

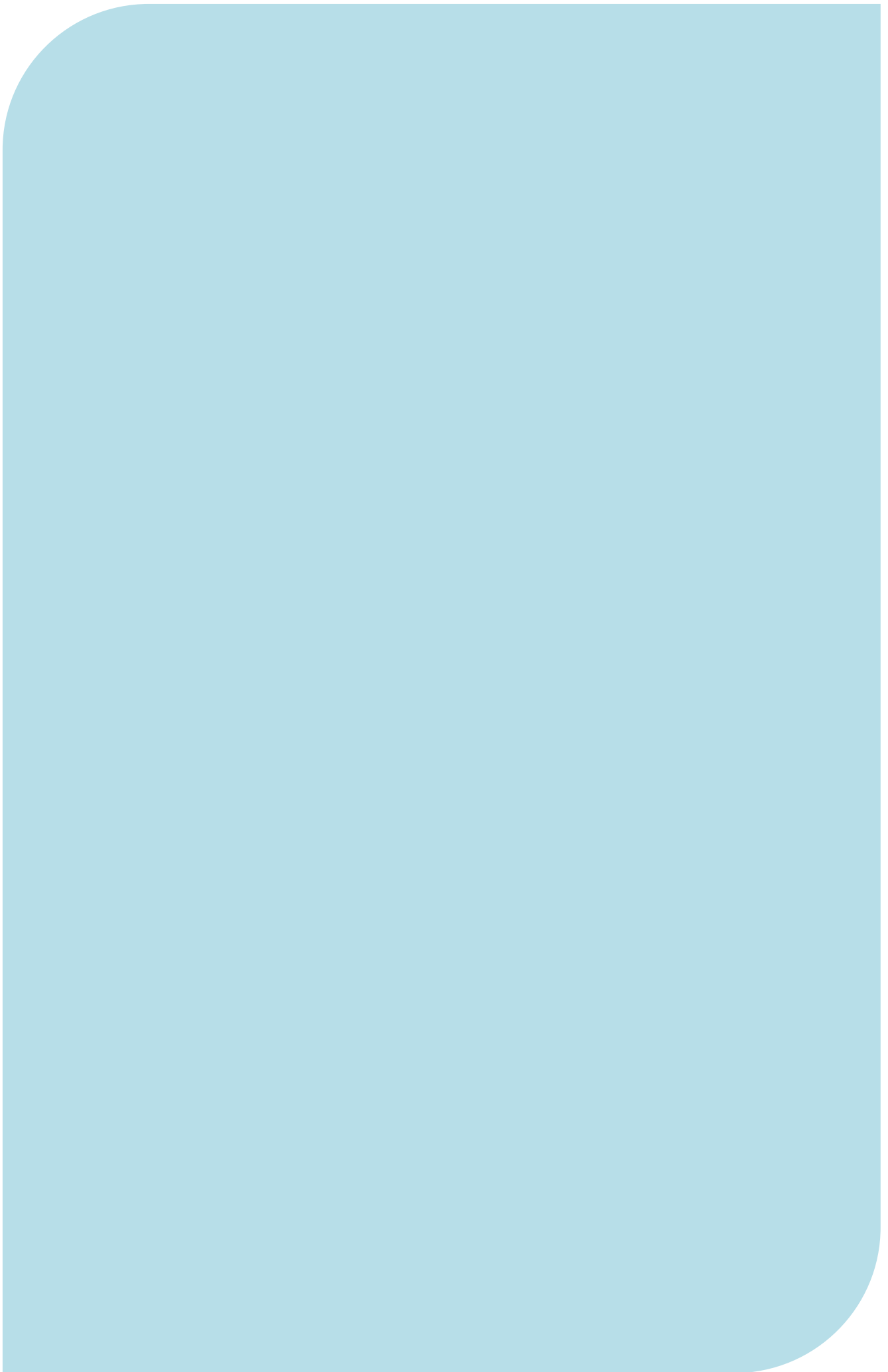


Office of Surveillance  
Commissioners

## ANNUAL REPORT

of the Chief Surveillance Commissioner  
to the Prime Minister and  
to Scottish Ministers  
for 2011-2012

HC 498  
SG/2012/127



# ANNUAL REPORT

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to Scottish Ministers

for **2011-2012**

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

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

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## 1. Introduction

- 1.1. This is my sixth report since taking up my appointment as the Chief Surveillance Commissioner in July 2006 and relates to the period 1<sup>st</sup> April 2011 to 31<sup>st</sup> March 2012.
- 1.2. My statutory responsibilities have not changed; they are to keep under review:
  - 1.2.1. The performance of functions under Part III of the Police Act 1997 ('PA97');
  - 1.2.2. Except in relation to the interception of communications and intelligence services, the exercise and performance of the powers and duties conferred or imposed by or under Parts II and III of the Regulation of Investigatory Powers Act 2000 ('RIPA'); and
  - 1.2.3. The exercise and performance of the powers and duties conferred or imposed by or under the Regulation of Investigatory Powers (Scotland) Act 2000 ('RIP(S)A').
- 1.3. The powers and duties of the Surveillance Commissioners in scrutinising and deciding whether to approve authorisations under PA97 (property interference) and under RIPA and RIP(S)A (intrusive surveillance) have been explained in earlier reports and are publicly available on our website. For reasons explained later in this report, I have agreed with Her Majesty's Chief Inspector of Constabulary that the Commissioners will, subject to any necessary legislation, give prior approval to some authorisations relating to a law enforcement Covert Human Intelligence Source (CHIS – commonly termed an undercover officer). Meanwhile, during inspections, my Inspectors are scrutinising the authorisation of any such undercover officer who has been authorised for an uninterrupted period exceeding 12 months.
- 1.4. There is a right to appeal against Commissioners' decisions to me. There have been no appeals lodged during this reporting period.
- 1.5. In performance of my duty under all three Acts to report annually, I continue to prepare a combined report.

## 2. Overview of the year

- 2.1. The statistics relating to property interference, intrusive surveillance, directed surveillance and CHIS are set out in Section 4.
- 2.2. During the reporting period, I received Her Majesty's Chief Inspector of Constabulary's report relating to the undercover officer Mark Kennedy and accepted the recommendation relating to me. I refer to this in paragraphs 1.3 above and 5.1 below.
- 2.3. At the request of the Director of Public Prosecutions, I conducted an independent Inquiry relating to protests at the Ratcliffe-on-Soar Power Station involving Mark Kennedy. My report was published in December 2011.
- 2.4. At the time of writing this report, the Protection of Freedoms Act 2012 had just received Royal Assent. I have made no additional contribution to that which I reported last year.
- 2.5. The imperatives of tighter fiscal controls and the loss of a large number of experienced police officers have combined to create a more variable performance by Law Enforcement Agencies this year. Some forces have maintained standards but this has usually resulted from close supervision by senior officers or less movement amongst applicants and authorising officers. In addition, greater emphasis on collaboration agreements among Law Enforcement Agencies and outsourcing by Local Authorities has given rise to difficulties in relation to the definition of a public authority.



### 3. Particular matters relating to the OSC

#### *Reporting to the Prime Minister and Scottish Ministers*

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

#### *OSC guidance*

- 3.2. My Commissioners approved the publication of the latest version of their guidance to public authorities in December 2011. I explained in paragraphs 3.4 to 3.6 of my last report the reasons why I have not made this publication more widely available. I have not changed my view.
- 3.3. My Inspectors are not lawyers and they address their reports to me. Their reports are subject to my endorsement which I will make clear in my covering letter to the chief officer of the authority inspected. It is therefore important that conversations with them during an inspection are not misquoted or shared with others without prior agreement.
- 3.4. There have been a few occasions when correspondence from me to a single public authority has been promulgated by that authority to others as a general interpretation. Usually my guidance relates to specific facts and may not be applicable in circumstances which may appear to be, but which on analysis are not, similar.
- 3.5. As previously reported, my Commissioners from time to time publish guidance in a single document for use by public authorities. I do not wish to apply a security marking to my guidance but, despite clear instructions, I am dismayed at thoughtless disclosure of a document which provides information which necessarily alludes to covert tactics. The Home Office has not yet provided me with a website capable of balancing the need for transparency to the public with controlled access to specific guidance by a limited audience.

#### *Inspection programme*

- 3.6. The public authorities which I currently inspect are at Appendix E. I report later on the difficulty in matching my inspections to the often complex arrangements between public authorities. I limit my inspections to those public authorities identified in the relevant Schedules to the Acts.

### *Oversight of local authority authorisations granted by magistrates*

- 3.7.** I rejected a Home Office proposal that I should report on the performance of the many thousands of magistrates who, when the Protection of Freedoms Act 2012 commences, will be enabled to approve the authorisation of covert surveillance by local authorities under RIPA. Section 62 of RIPA empowers me to oversee authorising officers and other relevant officials and members of public authorities, but specifically excludes persons with judicial authority. In any case, I do not have the resources to take on this task.

### *Commissioners' meetings*

- 3.8.** The Commissioners met on two occasions during the reporting period.
- 3.9.** The Serious and Organised Crime Agency has again accepted my request to visit its technical support unit during 2012 so that the Commissioners can see equipment the use of which they are frequently asked to approve. It will also provide the opportunity to assess the potential effect of technological developments.

### *Presentations and conferences*

- 3.10.** The capacity of my organisation to address presentations and conferences has significantly decreased. For reasons explained elsewhere, my Chief Inspector now supervises a reduced Secretariat and has been able only to present to the law enforcement agency authorising officer courses.
- 3.11.** I note a reduction in the number of courses run by the National Policing Improvement Agency (NPIA). I understand the financial imperatives but, in my view, demand exceeds capacity which must mean that authorising officers are reliant on internal training or are conducting an important statutory responsibility without the benefit of training. My Inspectors have commented that this inexperience is increasingly noticeable.

### *Liaison*

- 3.12.** My Chief Inspector continues to be my main point of contact with external stakeholders. He is a member of the HMIC Inspection Gateway Working Group which seeks to reduce the alleged burden on police forces. He is also providing advice to the ACPO RIPA Forms Review team which seeks to simplify the forms

without detriment in quality. I support these initiatives but remind those over whom I have oversight that my role is to assess compliance and performance independently. If the output of these groups appears to me adversely to affect my ability to perform my statutory function I will say so.

### *Home Office support*

- 3.13.** The Home Secretary is required by the Police Act 1997 to provide me with the support necessary to fulfil my responsibilities. The support I receive continues to be, in some respects, inadequate. In particular, information technology for many years has failed to meet the demands of remote, secure and mobile working which is an integral part of the inspection process. Promises of improvement are not fulfilled and there appears little urgency to resolve recurring problems. Similarly, I have to rely on archaic facsimile machines which repeatedly malfunction.

### *Changes in personnel*

- 3.14.** In my last report I relayed the adjustments necessary to meet a reduced budget. Ms Linda Ward and Mr Graham Scott (the two most senior Civil Servants in the office) were not replaced. Mr Jeremy Dixon was eventually replaced by Mrs Ruby Durasamy (from February 2012). My Chief Inspector now supervises, in addition to those conducting inspections, those providing administrative support.
- 3.15.** At the end of the reporting period, Mr John Bonner (Inspection Support) retired from the Civil Service for whom he had worked for 31 ½ years. He had supported the OSC for 8 ½ years. He is replaced by Mr Aftab Chaudri who transferred from the Home Office Departmental Security Unit.

### *Recognition*

- 3.16.** I wish to record, once again, my thanks to the Commissioners, Assistant Commissioners, Inspectors and all other members of the OSC for the indispensable support which they have given me in performing my statutory role. My thanks also go to Andrew Burke, Protective Services Division, Northern Ireland and to Graeme Waugh and the staff of the Police Division of the Scottish Government for the important administrative support they provide to the Commissioners in Northern Ireland and Scotland respectively.

## *Expenditure*

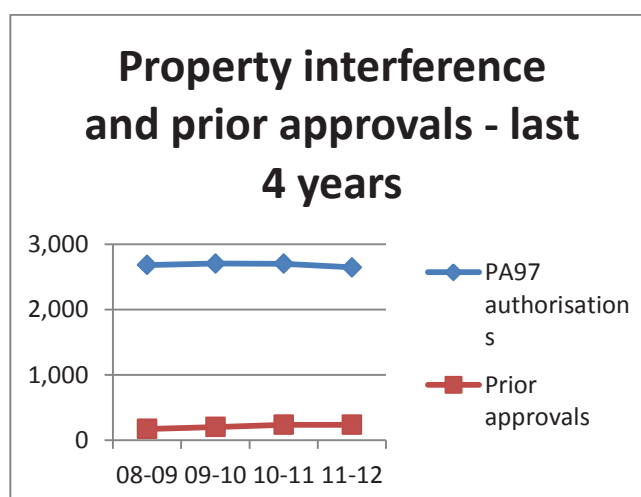
- 3.17.** Throughout the 14 years of its existence the OSC, until 2006 under the leadership of my predecessor Sir Andrew Leggatt and, since then, under my leadership, has cost remarkably little public money. The budget has always been less than £2 million. I believe that it has operated within budget every year. The budget for 2011-12 was reduced to £1.58 million, with actual expenditure, summarised at Appendix F, £43,000 under budget. I have been given the same budget for 2012-13.

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

### General

- 4.1. Statistics for property interference and intrusive surveillance authorisations for the past year are set out in tables at Appendices A-D. The chart comparisons show the overall four-year trend for each type of activity as reported to me when I request statistics for this report. I provide my usual reminder that my statistics can only provide a general record; they should not be misconstrued. My role is not to promote more or less covert activity; it is simply to report the performance of those enabled to seek the protection of legislation. I have identified no systemic attempt to misuse legislation.
- 4.2. The following statistics are based on a 100 per cent response from law enforcement agencies and a 90.3 per cent response from other public authorities. Of those non-law enforcement agencies that responded, only 6.75 per cent granted the use of a CHIS and 36.75 per cent have not granted authorisations of any kind. Because I do not inspect every authority each year, I have to rely on the returns provided by public authorities. I am sure that the overall trend indicated in each chart is valid but these statistics do not reveal any covert surveillance which public authorities have chosen not to authorise.

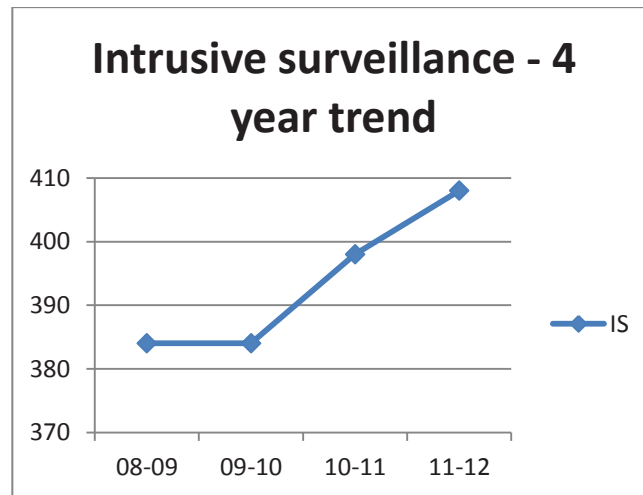
### Property interference



- 4.3. Excluding renewals, property interference authorisations were granted on 2,646 occasions; a decrease of 55 on last year. Five authorisations were quashed by Commissioners. The overall trend is flat but a decrease in activity involving

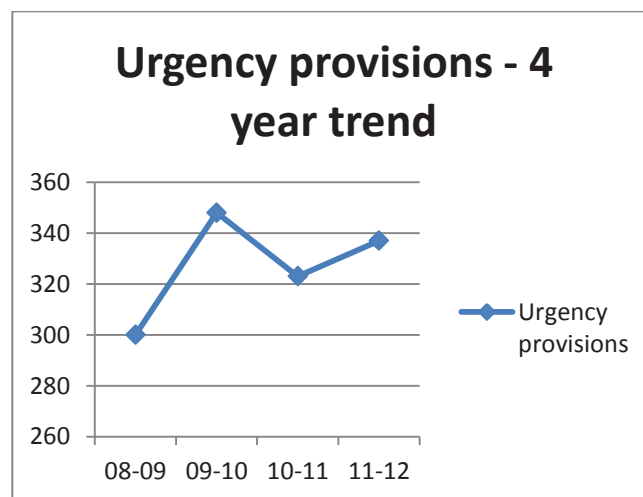
residential premises is countered by an increase in the use of vehicle tracking devices. Providing that the necessity test has been satisfied, the use of a tracking device is often more proportionate, more accurate and safer than using scarce surveillance personnel.

### *Intrusive surveillance*



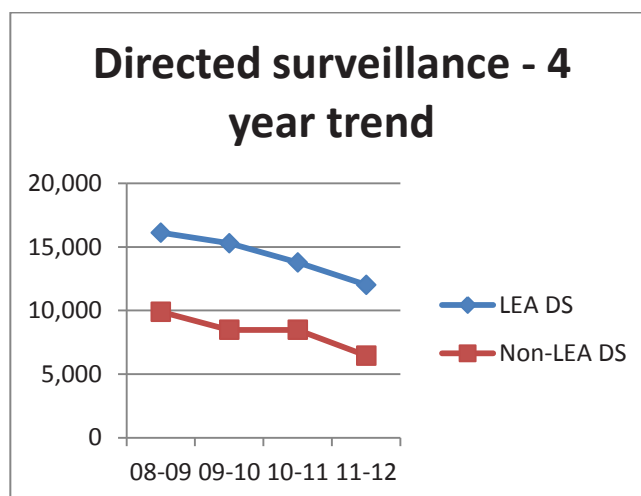
- 4.4.** The number of intrusive authorisations rose very slightly this year from 398 to 408. Two authorisations were quashed by Commissioners.

### *Urgency provisions*



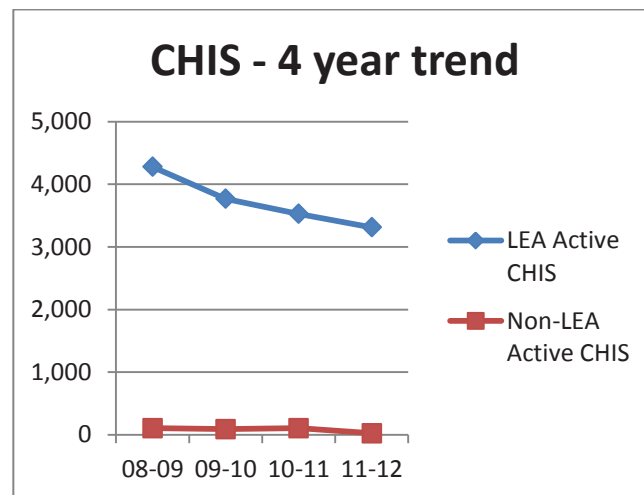
- 4.5.** The urgency provisions allowed by legislation were used on 337 occasions; a slight rise on the previous year but not of significant concern to me. I remain satisfied that the provisions are not systematically misused.

## Directed surveillance



- 4.6.** Law enforcement agencies authorised the use of directed surveillance on 12,015 occasions; 1,830 authorisations were extant at 31<sup>st</sup> March 2012. This is a reduction on the previous year when the comparable figures were 13,780 and 2,413.
- 4.7.** The returns to me by non-law enforcement agencies show authorised directed surveillance on 6,455 occasions. This continues a downward trend. 4,309 of these were granted by the Department of Works and Pensions (582 extant at 31<sup>st</sup> March 2012) which authorises the use of directed surveillance conducted on its behalf by many local authorities which may account for the low statistics from other local authorities. My inspections are revealing a continuing reluctance, by many local authorities, to authorise any covert surveillance. Many local authorities have been discouraged by adverse media comment (whether well-founded or not) and are unsure of the prospective impact of the Protection of Freedoms Act. In consequence, defensively, it seems likely that they are investigating fewer examples of possible unlawful behaviour (which may not be in the public interest) or are relying more on overt methods (which may be appropriate but may intrude on Article 8 rights) or are riskily resorting to covert activity which is not authorised and therefore not within the protection of RIPA. It will only become apparent which of these is happening by inspections over a number of years.

## Covert Human Intelligence Sources



- 4.8.** There were 3,361 CHIS recruited by law enforcement agencies during this reporting period. 3,656 authorised CHIS were cancelled in the same period (including some already authorised from the previous year); and 3,312 remained authorised at the end of this reporting period.
- 4.9.** Only 24 CHIS remained authorised by non-law enforcement agencies at the end of this reporting period. The number of non-law enforcement agency authorities granting CHIS authorisations is 6.75 per cent and their use is short-term and for specific purposes as the law requires. For reasons which I address at paragraphs 5.14 and 5.15 of this report, I know that some public authorities are not recognising persons who meet the legal definition of a CHIS and are not seeking the protection that legislation affords. This does not render the activity unlawful but does expose the authority to risk that any evidence obtained may be deemed inadmissible.

### Section 49 – encryption

- 4.10.** During the period to which this report relates, NTAC granted 57 approvals from 57 applications. Permission was not sought in three cases after NTAC approval. From the remainder, 33 had permission granted by a Circuit Judge, of which 20 have so far been served. Of these nine were complied with and 15 were not (this includes orders obtained in the last reporting year but not progressed at the time of the last report); the remainder are still being processed. It was decided not to proceed with five of the 14 people were charged with an offence. So far, in the period of this report, NTAC has been informed that there have been two convictions with other cases still in progress.



- 4.11.** One conviction related to the importation of controlled substances, the other related to a fraud offence. Other offences include: domestic extremism, possession of indecent images of children, insider dealing, fraud, evasion of excise duty, drug trafficking and drug possession with intent to supply.
- 4.12.** These statistics are provided by NTAC who are able to be accurate regarding the number of approvals granted. However, unless informed by the case team, the statistics cannot properly reflect the snapshot at the time of this report. However, it appears that there has been delay in serving some notices after approval has been granted and information regarding the progress of the cases although requested is not as prompt as it should be. Notices, one approved, should be served without delay and the information supplied to NTAC as soon as possible

### *Irregularities*

- 4.13.** 81 irregularities (71 by law enforcement agencies and 10 by non-law enforcement agencies) were reported to me during the period covered by this report, compared with 129 during the period of last year's report. This represents a tiny proportion of the total number of authorisations legitimately granted in the same period.
- 4.14.** The fact that reports which, for the most part, relate to short periods of unauthorised activity are made to me demonstrates that the reporting authorities have in place effective oversight processes. I suspect that some public authorities are not reporting irregularities to me either because they are embarrassed or because the error has not been recognised. I am minded in future to identify any public authority which fails to report a serious irregularity or which repeatedly fails to identify errors. Some irregularities which have not previously been reported to me are identified during inspection.

## 5. Key issues arising from my inspections

### *Police undercover operations*

- 5.1. In the light of the HMCIC report into the activities of the undercover officer Mark Kennedy, I have agreed to examine, and am examining during inspections, some authorisations of CHIS who are law enforcement officers and who have been authorised continuously for a period exceeding 12 months in relation to 'domestic extremism'. I am also agreeable in principle to Commissioners giving prior approval to certain kinds of such activity by a CHIS, provided that the OSC is given the appropriate resources to deal with the number of cases which arise and subject to any necessary legislation conferring the power.
- 5.2. Existence of an authorisation of itself will not prevent the problems associated with the Mark Kennedy affair. A difficulty with the police process is the understandable desire that a Chief Constable be aware of all activity taking place in his area of responsibility. This encourages a force to authorise only the covert activity taking place in the area for which its Chief Constable is responsible. The problem with this approach (known as the 'lead force' model) is that the relevant authorising officer may not know the history of the deployment or its future plans; he is presented with a *fait accompli* where a refusal to authorise may have wider implications. It does not seem sensible for operational oversight and RIPA oversight to differ so starkly.
- 5.3. One of Mark Kennedy's authorisations had been examined during an OSC inspection and was found to be appropriate. However, this assessment was based on the facts presented to the Inspector, which were only part of the story. If all the facts relating to the entire activity of a CHIS are not made available to an authorising officer his judgment may be flawed. In my view, the lead force model is not compatible with the need to protect the undercover officer and his overall deployment.
- 5.4. For some years I have been advising the relevant ACPO Working Group that the national approach to authorisation has been inadequate. Spurred, no doubt, by the focus on the Mark Kennedy case, the Working Group has, in the early months of 2012, issued improved forms. At the time of writing this report, I am not able to assess whether the form redesign will result in improved compliance.
- 5.5. Some police forces continue to confuse CHIS management by such sub-categorisation of individuals as undercover advanced officers, undercover foundation officers, or covert internet investigators. I sympathise with the view that

a police qualified human source may differ in capability and terms of control from a civilian, but the police service is not at liberty to ignore the present terms of the legislation and plough its own course. I do not accept the argument that the lack of case law means that current processes are necessarily correct and compliant with legislation. There are, no doubt, cases in which undercover processes could have been effectively challenged before a trial judge but, for one reason or another, no challenge was made so no judicial ruling was given. Until properly tested in court, I expect the guidance of my Commissioners to be followed.

### *Collaborative working arrangements*

- 5.6.** The designation of a public authority is increasingly difficult to apply. It is not as clear as Schedule 1 of the 2000 Acts suggests. It is not my role to interfere with operational decisions but current practice has difficulty in complying with the legislation. I will attempt to avoid inspection of the same entities more than is necessary but will criticise public authorities which allow arrangements which are not compliant with the legislation.
- 5.7.** The number of collaborations has increased in recent years. In addition to police collaborations – which may be collaborations for one business area between one set of forces and different collaborations for other business areas with other different forces – local authorities are opting for different working arrangements. In some cases local authority management teams share their time with different work forces; in other cases work forces have merged to serve more than one group of elected members; and in other arrangements, specific business areas (e.g. benefit fraud or trading standards) have combined to form separate operating entities which incorrectly authorise in their own unit name.
- 5.8.** There is also an increased use of non-public enterprises which may use covert techniques. These range from private investigators and bailiffs to fraud investigation units and the management of housing stock. I have no remit to oversee the activity of private enterprises whose activity would otherwise meet statutory tests and I do not challenge their existence or role. But where these entities conduct covert surveillance on behalf of a designated public authority, I reserve the option to examine their activities; I lack the capability to oversee an increasing number of entities and most will operate without my oversight. Some of these entities conduct covert surveillance but have a close relationship with one or more public authorities. Public authorities should be very careful in their cooperation with private enterprises and should have in place arrangements which clarify responsibility and liability in the event of challenge.

- 5.9.** The UK Border Force (UKBF) was declared operational before its management processes for covert surveillance were clarified. It is fortunate that the force is an operational division of the Home Office which is identified in Schedule 1 of RIPA, but the detailed mechanics of authorisation and oversight had not been properly addressed and the UKBF is not currently identified as enabled by RIPA in its own right. At the time of writing, I intend to conduct a joint inspection of the UKBA and UKBF in 2012.

### *The impact of financial pressures*

- 5.10.** The loss of expertise in law enforcement agencies as a result of redundancy and career termination is noticeable in many forces. An increasing number of authorising officers have limited experience of covert operations; some compensate by detailed scrutiny, others succumb to the assertions of more experienced applicants or the demands of their other responsibilities. This requires improved oversight from senior responsible officers and quality assurance mechanisms.
- 5.11.** An increased need for training appears to exceed the capacity of diminishing training budgets. There is an increased reliance on internal training delivery; the quality varies considerably from one authority to another. Internal delivery precludes the opportunity to compare practices and processes with others.
- 5.12.** Using covert technology because it is easier, cheaper or potentially quicker is a temptation many authorising officers accept as a compelling argument. In some cases it may be proportionate, but in many cases other less intrusive or overt options could be considered. Proportionality is not the same as convenience and a lack of resources should not be a significant factor in decision-making.
- 5.13.** Financial pressures may also inhibit full transition to police force collaboration because there is no single IT software solution for the management of covert surveillance. During transition, collaborating authorities must take care to avoid error.

### *Authorities cannot ignore the existence of a CHIS*

- 5.14.** I expressed concern, at paragraph 5.15 of my last report, at the ignorance of many non-law enforcement agencies regarding CHIS. The situation has not improved. I remain concerned that many non-law enforcement authorities still cannot properly identify a CHIS or, if they can, they prefer to abrogate their responsibility or rely on a law enforcement agency to fulfil the responsibility for them. A CHIS relationship is

not reliant on tasking; it does not require consent; and it is not dependent on the CHIS being unknown to the person being reported on. When a report is provided to a public authority without the knowledge of the person being reported on, it is covert to that person. If a person establishes or maintains a relationship and discloses information covertly, he is a CHIS. Authorisation is not obligatory, but is advisable.

- 5.15.** Many public authorities do not need the specialist training (commonly referred to as ‘tradecraft’) necessary to ensure the safety and welfare of a CHIS. Fulfilling the requirements of RIPA section 29(5) should not be a significant training burden; the onus is on preventing disclosure of the identity of the source by careful information management and document security.

### *Digital investigation and data sharing*

- 5.16.** The Data Protection Act is not within my remit but the ease with which data can be shared is of interest to me, particularly when the data being shared is the result of covert surveillance. First, there must be adequate protection of sources, techniques and product and this is not always apparent when there is no human in the loop to challenge the need to know. Secondly, I do not detect much effort by some authorising officers to make adequate arrangements for the destruction of product which was the result of collateral intrusion or not of value to the investigation or not properly authorised. The default solution appears to be in favour of retention. The necessity and proportionality of retaining data, which may later be shared in a different context, is as important as the necessity and proportionality of obtaining it in the first place.
- 5.17.** A frequent response to my Inspectors’ enquiries regarding a reduction in directed surveillance is that ‘overt’ investigations using the Internet suffice. My Commissioners have expressed concern that some research using the Internet may meet the criteria of directed surveillance. This is particularly true if a profile is built by processing data about a specific individual or group of individuals without their knowledge.
- 5.18.** There is a fine line between general observation, systematic observation and research and it is unwise to rely on a perception of a person’s reasonable expectations or their ability to control their personal data. Like ANPR and CCTV, the Internet is a useful investigative tool but they each operate in domains which are public and private. As with ANPR and CCTV, it is inappropriate to define surveillance solely by reference to the device used; the act of surveillance is the primary consideration and this is defined by RIPA section 48(2-4) (monitoring, observing,

listening and recording by or with the assistance of a surveillance device). The Internet is a surveillance device as defined by RIPA section 48(1). Surveillance is covert “if, and only if, it is conducted 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.” Knowing that something is capable of happening is not the same as an awareness that it is or may be taking place. The ease with which an activity meets the legislative threshold demands improved supervision.

### ***Automated Number Plate Recognition***

- 5.19.** The Commissioners invited ACPO representatives to present the case for continued operation of the ANPR system when legislation demands authorisation. It was accepted that ANPR cameras can be used for an overt and covert purpose. The Commissioners were not persuaded to alter their guidance. I am pleased that ACPO has decided to improve its national guidance and to incorporate the advice of my office.
- 5.20.** I am less happy to discover that the proper ANPR authorisation process can be circumvented using the Police National Computer. I do not desire to prevent the use of this very useful tool, but the ease with which ANPR can be used for directed surveillance demands that authorisation processes should not be circumvented.
- 5.21.** The Commissioners believe that the use of privately owned ANPR systems for a covert purpose should be subject to authorisation if it is to be used for the benefit of a public authority operation or investigation.

### ***Invasion of privacy when RIPA may not be used***

- 5.22.** I occasionally encourage the use of similar authorisation mechanisms for activity which cannot be protected by the Acts (for example where covert techniques are used to identify a missing person when no crime is suspected). In these circumstances statutory definitions are met but none of the grounds specified in RIPA section 28(3) or RIP(S)A section 6(3), yet the human rights of the subject of surveillance must be considered. The authorisation process provides a useful audit of decisions and actions.
- 5.23.** Similar caution is not taken by non-public authorities. Monitoring the activity of investigative journalists or other non-public authority entities (such as private investigators working on behalf of insurance companies) is not within my remit. I also acknowledge the imperative that public authorities be held to the highest level of accountability. However, it seems to me odd that the use of techniques that

would require authorisation if conducted by a public body is accepted, without apparent challenge, if it is not conducted on behalf of the State. I am not suggesting that these techniques are unlawful; I simply make the observation that invasions of privacy of this nature are unregulated. The public should be confident that there are adequate mechanisms so far as public authority covert surveillance is concerned; but there is no system of regulation of surveillance for covert investigative, commercial or entertainment purposes.

### *Training accreditation*

**5.24.** I have noted a tendency by some trainers to imply a relationship with the OSC by publishing a copy of my organisation's logo on their website or to imply that they are accredited to provide RIPA Part II training. I deliberately avoid commenting on the competence of those who deliver training because I have no remit to influence commercial activity. Suffice to say that I do not accredit those who deliver training relating to Part III of the Police Act 1997 or RIPA/RIP(S)A Parts II and III. Public authority compliance and authorising officer competence is assessed during my inspections and, ultimately, by the courts when covertly obtained evidence is tendered.

### *Improvement to RIPA forms*

**5.25.** I have been an advocate of form redesign for some years and fully support the initiative of ACPO in setting up a working group for this purpose. I note that the intent is to simplify the current forms without adversely affecting the author's ability to demonstrate compliance; I look forward to ACPO's final proposals. It is worth remembering, however, that improved forms on their own do not diminish the responsibility of each authorising officer carefully to consider the merits of each application and to ensure that all pertinent questions have been asked. I continue to require authorising officers to scrutinise applications and reject those which are not of a suitable quality.

### *Disclosure of interception*

**5.26.** My Commissioners have considered the impact of RIPA section 19(4) which makes disclosure to another person of the existence and content of an interception warrant or intercepted material a criminal offence. They conclude that they are sometimes denied information that may be available to an authorising officer as the basis of his authorisation and material which may support the case for authorising other covert activity.

### ***Reliance on the capability of the OSC***

- 5.27.** I reiterate the observation that I made in my last and earlier reports; lawyers should not rely on the OSC as having a comprehensive reach. My Assistant Commissioners and Inspectors can only carry out a dip sample of authorisations at inspections. My Commissioners see all authorisations to interfere with property and for intrusive surveillance, but they do not usually see reviews. The Commissioners do not contemporaneously examine authorisations for other types of covert surveillance (save as indicated in paragraph 5.1).
- 5.28.** I repeat that it is unwise for any public authority to believe that their processes are compliant merely because they have not been challenged in court. The absence of case law does not mean a *modus operandi* is unassailable. My inspections address fundamentals but do not involve the sort of cross-examination of those involved which is possible in court.
- 5.29.** Because of the limits of my resources, I encourage public authorities to seek legal advice though, in view of the number of requests which my office receives, this does not appear to be sought as often as it should be. Chief officers are at liberty to rely on whichever advice they choose. However, it is worth repeating that the opinion of a non-specialist lawyer is unlikely to have the weight of the collective opinion of my Commissioners.



## 6. The year ahead

- 6.1. I anticipate continued development of collaboration agreements in England and Wales.
- 6.2. I will provide advice when needed to assist the Scottish law enforcement agencies' transition to a single Police Service of Scotland by 1<sup>st</sup> April 2013.
- 6.3. I will provide advice, if sought, to assist the transition to the National Crime Agency by 1<sup>st</sup> April 2013.
- 6.4. I look forward to ACPO's final proposals regarding RIPA form redesign and to the conclusions of the HMIC Inspection Gateway Working Group. I have made it clear, however, that I remain solely responsible for the way in which my statutory functions are accomplished.
- 6.5. I will monitor the impact of those parts of the Protection of Freedoms Act 2012 which relate to the authorisation of covert activity by local authorities.

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

	2009-2010			2010-2011			2011-2012		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Total number of authorisations (not including renewals)	2542	163	2705	2531	170	2701	2495	151	2646

**PRIOR APPROVALS**

	2009-2010			2010-2011			2011-2012		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total
Number of cases requiring approval	190	13	203	215	22	237	212	24	236
Cases requiring prior approval by category:									
• Dwelling	118	6	124	155	20	175	156	20	176
• Office premises	45	7	52	34	0	34	34	3	37
• Hotel bedroom	23	0	23	19	2	21	19	1	20
• Matters subject to legal privilege	4	0	4	4	0	4	3	0	3
• Confidential journalistic material	0	0	0	0	0	0	0	0	0
• Confidential personal information	0	0	0	3	0	3	0	0	0

## Appendix B

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

	2009-2010			2010-2011			2011-2012		
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total
Assault	30	0	30	42	1	43	45	1	46
Burglary/Robbery	156	2	158	123	1	123	119	1	120
Conspiracy	24	3	27	12	0	12	6	0	6
Drug trafficking	1470	131	1601	1424	123	1424	1334	95	1429
Firearms offences (including armed robbery)	182	5	187	163	5	168	175	4	179
Kidnap/extortion	116	4	120	107	4	111	117	2	119
Money laundering	56	1	57	121	0	121	184	5	189
Murder/loss of life	176	10	186	220	29	249	191	30	221
Organised illegal immigration	18	0	18	22	1	23	24	0	24
Tax evasion	39	0	39	35	0	35	21	0	21
Terrorism	14	0	14	17	0	17	18	2	20
Other	261	7	268	245	6	251	261	11	272

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

	2009-20010			20010-2011			2011-2012		
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total
<b>Total number of authorisations (not including renewals)</b>	<b>359</b>	<b>25</b>	<b>384</b>	<b>358</b>	<b>40</b>	<b>398</b>	<b>364</b>	<b>44</b>	<b>408</b>
Cases by category:									
• Private vehicle	169	10	179	162	17	179	179	24	203
• Residential premises	190	15	205	196	23	219	185	20	205

## Appendix D

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

	2009-2010			2010-2011			2011-2012		
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total
Assault	14	0	14	14	1	15	10	0	10
Burglary/Robbery	7	0	7	15	0	15	10	0	10
Conspiracy	2	0	2	3	0	3	2	0	2
Drug trafficking	165	15	180	158	18	176	169	15	184
Firearms offences (including armed robbery)	16	2	18	7	1	8	21	1	22
Kidnap/extortion	11	1	12	1	0	1	11	0	11
Money laundering	10	2	12	13	0	13	19	1	20
Murder/loss of life	79	1	80	104	20	124	81	22	103
Organised illegal immigration	1	0	1	0	0	0	2	0	2
Tax evasion	6	0	6	1	0	1	4	0	4
Terrorism	2	0	2	1	0	1	2	2	4
Other	46	4	50	41	0	41	33	3	36

## INSPECTION PRIORITIES

### *Subject to annual inspection*

British Transport Police  
Civil Nuclear Constabulary  
Department for Work and Pensions  
Environment Agency  
HM Revenue and Customs  
Home Office - UK Border Agency  
Home Office – UK Border Force  
Ministry of Justice - HM Prison Service  
Northern Ireland Prison Service  
Office of Fair Trading  
Police forces for England and Wales  
Police forces for Scotland  
Police Service of Northern Ireland  
Port of Dover Police  
Port of Liverpool Police  
Royal Mail Group plc  
Serious Organised Crime Agency  
Scottish Crime and Drug Enforcement Agency  
Scottish Prison Service

### *Subject to inspection every other year*

British Broadcasting Corporation  
Care Quality Commission  
Child Maintenance and Enforcement Commission  
Department for Environment and Rural Affairs  
Department for Business, Innovation and Skills  
Department for Transport - Driving Standards Agency  
Department for Transport - Maritime and Coastguard Agency  
Department for Transport - Vehicle and Operator Services Agency  
Gangmasters Licensing Authority  
Health and Safety Executive

Independent Police Complaints Commission  
Marine Scotland  
MoD Police and Guarding Agency  
NHS Counter Fraud and Security Management Service  
NHS Scotland Counter Fraud Services  
Office of Communications  
Office of the Police Ombudsman for Northern Ireland  
Royal Air Force Police and Security Service  
Royal Military Police  
Royal Navy Police  
Scottish Accountant in Bankruptcy  
Scottish Environmental Protection Agency  
Serious Fraud Office  
Transport Scotland  
Welsh Assembly Government

***Subject to inspection every third year***

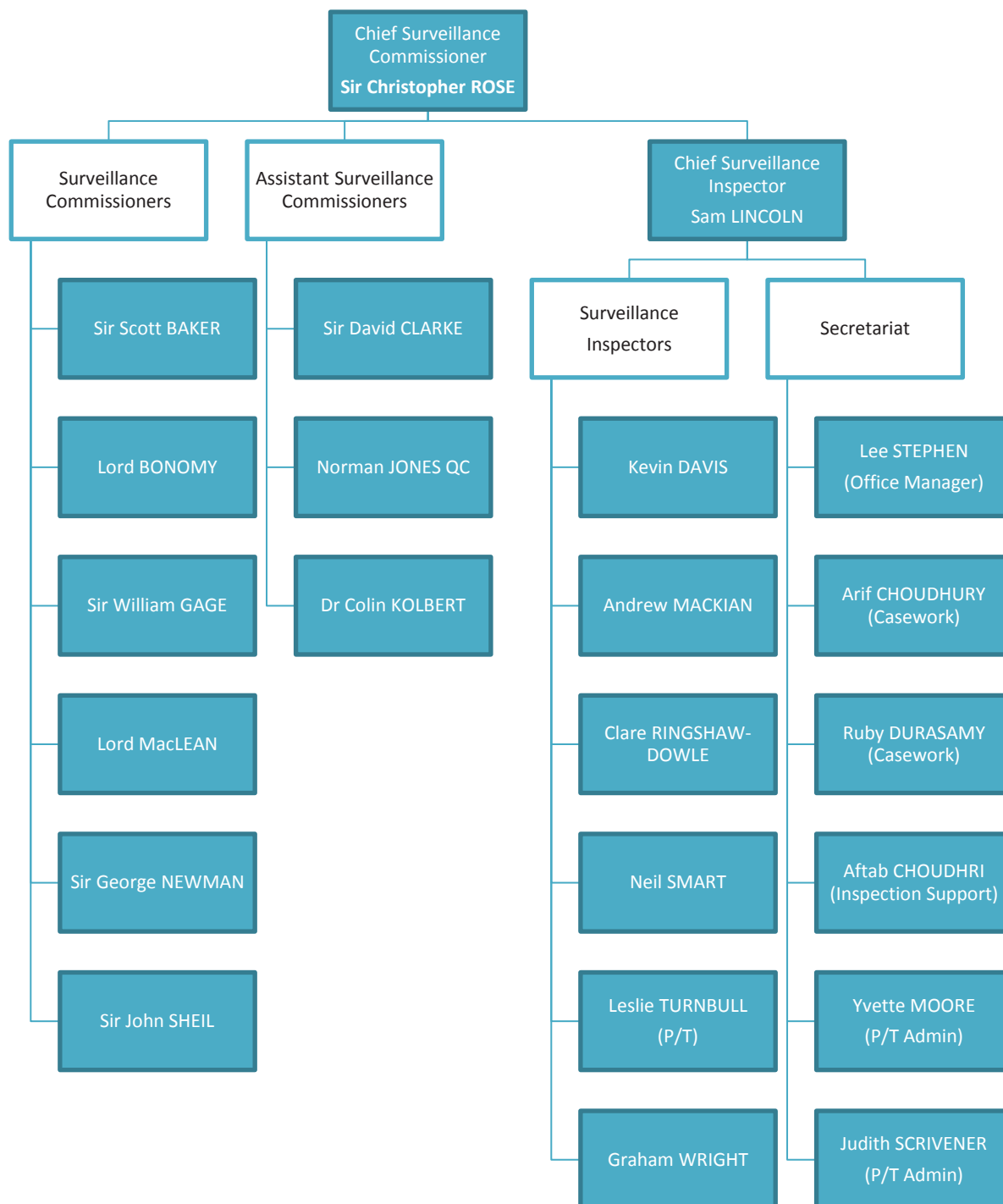
Charity Commission  
Department of Health – Medicines and Healthcare Products Regulatory Agency  
Financial Services Authority  
Fire and Rescue Services in England and Wales  
Fire and Rescue Services in Scotland  
Food Standards Agency  
Gambling Commission  
General Pharmaceutical Council  
HM Chief Inspector of Education, Children’s Services and Skills  
Local Authorities (Unitary, Metropolitan, London Boroughs, County, District, Scottish and Welsh)  
Office of the Information Commissioner  
Postal Services Commission

## OSC EXPENDITURE FOR APRIL 2011 – MARCH 2012

Description	Total (£)
Staff costs, including recruitment and training	1,249,487
Travel and subsistence	86,902
Conferences and meetings	2,979
IT and telecommunications	40,659
Stationery, including printing, postage and publications	10,875
Office and security equipment	-123
Accommodation	145,000
Other	1,822
<b>Total</b>	<b>1,537,601</b>



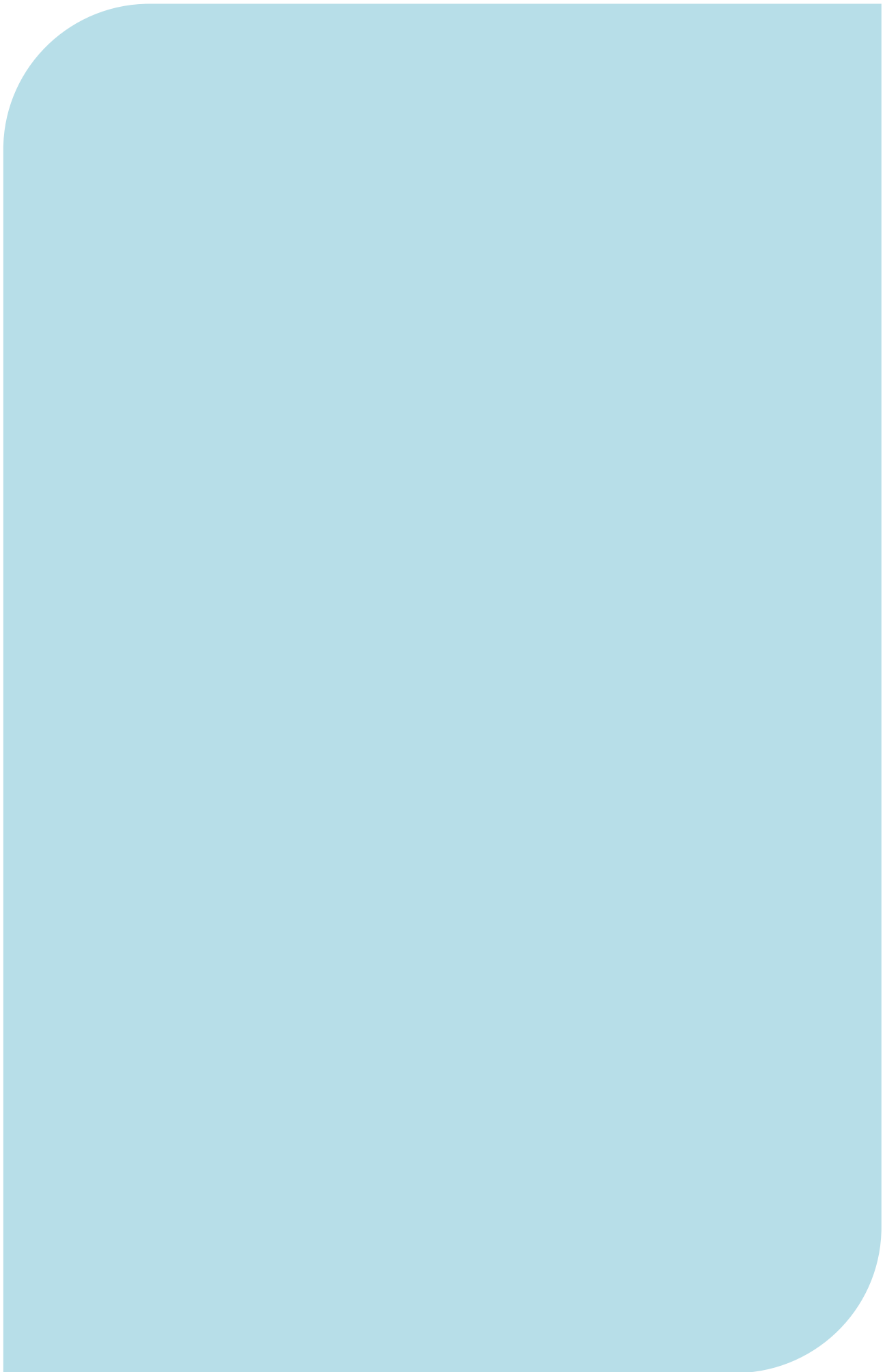
## MEMBERS OF THE OFFICE OF SURVEILLANCE COMMISSIONERS AS AT 31 MARCH 2012



**Members who have left during the reporting period:**

Mr. John Bonner







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