



## Covert Human Intelligence Sources: Criminal Conduct Authorisation Process

First, or at the same time, a use and conduct authorisation under Section 29 of the Regulation of Investigatory Powers Act 2000 (RIPA), with its necessity and proportionality judgements, must be granted. On top of this, a Criminal Conduct Authorisation (CCA) must describe why the **criminal** conduct is necessary for a statutory purpose. The Authorising Officer must consider whether the outcome could be achieved by non-criminal means. The conduct must relate to a specific CHIS, for a specific operation or investigation, and it must be proportionate to what it seeks to achieve.

Taking into account the conditions for granting a CCA, the existing duties to safeguard the CHIS, to make full records, and ensure the CHIS's informed consent, **this means that the authorisation must be clear, specific, tightly-bound, understood by the CHIS, and the authority must assess that the CHIS is capable of carrying out the activity safely.** Effectively there is a double assessment of aspects of necessity and proportionality, because the CCA must relate to activity which has been authorised under Section 29.

### Assessing Proportionality

The draft CHIS Code of Practice mandates proportionality tests including: whether there are reasonable alternatives, and the activity intends to prevent more serious criminality; whether the potential harm to the public interest from the proposed criminal conduct is outweighed by the potential benefit to the public interest; and how the activity will cause the least possible intrusion.

A CCA must comply with the **European Convention of Human Rights (ECHR)**: In addition to the unqualified rights in the ECHR (for instance the right to life, and the prohibition on torture and inhuman and degrading treatment or punishment), there are protective obligations on the State. Where the State knows of the existence of a real and immediate threat to a person, the State must take reasonable measures to avoid that risk. No CCA could be granted which did not comply with both the ECHR prohibitions, and its protective duties.

**IPCO Oversight:** The Investigatory Powers Commissioner is an independent role performed by someone who has held high judicial office. The current Commissioner is Sir Brian Leveson. His office (IPCO) can examine any CCA, and associated information which must be retained, at any time. Inspectors understand the organisations intimately, and they will interview officers as well as examine paperwork. Inspection reports contain recommendations which the Senior Responsible Officer must act on. This is in addition to the annual IPCO public report.

**Special safeguards apply to the authorisation of juvenile or vulnerable individuals, and where confidential information (such as legally privileged, or journalistic source information) is likely to be acquired, including a requirement for a higher level of authorisation. These safeguards are set out in the CHIS Code of Practice.**

**An enhanced authorisation regime also applies to the use of undercover officers as Relevant Sources as detailed in the Regulation of Investigatory Powers (Relevant Sources) Order 2013. The regime implements the recommendations of HM Inspectorate of Constabulary following the examination of the deployment of a former police undercover officer, but whose findings are applicable to any law enforcement organisation who use undercover officers.**

### Additional Safeguards

All authorities have **internal disciplinary** procedures. An officer found to be operating in breach of legal or guidance obligations is liable to disciplinary procedure and investigation. This can include criminal investigation. There is an offence of 'Misconduct in a Public Office', which may be relevant to a criminal investigation into such activity, but each investigation will be fact-specific.

There is a duty on all officers involved in exercising the powers in RIPA to inform the Investigatory Powers Commissioner of any **relevant error** in the application of those powers.