with unknowing members of the public, and that they will continue to do so in the future.

Therefore it implies that this practice is authorised by policymakers.

If this indeed is the case:

In what circumstances is sexual and emotional intimacy justifiable?
There is no clarification stating specifically why and in what circumstances the practice of officers engaging in intimate sexual relationships is justifiable. If ever.

I am not aware of any situation whatsoever when the state would need to employ police to carry out this level of intrusion into the private lives of citizens.

Is the lack of scrutiny intentional? The omission and lack of clarity in this document is inexcusably naïve. This code of practice places an implausibly vast amount of power in the control of police organisations. These organisations do not merit this lethargic lack of scrutiny on the part of policymakers.

The recent exposure of grossly invasive violations by undercover officers (including the fathering of children, co-habiting, attending funerals of family and other deeply personal activities with women) would seem to warrant more clarity than this document offers.

Policymakers should ensure that the private lives of citizens are protected. This code of practice does not help do this.

Official

Thank you for offering us the opportunity to comment on this matter.

From my study of the documents I cannot find anything in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

In my view the practice of forming intimate sexual relationships is unprofessional and unacceptable. It is clear that some women have had their whole lives shattered by their experiences of these deceitful relationships.

I believe that it is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I hope that you will amend the guidelines to protect women from having their privacy violated.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

The code needs to be modified to include the banning of intimate sexual relationships which are a vast infringement and extremely unprofessional.

The codes of practice for undercover officers need to contain guidance that upholds a certain code of practice that is respectful to the humans the officers are covertly observing. The codes of practice must be adhered to and are punishable by law if they are not. The codes of practice must prohibit intimate sexual relationships being formed between an undercover officer and any of the people they are observing. It could be argued that the formation of sexual relationships may be encouraged, by the Police, between the undercover officer and the people they're observing in order to damage relationships in a group; this in my opinion should be classed as rape being used as a weapon of war. The psychological damage for the people who are consenting to having sex with a person who is not real can be huge and potentially irreparable. The damage has been done and lessons need to be learnt. Please do not allow this practice to continue.

Here are some points which need to be considered in the new Covert Human Intelligence Source Code of Practice:

<https://www.gov.uk/government/consultations/covert-surveillance>

This is 2014 and somehow, yet again, there is no specific mention of *online* CHIS activities in the Code of Practice - this is inexcusable

Online "Legend" building and maintenance

=====

It may be necessary and proportionate for a CHIS or a Relevant Source to create fake online internet service accounts e.g. Google Gmail, Microsoft Live ID, Twitter, Facebook, blog registrations, online discussion forum registrations etc.

Official

These may be used to help establish a "Legend" (does nobody else find the use of this Soviet era KGB espionage slang by the Home Office questionable ?)

N.B. by doing so, the CHIS or Relevant Source will almost certainly be breaking the legal Terms and Conditions of the online service.

Since newly created social media accounts which participate in discussions or which try to "follow" or "friend" other users, are less trustworthy and more suspicious, a convincing online persona requires a searchable history of online activity for it to be accepted.

Therefore any such "Legend" building (which may not yet have been allocated to a particular Relevant Source or investigation or operation) could take years and must also be reviewed by a senior responsible officer and the Surveillance Commissioners, with the same audit trails and regularity as other Relevant Sources i.e. regular review at least annually.

Automated social media software

=====

There are plenty of companies willing to sell or create social media software tools and services for "marketing" or for "social media intelligence", the use of which can help in the creation of believable online "Legends", or allow the gathering of online social media details about an individual or group.

Any use of such tools or services must also be clearly authorised and audited as per Relevant Sources.

online CHIS risk of Disruption , Agents Provocateurs & Entrapment

=====

One particular danger is the temptation for a CHIS or Relevant Source to use automated scripts or software to easily create and try to maintain multiple fake online personalities, often with limited artificial intelligence to send and reply to messages, so as to to create "buzz" or "chatter" online about a particular topic or issue.

They are also used to try to to manipulate (up or down) the ranking of certain keywords in web search engine queries.

These are abused by unethical businesses and by criminals to, for example, manipulate the price (up or down) of stocks and shares ("pump and dump" or "boilerhouse" operators) or to try to hide unfavourable or embarrassing press articles or social media commentary (no matter how truthful) from most naive web search engine users, who rarely progress beyond the first page or two of results.

Such software can also be used to "swarm" or "spam" political discussion forums, pushing a particular viewpoint and stifling free debate through "trolling" and "sock puppetry".

Therefore any use of such software must also be carefully authorised like a Relevant Source and audited by the Surveillance Commissioners. There also needs to be a clear Financial audit trail, as there is could be a substantial cost to the public purse.

Any use of such software for the dubious purpose of "disruption" of criminal or terrorist enterprises is also fraught with danger that it will be used to disrupt and cause collateral damage to innocent people e.g. those involved in political or social campaigns, peaceful demonstrations etc.

Although popular in the USA and with repressive dictatorships, such techniques risk creating online Agent Provocateurs and Entrapment, which should be a legal anathema in the UK.

N.B. even a "justifiable" use of such software or techniques will inevitably cause reputational damage to the trustworthiness of the law enforcement agency which uses them, when, not if, this becomes public.

Official

This new CHIS Code of Practice must clearly forbid any use of Agents Provocateurs or Entrapment, whether online or in person.

It is most concerning that the new codes of practice relating to undercover officers, known as "Covert Human Intelligence Sources", has failed to address the following:

There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

With consideration to human rights the above should be addressed within the code of practice.

There SHOULD be a code of practice which prevent intimate sexual relationships by undercover police officers in their undercover roles. Women should not be used/abused in this way. The Govt. should act to prevent and oversee that violations of privacy and the misuse of women should end. It is unacceptable and unprofessional !

This is your own population, who you have sworn to protect, who you are acting against. You are NOT at war and people have the right to protest and resist peacefully. Until this government turns all types of protest illegal that is.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I have grave concerns I would like to voice in relation to the consultation.

There's nothing in the codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles. Namely, the practice of forming intimate sexual relationships is unprofessional and unacceptable, and is a violation of a persons rights. Also should childbearing women be subject to an undercover relationship bearing offspring this is a violation of that child's rights to family life and other unethical points too. These gross violations of privacy are not authorised, and should not be legitimised under any circumstances. It is a hue violation of peoples rights, and womens bodies.

I'd like to express my dismay that the codes of practice relating to this subject (which I've viewed here <https://www.gov.uk/government/consultations/covert-surveillance>) contain nothing which would prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

Undercover police forming intimate sexual relationships with those they have infiltrated is unprofessional, unacceptable and abusive.

Any decent codes of practice would address this. It is time for the government to make clear that such gross violations of privacy are not authorised.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I would like to know if any of the undercover officers were/are women.

At Newbury we were spied on by a private company Pinkertons? and video warnings made by police were kept by them. My 8 year old daughter was warned on police video that if she entered the cordon again she would be arrested.(1/4/1996) What happened to all this surveillance?

It was bad enough that the that ACPO ran the NPOIU - so no accountability; worse still that they spied on democratic and peaceful organizations, and sometimes encouraging members to engage in illegal acts; but initiating intimate relationships with members in order to advance spy's 'cover' was appalling. The failure to admit whether or not doing so was official policy not only demonstrates the lack of accountability of the police in the UK post Lawrence and Hillsborough, it illustrates a determination to continue the 'cover up' concerning the unnecessary stress and mental torment suffered by those who were deceived.

As long as the police refuse to admit whether these relations were officially or unofficial authorized, the victims seeking compensation are being denied due process, and their right to seek redress.

That effectively means that the government is condoning what has occurred and refusing to clarify whether or not it believes inflicting psychological pain on citizens is acceptable. This practice should be made illegal and rules governing covert operations should make that clear.

This appalling tactic inflicting psychological damage on citizens should stop; and those responsible should be held to account.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I would like you to note that there is nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

The practice of forming intimate sexual relationships is unethical, unprofessional and totally unacceptable.

It is time that the government clarifies the situation and makes it clear that these gross violations of privacy are not authorised.

Official

I am looking forward to your outlawing of this unethical behaviour by police officers.

It is important that codes of practice for covert human intelligence sources are absolutely clear and unambiguous on the subject of sexual relationships with members of groups under surveillance.

It is completely unacceptable and also unprofessional for serving officers to form intimate sexual relationships whether or not to the extent of fathering children while acting pseudonymously as members of groups that are considered suitable subjects for surveillance. Such violations of the privacy of individuals must be very clearly out of bounds.

It should also be clear that 'Day of the Jackal'-style adoption of the identities of dead children is completely inappropriate and can cause immense distress when discovered.

These codes still do not prohibit forming sexual relationships with suspects. Obtaining sexual favours under false pretences is rape.

The government MUST prohibit state sponsored rape of its own citizens, otherwise it will be in breach of the UN charter, let alone our own domestic law.

It is immoral for officers to carry out sexual/intimate relationships with those who are unaware of their profession.

It is a form of psychological and physical abuse, that should not be tolerated. Victims of physical and psychological abuse are within their rights to prosecute the aggressor and members of the police should not be excluded from this prosecution.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I am glad to hear that the Government is reviewing this issue and how it relates to the behaviour of undercover police officers. I have been very disturbed by recent accounts of undercover policing and in particular the practice of police officers entering into intimate sexual relationships under a false name with political activists. Such behaviours are in most cases bound to lead to psychological damage for the victims .

Please make clear in the revised Codes of Practice that:

THE PRACTICE OF FORMING INTIMATE AND SEXUAL RELATIONSHIPS IN THEIR ROLES AS UNDERCOVER POLICE OFFICERS IS UNACCEPTABLE and UNPROFESSIONAL.

It is time for the Government to make it absolutely clear that such gross violations of privacy are not allowed and will automatically lead to disciplinary action.

In my view it highly inappropriate for police officers to be conducting sexual relationships with members of the public they are supposed to be surveying. Regardless of the quality of the information they can acquire in this way or the plausibility it may give to their covers this behavior must surely be deeply traumatic for those involved. Undercover officers should never have sex with a criminal suspect or

Official

member of the public in order to gain information, to expect them to or let such behavior go unreprimed is to quite literally make prostitutes of our public servants.

My other point is about the choice of targets for infiltration. Environmental and radical left-wing groups whose aim is to peacefully protest should not be surveyed by our police officers because they offer no threat to the public at large. As I understand it the "direct action" of such groups is targeted at big businesses (whom I imagine can afford their own security officers). If the role of the police truly is to protect the public then we must stop wasting our time and money harassing such small scale groups.

Thank you for taking the time to read this, I do hope you takes these two points on board. It's been quite shocking to hear of the activities of undercover officers that have come to light in the media over the past ten years.

I am extremely disappointed to see the updates to the codes of practice falling so short of actually protecting anyone from the kind of intimate sexual relationships that have destroyed lives of women and their children over years. This disgusting conduct can not be authorised.

I am writing to contribute to the consultation on "Covert surveillance and covert human intelligence sources".

In recent years a number of instances have come to light whereby male police officers have conducted sexual relationships with women they have been investigating. These relationships are entirely deceitful, unprofessional and grossly inappropriate. The Sexual Offences Act 2003 makes it clear that sexual consent is vitiated where that consent is obtained by deception as to the nature of the sexual act. The nature of these (repeated) acts was entirely deceitful. They purported to take place in the course of loving relationships but were actually a cheap way of obtaining sexual congress with women who were being investigated. This is little short of state-sanctioned rape.

It is vital that the codes of practice should be amended to make it clear that sexual relationships are not sanctioned as part of investigative work. No officer should be under any misunderstanding. If they engage in this form of violation of privacy and dignity then they should be subject to gross misconduct procedures. Please ensure that the final code of practice reflects this. We are onto you this is not on history will be the judge. Undercover sexual relations is rape !!

I just want to express my opinion on the subject of allowing undercover officers to form intimate sexual relations with the people they are watching. It is of course completely immoral and unethical to allow this to happen. It's an infringement on people's civil liberties and has been extremely traumatising to the individuals it has happened to so far. If the government proposes that this is acceptable behaviour, then they are nothing short of an oppressive regime. I urge you to vote against this practice as it is a gross violation of privacy and nothing short of sexual harassment.

It is totally unacceptable that any undercover police officer has any kind of state sanction to have sexual relationships in their undercover roles. It is abusive and de-humanising behaviour; demonstrating a contempt for those people involved, usually women. It is a violation of their privacy, their right to a genuine family life. What has happened over the years is horrific, damaging and brutal. These codes of practice do not prevent this type of relationship and it is important that it is clearly stated that the state and its various bodies not only do not authorise these relationships but condemn them and commit to sanctioning those who conduct them in its name.

Official

With regards to the guidelines for undercover officers, I am concerned that there is nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

The practice of forming intimate sexual relationships is unprofessional and unacceptable.

It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

It has become apparent that undercover police officers have been using sexual relationships with members of the public as a way of gaining the trust of the people they are spying on.

Since the question "Can I have sex with you, I'm a police officer" would undoubtedly been met with a firm "no", I can only conclude that the sexual relationships were carried out without the informed consent of the victims. This clearly means that people like Mark Kennedy are rapists.

How can the state justify using rape to pursue its political aims? Why have none of the rapists involved been charged?

It is not now, never was and never will be OK to abuse women as cover for undercover policing. The new guidelines need to end this practice. End of.

I would like to submit my response to the public consultation on covert surveillance.

I am concerned that there is a glaring omission from the covert human intelligence sources (CHIS) code of practice, namely that it does not proscribe a CHIS from entering into an intimate sexual relationship whilst under an assumed identity.

In the wake of the Mark Kennedy scandal, this is a gross oversight. It has been revealed that numerous undercover officers formed long-term sexual and romantic relationships with women, in some cases fathering children with them, only to disappear without explanation when their deployments ended. There is no justification for this; it is unnecessary, unprofessional and unacceptable.

Unless such intrusion is explicitly ruled out, there is every chance that it will continue to happen. Given the recent history of undercover officers having intimate sexual relationships with the subjects of their surveillance, there is a need for the code of conduct to include an explicit prohibition on this type of gross intrusion.

Its been a long time since the British have used rape and sexual violence to make political points.

Why are you investigating environmental activists while there are British people who are destroying our civilization for a quick carbon profit.

Stop STATE RAPE NOW please, and get your priorities right.

I write regarding the public consultation that is currently taking place in relation to proposals to update codes of practice in relation to undercover police officers.

Given the recent court cases involving undercover officers having relationships with several women, I am surprised and concerned that there is NO mention of practice in relation to this in the draft codes to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light in the last few years. The practice of forming intimate sexual relationships is unprofessional

Official

and unacceptable and diminishes my trust in the police. It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I find it disturbing that there is nothing in the code preventing officers from having sexual relationships in the course of their "work"!!! This surely should be prohibited in the code as in any other profession it is totally unacceptable.

Re your public consultation on your codes of practice relating to undercover officers I would like to make the following points.

There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

There is no way faith in the police can be reinstated unless these issues are addressed. The police are there to serve the public, not to simply protect their own interests.

I have been made aware in the last year of the historic problem of the sexual relationships of serving police officers in the course of their undercover work. While at Edinburgh Book Festival last summer I attended a book event regarding the book "Undercover" by Rob Evans and Paul Lewis. I understand that the behaviour of apparently unsupervised police officers resulted in much personal distress for women who could not be described as having ever posed a threat to national security. I have spent 40 years in public service and cannot understand how the supervisors of these officers have not owned accountability for this mismanagement.

I complained to the IPCC and in reply they cite the reforms your Consultation documents describe. However I see no mention of the very difficult issues of most concern to the public who largely accept the need for covert surveillance in situations of organised crime. The issues not mentioned in your documents are:-

How false names are acquired by officers who are employed undercover?

What are the parameters for relationships by serving police officers on duty towards targets?

To take my last point, if we assume there will no longer be covert human relationships with low threat groups as has historically occurred, owing to your reforms, then I ask myself would I agree with a police officer in service to society continuing a sexual relationship with a dangerous criminal within organised crime?

Anyh balance of risks must be closely assessed and recorded and responsibility shared and accountability for decision making recorded closely. Would such a risk assessment take in the long term distress of a person being duped in this manner? Is such sex consensual? Should a need for sexual or emotional contact arise in such work there should be a published protocol available for the public to see and it should be rigorously applied. I think this difficult subject should be tackled in your reforms. Not to do so leaves an " elephant in the room" . The risks of sexual contact for the man and woman involved regarding distress, legal action, pregnancy , disease and grief on abandonment are very great. The police need to grapple with this issue robustly and openly if they honestly believe this option should remain. To say nothing suggests to me that the police wish to keep this option without allowing protocols to be studied and agreed openly. What would we all think if a police officer on duty began to deliberately encourage a loving sexual relationship with our daughter or son? Even if he/ she was on the " most wanted" list. While I applaud the greater rank suggested re accountability, your reforms are a missed opportunity to grapple with this and come to a transparent decision. If the Government want this option

Official

for covert policing then argue for it openly giving your reasons and suggested protocol. I think that the Human Rights Act would probably rule it out.

To briefly mention the insensitive and repugnant use of dead children's names. Surely in this digital age we can come up with something better?

It might make sense to do many things in the pursuit of police work but if the ends do not justify the means good policing would accept its limits.

Whilst there may be a role for covert intelligence gathering for genuine serious organised crime this must not be used for political purposes in criminalising dissent.

The practice of forming intimate and sexual relationships is a serious breach of any professional standard and should never be condoned. The government must ensure that this practice is abolished.

I am concerned that the code does not include anything to stop undercover officers having intimate sexual relationships in their role, possibly resulting in the birth of children .

The formation of intimate sexual relationships is anathema. It is hypocritical and unprofessional.

HM Government has a responsibility to control the police and stop this destructive and damaging behaviour

I have read the draft document and am deeply concerned that the use of sexual relationships by CHIS is not explicitly rejected by the guidance. By not doing so the guidance allows gross breaches of Article 8 and sexual abuse by public authorities. I am further concerned that proportionality is not outlined in the guidance. Historical cases of public bodies sexually abusing women under surveillance has highlighted the LOW level of risk (if any) that the 'targets' presented.

If law is agreed with mutual consent, why allow a practice that in every case the innocent victim would object to. The public deserve better. We all deserve better. This archaic and horrendous intrusion into people's lives must end now.

Why do the draft codes not include any mention of the immoral practice of undercover police officers establishing deceitful long-term sexual relationships with various women? Any meaningful code must prohibit such behaviour, which has a devastating effect on the women thus targeted - especially as these women were often targeted for "legend-building" purposes, rather than being the subject of surveillance themselves.

* There's nothing in these codes of practice to prevent the kind of intimate sexual relationships by police officers in their undercover roles that have come to light over the last few years.

* The practice of forming intimate sexual relationships is unprofessional and unacceptable.

* It is time that the government clarifies the situation, to make it clear that these gross violations of privacy are not authorised.

I would like to express my outrage over the fact that no changes have been suggested to make it illegal for undercover officers to form sexual or intimate relationships with anyone they come in contact with through their deployment. Unless such intrusive activity will carry charges of gross misconduct or dismissal it will not stop. There are no circumstances at all in which such behaviour can be justified.

Official

I am writing to express my outrage that the issue of intrusive methods has not been resolved in this code and to urge you to redress this omission. I was appalled to learn of the way women were abused by police officials in undercover operations as they sought to infiltrate environmental groups. This was an appalling abuse of the rights of those women. It was also a flagrant abuse of public resources, allowing extended surveillance with absolutely no public safety gain. It is absolutely clear that the abuse of power in these cases was systemic and the public outcry should mean that this new guidance never allows this to happen again.

In my view the guidance does not put sufficient checks in to prevent issues being investigated which are of low public risk (environmental campaigns for example) and does not explicitly rule out intrusion into private and family life, even when those involved are not the direct subjects of the investigation. This has to be rectified in the final version to be stronger and more explicit and so that any officer which engages in sexual relationships with individuals in the course of an investigation would be in breach of this code and subject to due process.

It is essential that there is public trust in our authorities, at present this code does nothing to restore that and I urge you to correct this.

"1.10 Surveillance is covert if, and only if, it is carried out in a manner calculated to ensure that any persons who are subject to the surveillance are unaware that it is or may be taking place"

"9.7 The heads of [The intelligence services, MOD and HM Forces] are responsible for ensuring that arrangements exist for securing that no information is stored by the authorities, except as necessary for the proper discharge of their functions."

Taken together these statements imply that the dragnet operation by which GCHQ et al gathers and stores for ever all communications, private and public, may continue on the grounds a) that we are already fully aware of it and/or b) that they need to keep us "safe" (except from the state itself).

This document appears to say nothing about the legality or otherwise of hacking into the digital thew of apparently rogue states such as Belgium where we recently hacked into one of their Telecoms companies. Is another act proposed that will cover this, or are we all on board with starting a new East India company and taking over the planet, again?

I see nothing in this document that admits that the people who run the surveillance establishment are as weak and venal as the rest of us. How are they to be held to account? By discrete sackings with impunity, perhaps, as recently? Or will they be brought before the courts as they should? Or will they have just plain-old impunity like Mr Clapper of the NSA?

How will we know that data has been acquired illegally when "parallel construction" is standard practice? [Look it up:

http://en.wikipedia.org/wiki/Parallel_construction] This manouver ensures that the really key source of information, and how it was obtained, is never shown in court and is never challenged for legality. A surrogate pretext for search is sought in the mass of previously collected data. Consider a car on the M1 containing three young men which is pulled over by possibly the only police car on any motorway in the UK that day on suspicion of being uninsured. A search of the car boot reveals weapons. What a surprise! What amazing good fortune! The judge, and defence, who know what's going on, can never test the legality of the means by which the information that triggered the search for its surrogate was found. Hence zero accountability of surveillance is maintained.

Parallel construction is a form of perjury and should definitely be in the law as a crime.

Ends