

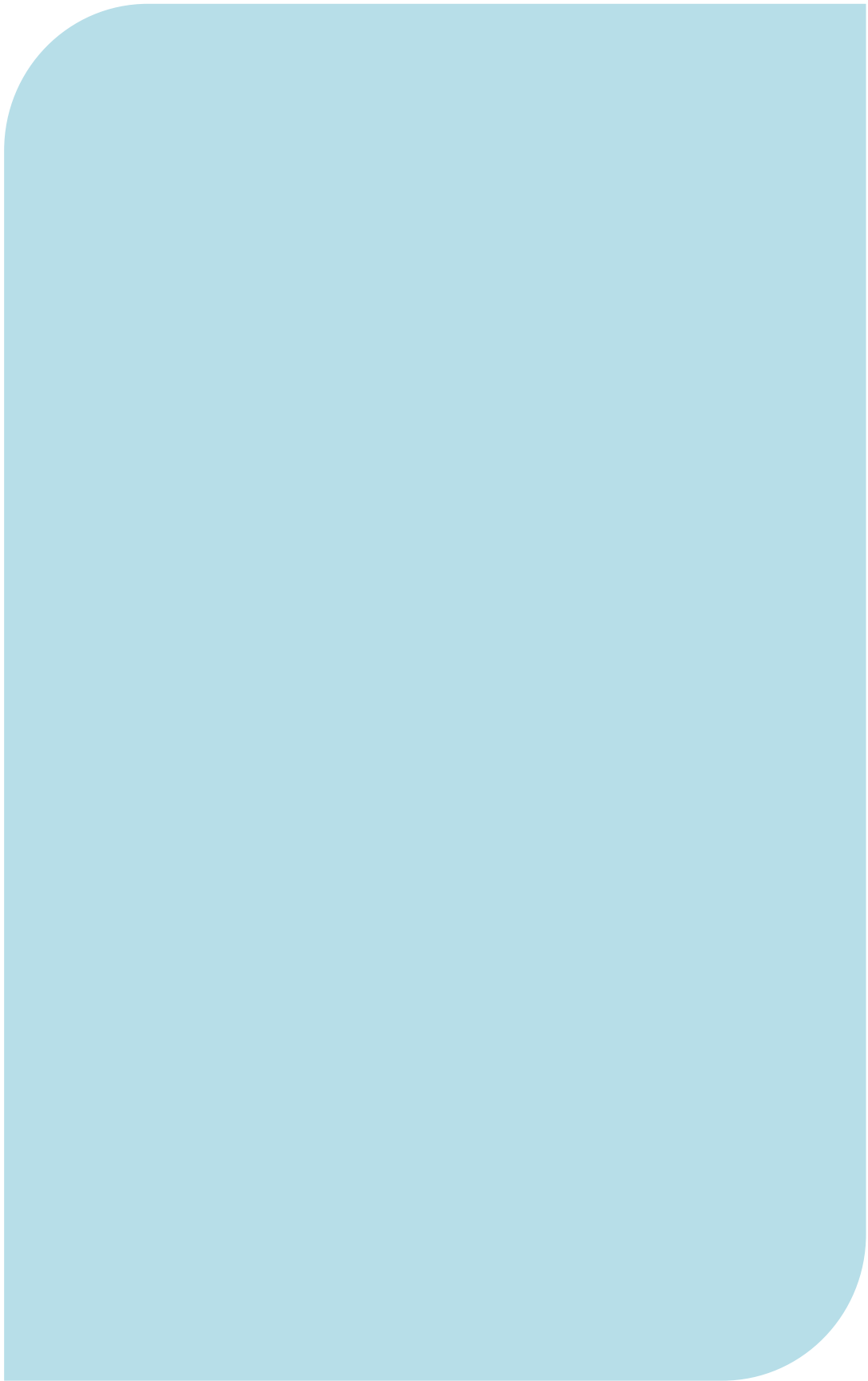


Office of Surveillance
Commissioners

ANNUAL REPORT

of the Chief Surveillance Commissioner
to the Prime Minister and
to the Scottish Ministers
for 2016-2017

HC 299
SG/2017/222



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for **2016-2017**

Chief Surveillance Commissioner:
The Rt. Hon. Lord Judge

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

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to be printed on 20 December 2017

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by the Scottish Ministers
20 December 2017

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1. Introduction

- 1.1. This is my second and will be my last Annual Report as Chief Surveillance Commissioner. In September 2017 the Investigatory Powers Commissioner will assume responsibility for the work currently done by the Office of Surveillance Commissioners (OSC) and the Interception of Communications Commissioner and the Intelligence Services Commissioner. I publicly supported the proposals to bring these three bodies into a single organisation, and I am delighted that the Investigatory Powers Act 2016 will shortly be coming into force. The new arrangements make logical sense and have been achieved without any diminution in the level of independent oversight and supervision which will govern the use of covert surveillance and the exercise of the statutory powers created by the Regulation of Investigatory Powers Act 2000 and the Regulation of Investigatory Powers (Scotland) Act 2000, and connected legislation.
- 1.2. I took up appointment as the Chief Surveillance Commissioner in July 2015. Even in that short period there has been considerable change, largely deriving from technological advances and increasing understanding of their potential. Much criminality is instigated or conducted through virtual means across traditional geographical boundaries. Electronic equipment can be and is used to promote fraud, sexual abuse, modern slavery, serious organised crime in its many forms, and terrorism. Social media and the far reaches of the Internet have enabled individuals who might, in earlier days, have acted alone, or indeed not acted at all, to find others who share their perverted interests. At the same time what I may describe as age old crime remains. The law enforcement agencies overseen by the OSC are obliged to adapt their approach and tactics to deal with these changes. On occasions the Surveillance Commissioners are required to address the lawfulness of proposals by law enforcement agencies to deploy the latest technology as they perform their responsibilities for the prevention and detection of crime. This is as it should be. New technology will inevitably be misused by professional criminals; it should also be seen as a weapon against them.
- 1.3. Loyal to the principles established by my predecessors as Chief Surveillance Commissioner, Sir Andrew Leggatt and Sir Christopher Rose, the OSC has continued to exercise its oversight responsibilities with the determined and uncompromising independence expected of the senior judiciary. The legislative powers granted to law enforcement agencies are carefully constrained, and from the outset the OSC has sought to provide clear, impartial and reliable direction to ensure that the processes in place at each agency, and the exercise of those powers in each individual case, fall clearly within the permissive ambit of the legislation. Sir Adrian Fulford, the newly appointed Investigatory Powers Commissioner, until very recently the Senior Presiding Judge for England and Wales, will adopt and support the same approach.

- 1.4.** As Sir Adrian exercises his responsibilities he will, as I have, enjoy the support of a group of Surveillance Commissioners who undertake the responsibility of checking, and where appropriate, approving the use of property interference, intrusive surveillance, and the deployment of undercover officers (“relevant sources”) in accordance with the legislation, provided that the proposed interference is necessary and proportionate. The OSC has operated this “double lock” process since 2001 and its value has been acknowledged and will be expanded to cover other forms of covert activity when the provisions of the Investigatory Powers Act 2016 come into effect.
- 1.5.** Sir Adrian will also enjoy the further support of the Inspectorate, an impressive group of Surveillance Inspectors and, subject to the problem discussed in the following paragraph, Assistant Surveillance Commissioners. They carry out detailed and thorough inspections of the relevant agencies and write carefully structured reports in which they identify areas of good practice and, where criticism is justified, make unequivocal recommendations for improvements. Their rigorous scrutiny over the years, and the way in which they have reported their findings, have made a significant contribution to steadily improving standards across the United Kingdom. My personal experience, from visits to Police Forces and other major law enforcement agencies, like the National Crime Agency and Her Majesty’s Revenue and Customs, is that the work of the Inspectors and Assistant Surveillance Commissioners is welcomed by Chief Officers (or their equivalent) as a significant factor in securing compliance, and a desire to ensure compliance, with the statutory provisions.
- 1.6.** Throughout the passage of the Investigatory Powers Bill, and since its enactment, the OSC, including Commissioners, Assistant Commissioners, the Inspectorate and the Secretariat, spent a great deal of time in discussion with and providing detailed information to policy officials. Despite this positive cooperation, it seemed to me that some officials paid insufficient attention to the fact that at the OSC, they enjoyed access to an array of experienced individuals who had practised the “double lock” system for well over a decade and had much practical knowledge to offer. The drive and accompanying policy focus was heavily weighted towards Part 1 of RIPA (interception and communications data). Indeed it was not until very late in the day, when the new power of equipment interference was under consideration, that it was fully appreciated that this system had been used by law enforcement agencies under the Police Act 1997, overseen by the OSC. It also remains disappointing that no formula has yet been found to enable the new Commissioner’s Office to benefit from the continued involvement of Assistant Surveillance Commissioners, all of whom have been Senior Circuit Judges, and who have provided considerable judicial experience as an integral part of the inspection process. In truth the omission is incomprehensible to anyone who appreciates the contribution of the Assistant Surveillance Commissioners to the inspection and oversight function.

- 1.7.** During the period under report I have not had occasion to make a report to the Prime Minister or Scottish Ministers about matters arising from the exercise of the powers conferred by the legislation. I have, however, been sufficiently concerned about some of the arrangements relating to the secretarial support in my office to write about them. Details are provided later in this report.
- 1.8.** Like earlier Annual Reports by the OSC (which can be found on the website) this report addresses the way in which statutory responsibilities have been discharged. I am required to report annually, and I continue the practice of preparing a single report which addresses all the issues which require to be reported.
- 1.9.** I am grateful to the staff of the Security and Protection Group in Northern Ireland and the Defence, Security and Cyber Resilience Division of the Scottish Government for the valuable administrative support provided to the Commissioners in Northern Ireland, and Scotland respectively.

2. The statutory responsibilities of the OSC

2.1. The OSC must keep under review:

- i. the performance of functions under Part III of the Police Act 1997 (PA);
- ii. except in relation to the interception of communications and intelligence services, the exercise and performance of the powers and duties conferred by or under Parts II and III of the Regulation of Investigatory Powers Act 2000 (RIPA);
- iii. the exercise and performance of the powers and duties conferred by or under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A); and
- iv. the exercise and performance by law enforcement agencies of the use of undercover officers (“relevant sources”) in accordance with the Regulation of Investigatory Powers (Covert Human Intelligence Sources; Relevant Sources) Order 2013 and the Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014.

- 2.2.** Every authority vested with any of the powers which fall within the responsibilities of the OSC is subject to scrutiny and inspection. The arrangements for approval, inspection and oversight have been carefully structured to achieve lawful compliance with the legislation. The specific duties of the OSC and the way in which they are discharged have been explained in earlier reports. They can be found on the OSC website and as they are unchanged I see no advantage in repetition.

- 2.3.** Surveillance powers which fall within the OSC ambit of responsibility are, understandably, most frequently exercised by Police Forces, and the major law enforcement agencies like the National Crime Agency and Her Majesty's Revenue and Customs. They are subject to a detailed annual inspection, and report, and a follow-up visit by me or by one of the Commissioners, the main object of which is to see that arrangements have been or are being made to address the OSC recommendations. A number of authorities, like the Care Quality Commission and the Serious Fraud Office, are inspected every other year. Every Council (whether Scottish or Welsh, Unitary, Metropolitan, County, District or London Borough) is inspected every three years. Councils in Northern Ireland form an exception, on which I shall comment later. A full list of the authorities subject to the inspection regime, together with the frequency of inspection, is found at Appendix C. For the purposes of this Report a distinction must sometimes be drawn between "law enforcement agencies" (those which fall within the first category) and "public authorities" or "authorities" (the others).
- 2.4.** Under the Regulation of Investigatory Powers Ordinance 2012 I also act as the Investigatory Powers Commissioner for the Sovereign Base Areas, Cyprus. The arrangements are inspected every two years, and following each inspection I report to the Administrator.
- 2.5.** The frequency of inspections is not fixed by legislation. The current arrangements reflect the balance to be made between authorities whose use of the legislation is frequent (as with the law enforcement agencies) and public authorities (which nowadays rarely exercise the statutory powers) and the availability of Inspectors and resources. If however, for example, the process of inspection has revealed unsatisfactory or troublesome features, it is open to the OSC, and I have accordingly ordered, a fresh inspection.
- 2.6.** Like the frequency of inspections, the process of inspection is determined by the OSC. As I explained in my last report, I decided that for this inspection year, in relation to a non-Unitary Council, or a "stand alone" Fire and Rescue Service in England, where the statutory powers had not been used at all, or very rarely used during the last three years, the process should start with an examination of papers, following a request by an Inspector or Assistant Surveillance Commissioner for material. This is known as the "desktop" process. It was applied to some 25 public authorities in the period covered by this report. In the vast majority, following an examination of all material, it was decided that no visit to the authority was required, and none was sought by the relevant Chief Executive. Sometimes, however, for a variety of reasons, the paper inspection revealed that a visit would be appropriate. For example, the evidence may show that the number of recent authorisations was greater than anticipated, or that the activities were more unusual in nature (for example, the authorisation of a Council Officer as a CHIS (covert human intelligence source) to act as a potential purchaser of puppies, suspected to be carrying highly contagious and fatal diseases from a "puppy farm"). In short, an appropriate level of flexibility means that this particular change to our processes has been successful, and enabled the Inspectors to use their available time to better effect where the needs were greatest.

- 2.7.** The Commissioners, including the Commissioners from Scotland and Northern Ireland, and the Inspectors continue to meet three times annually. This underpins our collegiate approach to the discharge of individual responsibilities, based on the interaction between Commissioners with their commitment to the independent administration of criminal justice and the Inspectors with their experience of the practical realities of policing and great experience of the legislation in operation. From time to time the OSC attends meetings or seminars dealing with a variety of different aspects of covert activity. For example, the Chief Surveillance Inspector and another Inspector attended part of the annual conference for undercover policing during 2016, and we have provided early assistance to Her Majesty's Inspectorate of Constabulary for Scotland as it undertakes a review of undercover policing since 2000. Contributions have been made to work addressing national security matters, and another Inspector supported a bespoke piece of work being undertaken by the Surveillance Camera Commissioner. In the meantime the Chief Surveillance Inspector has remained a member of the Covert Legislation and Guidance Peer Review Group and continues to meet with the Chair and Secretary of the National Undercover Working Group. She has also been closely engaged with her opposite numbers in the oversight bodies, and Sir Adrian Fulford, so far as possible, to achieve a seamless transition into the new oversight arrangements.

3. Overview of the year

- 3.1.** The statistics relating to property interference, intrusive surveillance, directed surveillance and covert human intelligence sources, including "relevant sources", are set out in Section 11.

4. Use of powers by public authorities

- 4.1.** Following a determined effort by the OSC Secretariat to ensure that every authority provided its returns in good time to enable the preparation of the statistics for the reporting year, there has been a marked improvement. We have received returns from every public authority. The statistics indicate a consistent pattern of overall reduced use of the statutory powers by public authorities. The single exception is a minimal, immaterial rise (little more than 1%) in the number of CHIS authorisations.
- 4.2.** The Inspectorate has explored the reasons for the reduced use by local authorities of the statutory powers. Generally speaking the same explanations are given throughout the United Kingdom. Resources are reduced, and trained individuals, time, and money, are not available to carry out what can sometimes become protracted investigations. Moreover the Protection of Freedoms Act 2012 imposed additional burdens on authorities, with new statutory requirements for approval of planned activity by magistrates. We are often told that where an investigation appears to be necessary, local authorities now prefer to handle the investigation process overtly and covert investigations are usually treated as a last resort. Where there are grounds for

concern that serious criminality may be involved the facts are reported to the police.

- 4.3.** From time to time my Inspectorate is asked why, given that no authorisation has been granted by an individual authority since the previous inspection some three years earlier, the process of inspection and oversight is necessary. The short answer is unequivocal. While local authorities remain vested with the power to deploy covert surveillance, regardless of actual use, the appropriate structures and training must remain in place so that if and when the powers do come to be exercised, as they may have to be in an unexpected and possibly emergency situation, the exercise will be lawful. So for that reason alone the process of inspection must continue. There is a further consideration. The inspection process may reveal inadvertent use and misuse of the legislative powers. The steady expansion in the use of the social media and Internet for the purposes of investigative work provides a striking example of a potential new problem which came to light through the inspection system. Local authority officials, vested with burdensome responsibilities for, among others, the care of children and vulnerable adults, are, like everyone else, permitted to look at whatever material an individual may have chosen to put into the public domain. This is entirely lawful, and requires no authorisation. However, repeated visits to individual sites may develop into activity which, if it is to continue lawfully, would require appropriate authorisation. Local authorities must therefore put in place arrangements for training officials into a high level of awareness of these risks. Without the inspection process this problem might never have been identified.
- 4.4.** In the context of local authorities in Northern Ireland, in accordance with section 62(1) of RIPA, the OSC scrutinising process is expressly excluded. The issue was highlighted by a report in February this year by the BBC News for Northern Ireland which carried a report under the broad heading, "Spying legislation used to detect benefit fraud cases". According to the report a Freedom of Information request revealed that since April 2012 RIPA had been used on 591 occasions by the Department for Communities for the purposes of preventing and detecting crime and the investigation and prosecution of benefit fraud cases, and by the Department for Infrastructure on 132 occasions for matters such as preventing personal injury compensation fraud and the illegal use of taxis and buses. The reported level of use did not distinguish between the type of authorisation granted for these purposes nor, indeed, the applicable statutory provision. The continued absence of an oversight and scrutinising process has survived the passing of the Investigatory Powers Act 2016. This distinction between local authorities in Northern Ireland and the rest of the United Kingdom will therefore continue. It is a distinction which does not apply to law enforcement agencies and the OSC inspects, for example, the Police Service for Northern Ireland, as it does every other police force in the United Kingdom.

5. Law enforcement agencies

Collaboration Agreements

- 5.1. There has been a steady, welcome growth in the number of formal collaborations or “alliances” between different police forces. Starting with section 22A-23I of the Police Act 1996 this process has been most recently visited in the Police and Crime Act 2017. On 27 April this year all 43 Police Forces and Police and Crime Commissioners in England and Wales signed a National Collaboration Agreement to enable authorisations for interference with property or wireless telegraphy in accordance with Section 93 of the Police Act 1997 to be made by the Senior Authorising Officer not only in relation to their own force area but, where necessary and proportionate, in relation to other force areas. In other words, provided the Authorising Officer is personally satisfied that such wide-ranging authorisations are justified, the new arrangements will provide greater cohesion. The OSC inspection process has sought to address the impact of greater shared resources, joint operating locations, and single Authorising Officers with responsibilities for more than one police force, and, inevitably, more widely dispersed documentation. For the inspection year 2017-2018, wherever possible, inspection weeks will be aligned to cover agencies working in accordance with collaboration or partnership arrangements. This may mean that the traditional timings of the inspections of some forces will change. Sir Adrian has already indicated that he is content for the inspection timetable already planned by the OSC until March 2018 to continue.

Undercover police activities (“Relevant Sources”)

- 5.2. In my last report there was detailed comment on this subject, which I shall not repeat. At this stage I record the Undercover Policing Inquiry will continue to be supported by the Investigatory Powers Commissioner’s Office, as it has been supported by the OSC. In the meantime, during this reporting year, the OSC has provided witness statements to this Inquiry, and has welcomed members of its legal team to the offices to explain the oversight regime which is now in force in accordance with SI 2013/2788 in England and Wales and 2014/329 in Scotland.
- 5.3. Occasions which involve the use of undercover police officers are immensely sensitive and involve considerable complexity in the processes of authorisation, approval and inspection. Moreover the nature of this form of deployment continues to change, particularly with engagements involving the virtual as opposed to the real world. I shall analyse our findings later in the report.

6. OSC capability

The Brent problem

- 6.1. Last year I underlined the importance of a secure and reliable means of confidential communication between the OSC Secretariat and all the law enforcement agencies. In doing so I was merely repeating what my predecessor had highlighted. Brent machines continue to fail on a regular basis, both at the OSC office, and at the homes of the Surveillance Commissioners, and the agencies themselves. Police forces were compelled to send officers, in some cases literally hundreds of miles, to ensure that confidential papers were placed before a Commissioner for decision. This was an absurd waste of limited resources. With the assistance of the National Police Chiefs' Council the extent of the difficulties encountered with the Brent machines was analysed. The clear conclusion was that this means of communication was no longer fit for purpose, and had already, on several occasions, threatened to bring the prior approval process to a premature halt.
- 6.2. Accordingly, in October 2016, I wrote to the Director of National Security at the Home Office, with copies to the Home Secretary and the First Minister for Scotland that *"On any analysis the evidence which demonstrates the urgency with which the problem must now be addressed is unequivocal.....Quite apart from the immediate needs of the OSC, it would hardly be propitious for the new Investigatory Powers Commission to inherit these problems"*. While there appears to have been some determined work to find a long-term solution, and promising noises have emerged from the Home Office, at the time of writing (May 2017) it looks as though the unsatisfactory Brent machines will still continue to be used for the purposes of secure communication between the agencies and the Judicial Commissioners when the new Commissioner's Office begins work in September this year. If so, the start will indeed not be propitious.

The Website problem

- 6.3. The attempts made by the OSC office to reinvigorate and make the website more dynamic have again been thwarted by what appears to be an unwillingness to adopt the fairly low cost updated site we had developed with an independent designer (already used by others of the oversight bodies). The website will be of considerable value to the new Commissioner's Office. It should enhance public understanding of its work and responsibilities, and indeed may serve to allay ill informed suspicions about the circumstances in which statutory powers may be exercised. As with the failure to resolve the problem of the Brent machines, the inadequate website issue remains. Each represents a diminution in the capability of the OSC, and, unless addressed, will have the same deleterious effect on the work of the new Commissioner's Office.

The Appointments problem

- 6.4.** In my last report, I repeated the concerns expressed by my predecessor about the inordinate time taken by the process of appointing or recruiting new Commissioners and Inspectors. During the course of this year, two Surveillance Inspectors have retired, and by the time this report is published a third will have taken employment elsewhere. The pace of replacement is alarmingly slow. By way of example, at the conclusion of the selection process, a new Inspector was offered appointment in November 2016. As a result of considerable time and effort made by my office to contact different parts of the recruitment and appointments process in the Home Office in London, the recruitment providers in the North East, and Human Resources teams in South Wales, his formal appointment was eventually confirmed, but not before over five months had elapsed. When another Inspector began working for the OSC, the salary arrangement was wrong, and only resolved following a direct approach from the Chief Surveillance Inspector and by me to the Director General for Capabilities and Resources at the Home Office.
- 6.5.** The amendments to the requirements of judicial qualification as a Judicial Commissioner under the Investigatory Powers Act 2016 means that the office of Assistant Surveillance Commissioner will cease. I have already commented on the unwisdom of this decision. Two of the current Assistant Surveillance Commissioners have decided that they will retire this summer. It remains to be seen whether the third may be found some appropriate responsibilities in the new Commissioner's Office which, in any event, will require additional Judicial Commissioners. I assume that those currently in office as Commissioners will, if they wish, continue into the new Commissioner's Office. It would be absurd if they did not. In any event, however, the process of appointing new Commissioners should not be subjected to the delays which in my experience have accompanied the appointment to the OSC's list of Commissioners and Inspectors.

7. HM Prisons

- 7.1.** I reported at some length on this topic and the use of covert tactics at HM Prisons and I return to the topic at Section 16. It is however worth repeating at the outset that the use of covert tactics within prisons, quite apart from any complexity which surrounds the exercise of the legislative provisions which govern the use of covert surveillance, is fraught with difficulty and risk, while the value, and in some instances the necessity, for deploying covert surveillance in the public interest in the detection and prevention of serious crime is obvious. Covert surveillance in this context is far removed from the kind of gossip and informal, unattributable provision of information by inmates to prison officers which have always been a feature of and contributed to the safe running of the establishment. My understanding of the concerns about the safety of inmates, and the risks to which prison officers in their turn are exposed is consistent with many of the reports in our media.

- 7.2.** The National Offender Management Service (NOMS) has now been replaced by Her Majesty's Prison and Probation Service. For convenience, and consistently with the position which obtained through the period covered by this report, I shall continue to refer to NOMS.

8. Advice and Assistance

- 8.1.** The OSC continues to receive requests, sometimes during the inspection processes themselves, and at others from direct enquiries to the office, for advice. Last year the OSC's 2016 Procedures and Guidance Document became a public document, which remains in force. It can be found at <https://osc.independent.gov.uk/wp-content/uploads/2016/07/OSC-Procedures-Guidance-July-2016>. During the course of inspections, there are numerous occasions of informal discussions between the OSC Inspectors and the officers with responsibilities for covert surveillance, and it would be absurd for the Inspectors to decline to comment on matters on which their views are sought. When it is sought guidance is offered on a broad general basis, but in the end, the responsibilities of the OSC do not extend to provision of formal legal advice. Where there appears to be any significant point of difference, public authorities and individuals are required to seek their own legal advice.

9. Budget

- 9.1.** Expenditure by the OSC is summarised at Appendix D. The Budget for the year was maintained at £1,717,000, and, as in every year since the OSC was created, it was not exceeded. The care with which all items of expenditure are examined reflects great credit on the Chief Surveillance Inspector and Head of the Secretariat. At the end of this financial year the underspend was £71,817.

10. Conclusion of Overview

- 10.1.** This year has seen the retirement of Sir Scott Baker and Lord Maclean as Surveillance Commissioners as well as the departure of two Surveillance Inspectors, Les Turnbull and Martin Andrew. In acknowledging each individual contribution, I cannot forbear to highlight that Mr Turnbull, following a full career in the police, was one of the original four Inspectors who began working with the OSC when it was created in 2000. For sixteen years he served as an Inspector without the slightest hint of any diminution in his ability to see through flannel, and to use unequivocal language to describe it for what it was.
- 10.2.** Throughout this year, and indeed throughout my time working at the OSC, I have been greatly impressed by the dedication and efficiency of its Commissioners and its Surveillance Inspectors, under the leadership of Clare Ringshaw-Dowle, the Chief Surveillance Inspector, and by the enthusiastic support of the Secretariat, led by Mark Ogunjumo. Collectively they have unfailingly offered the highest level of commitment to public service.

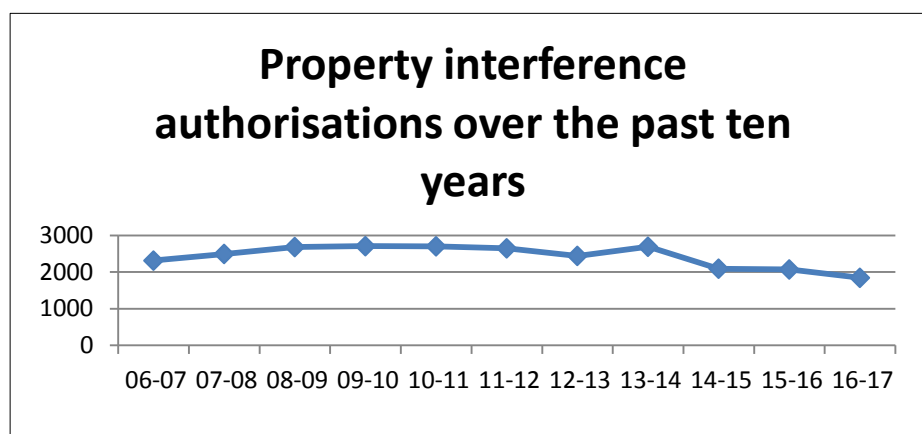
- 10.3.** Their contribution to the maintenance of the principles which govern the use of covert surveillance, and the areas of responsibility carried by the OSC, can be identified in a number of different ways. To me, perhaps the most significant is that the law enforcement agencies themselves, and public authorities, constantly seek improved standards. They know perfectly well that the Commissioners will not countenance authorisations which do not meet the strict legislative standards, and that the Inspectors will be meticulous in their examination of the documents containing the material on which the authorisations have been based, unafraid to highlight where standards have fallen below what is required, yet simultaneously helpful and cooperative, and constructive in their approach to their inspections, noting and encouraging good practice. Standards of compliance have steadily improved. In my view, and addressing it generally, they are high.
- 10.4.** There are occasional breaches. When they occur, as will be seen later in this report, they are almost invariably consequent on human error, often under pressure of events. They result in a report to me personally, which also describes the proposals for immediate action to address the cause of the breach. The reports include notification of possible breaches, for example, where the legislation is not entirely clear. It is unusual for my Inspectors, examining the documentation held by law enforcement agencies, to discover a breach which has not already been reported, and when they do, generally speaking, they are minor and technical. These issues are addressed in greater detail at Section 12.

11. Statistics

- 11.1.** The statistical analysis is based on a return of 100% from both law enforcement agencies and other public authorities. Statistics provide a general record, no more, and before conclusions are drawn from any individual statistic, it should be examined as one feature in an overall context.
- 11.2.** In the context of the number of authorisations for covert surveillance, whatever those figures may be, the OSC should neither promote nor discourage the level of covert activity by law enforcement agencies or public authorities. Broad policy decisions, and decisions whether to use any statutory powers, are for the relevant authority.
- 11.3.** Statistics provided by law enforcement agencies for property interference and intrusive surveillance authorisations during the last three years are set out in Appendices A and B. Accompanying graphs below show the overall trend for each of these types of activity during the last ten years. Further graphs show the number of authorisations for directed surveillance and for the use of covert human intelligence sources (CHIS).

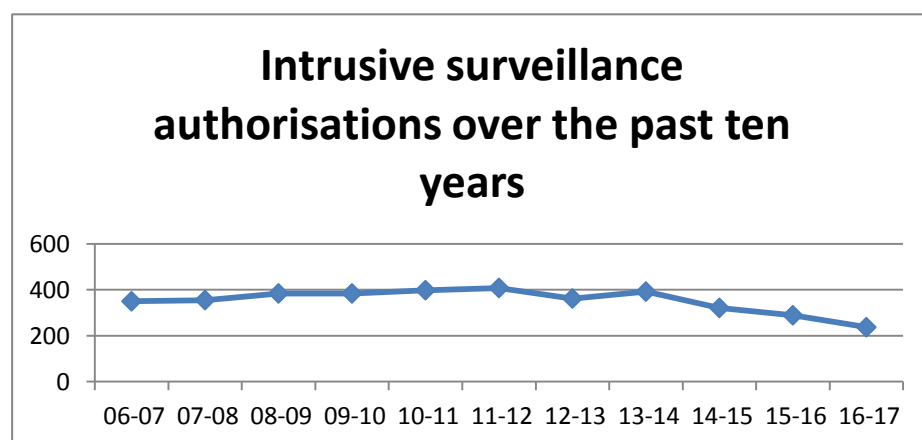
- 11.4.** Separate statistics relating to the use made of “relevant sources”, better known as undercover police officers, are also provided. These indicate the number of relevant authorisations throughout the United Kingdom, as notified to the OSC between 1 April 2016 and 31 March 2017; the number of cancellations notified to the OSC; and the number of those submitted for prior approval for renewal as a long-term source. Particular operations in which undercover officers are deployed are, for obvious reasons, not identified in the statistics.

Property interference



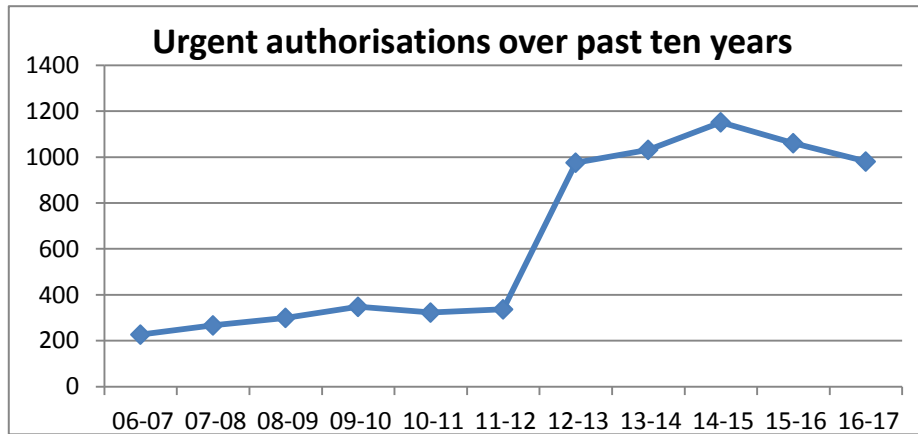
- 11.5.** Excluding renewals, 1,842 authorisations for property interference were granted, a decrease of 228 on the previous year. In the reporting year, three property interference authorisations were quashed by a Surveillance Commissioner.

Intrusive surveillance



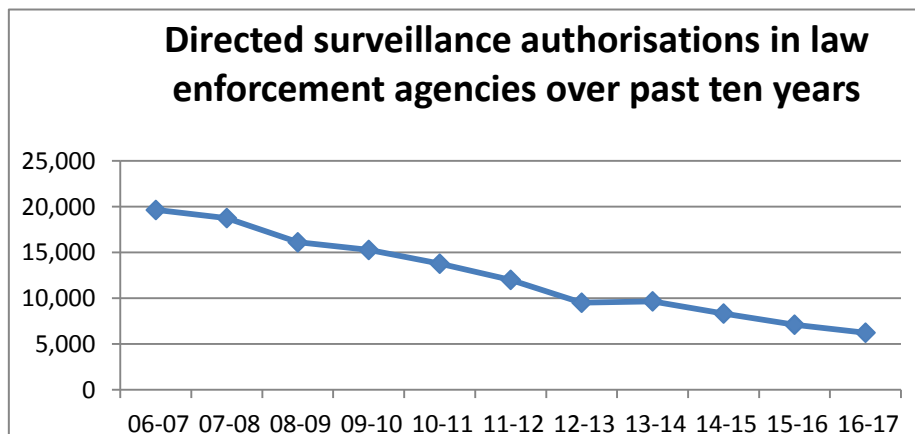
- 11.6.** 237 intrusive surveillance authorisations were granted this year, a decrease from 289 granted last year.

Urgency provisions

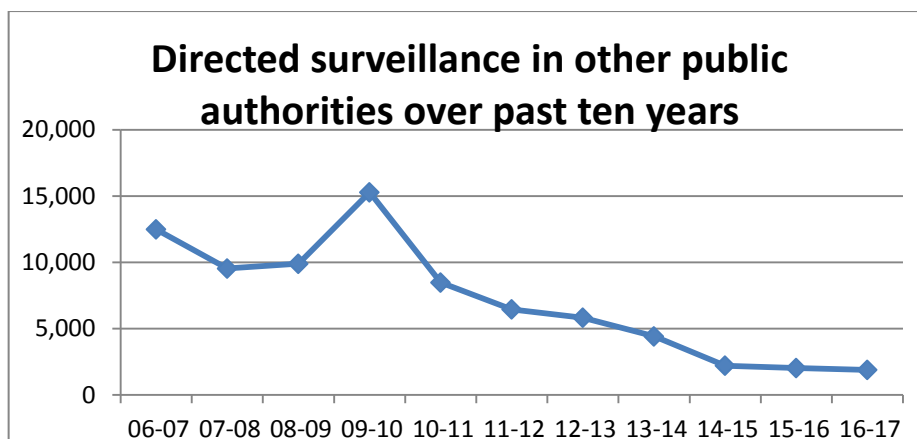


- 11.7.** 981 occasions of the use of the urgency provisions permitted by the legislation were reported, a 7.5% reduction compared to last year.

Directed surveillance



- 11.8.** Law enforcement agencies authorised the use of directed surveillance on 6,237 occasions, with 808 extant at the end of March 2017. This reflects a decrease on the previous year when the comparable figures were 7,118 and 1,057.

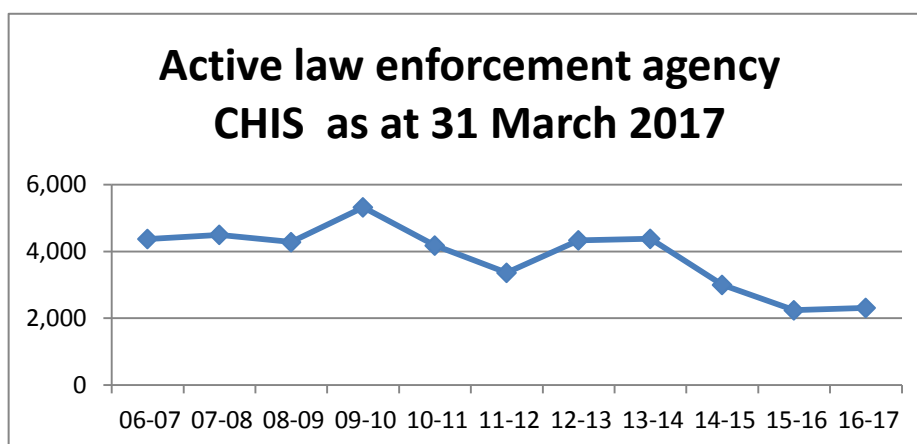


- 11.9.** Within other public authorities directed surveillance was authorised on 1,887 occasions, a decrease of 7% from 2,029 such authorisations in the previous period. The Department for Work and Pensions still accounts for the overall majority of these authorisations (having authorised 1,203 of them – 64%). Out of the 483 public authorities, only 117 used directed surveillance at all.

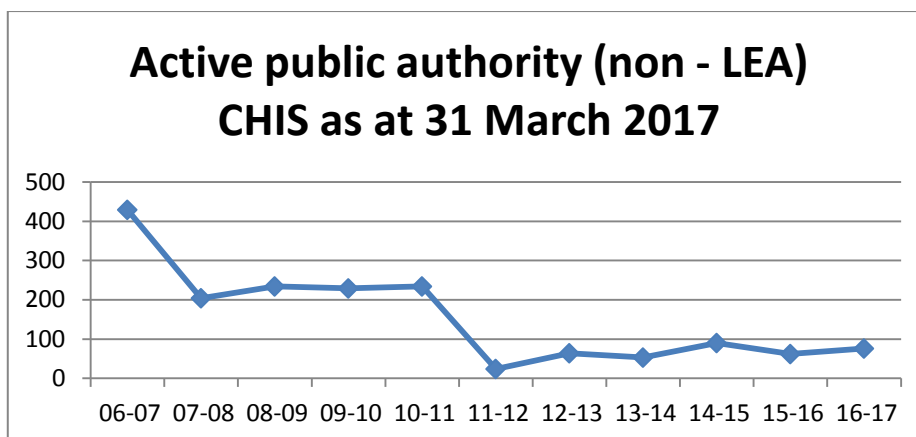
Protection of Freedoms Act 2012

- 11.10.** 227 authorisations were presented by local authorities to a magistrate for approval under this legislation. Nine were rejected.

Covert Human Intelligence Sources

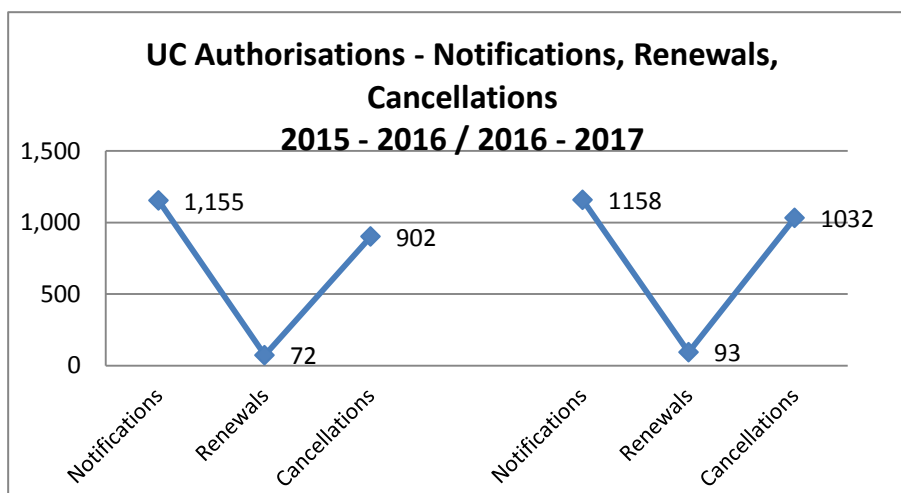


- 11.11.** 2,310 CHIS were authorised by law enforcement agencies, and 2,184, including some which may have been already authorised from preceding years, were cancelled. At the end of March 2017, 2,299 CHIS remained authorised.



11.12. Only 6.6% of public authorities (aside from the law enforcement agencies) have deployed CHIS, usually for matters involving investigations like trading standards.

Relevant Sources (undercover officers)



11.13. During the reporting year 1,158 relevant source authorisations were notified to the OSC, effectively the same as last year when there were 1,155 authorisations. The number of cancellations rose from 902 last year to 1,032. The number of renewals rose from 72 to 93. These particular statistics need very careful interpretation. They represent the number of times a single individual undercover officer has been authorised for deployment on a specific and carefully defined police operation. Thus, the total number of authorisations does not reflect the number of undercover operations undertaken during the year. A single police operation may require the deployment of a number of undercover officers. Moreover there is a limited pool of trained officers, used on a variety of operations during the course of any year, and they may have been deployed on more than one operation.

Encryption

11.14. During the period to which this report relates the National Technical Assistance Centre, following 166 applications granted 159 approvals. The documentation associated with these cases is generally included as part of the dip-sampling process during inspections of the law enforcement agencies. The offences to which the approvals relate include international and domestic terrorism and extremism, murder, firearms offences, indecent images of children, kidnap, people trafficking, drug-trafficking, fraud, evasion and excise duty, possession of drugs with intent to supply and misconduct in public office.

12. Breaches and Non-Compliance

12.1. In the period covered by this review law enforcement agencies reported 92 breaches or irregularities, and other public authorities reported three. In the previous year, 2015 - 2016 a total of 100 irregularities were reported, in the year before that, 2014 - 2015, 127 reports were received. The total number of reports this year continues a downward trend and to represent a minute proportion of the total number of authorisations granted during the course of a year. No less important, this year I have received no reports, and the Inspection process has not revealed any occasion, when the legislative powers have been deliberately misused.

12.2. In the course of complex and sometimes urgent investigations human error is inevitable. As already explained, every instance of a breach or possible breach of the statutory provisions, together with a detailed description of the circumstances in which it occurred, and the remedial steps which have been or are proposed to be taken, is reported to me personally, immediately or as soon as possible after the breach has been discovered. The breaches reported to me are usually consequent on individual oversight, usually through inexperience, and sometimes simply under the pressure of events demanding urgent attention. The breaches tend to fall into similar categories. Sometimes there is a failure to be totally focused on what exactly has been authorised, and in precisely what terms, so that steps outside the authorised ambit are taken; sometimes there is a failure to ensure that what was sought had in fact been authorised; sometimes, equipment is allowed to continue to function after the expiry of the authorisation time, or after a direction to cease has been given; and sometimes supervising officers, more familiar with the legislation, have recognised that an authorisation which ought to have been procured in advance of an operation, was not.

12.3. Errors also occur for technical reasons. For example, this year, a law enforcement agency reported that a piece of equipment had captured more data than envisaged by the associated property interference and directed surveillance authorisation. This was because part of the equipment was automatically capturing more data than authorised. By the time the problem was identified the equipment had been used on a number of different operations. All were reported to me and measures immediately put in place to prevent any repetition.

12.4. Following every report, all the papers relevant to the individual breach are retained for study during the annual inspections. Therefore in addition to an examination of the documents to ascertain whether there have been any unreported breaches (which are occasionally revealed, and as I have already explained are largely minor or technical) the occasions when a breach has occurred are reanalysed by the Inspectors. This provides a cross check, ensuring that the report to me is accurate and complete. Beyond that, the papers continue to be retained so that all the relevant information is available to the Crown Prosecution Service or the Procurator Fiscal Service, for appropriate disclosure to the defence, and thereafter, if the occasion arises, for an admissibility ruling by the trial judge, or an abuse of process hearing.

13. Law Enforcement Agencies

13.1. No relevant change has occurred to the way in which applications and authorisations are submitted for prior approval or noting by a Surveillance Commissioner. None has occurred with the process of OSC inspection.

13.2. Apart from tackling what I have already described as age old crime, law enforcement agencies are under increasing pressure to tackle crime arising in the virtual world. This presents problems of training and resources. As well as spotting potential for disorder on a busy high street as the clubs start to close, today's investigating officer needs to be well versed in accessing social media, speaking new languages (including modern online "chat") and understanding the value, in all its different respects, of a Bitcoin. In addition, virtually every police force I have visited this year has explained the huge pressures arising from the Inquiries into historic sexual abuse, going back many decades, and also into undercover police activity, now going back some fifty years. Police resources are not unlimited.

13.3. It is therefore worth emphasising that, notwithstanding these difficulties, compliance standards continue to improve. Many inspections of major law enforcement agencies produce complimentary reports from Inspectors who are disinclined to flattery. Some reports make no formal recommendations at all, because none are needed, but simply offer suggestions for "fine-tuning", which are invariably adopted. This is admirable. My impression is that nowadays standards are most at risk when several key officers with particular responsibilities relating to covert surveillance, like Authorising Officers, Senior Responsible Officers, and Covert Authorities Bureau Managers retire or move on to different responsibilities, particularly when this happens to more than one such officer simultaneously. This underlines the necessity for continuing high quality training, to which the agencies are committed.

- 13.4.** Most Authorising Officers clearly articulate what they are seeking to achieve by any covert activity, and carefully explain to the Surveillance Commissioner why they believe that a particular form of covert activity is necessary and proportionate. Unless they are appropriately satisfied themselves, before seeking the further authorisation of a Surveillance Commissioner they normally refuse to grant the authorisation, or suggest strict parameters on what can and cannot be done. It would be highly unusual to find authorisations being sought from an Authorising Officer as a “fishing exercise” or one which is based on anything less than detailed intelligence and careful analysis. If it does happen, it is rejected.
- 13.5.** That is the starting point. From time to time, as I have already explained, as a result of facts established during the inspections, specific recommendations designed to improve standards are made to an individual law enforcement agency. In the context of originating applications which form the basis of an application to the Authorising Officer (that is, before the Authorising Officer approves the application and submits it to the Surveillance Commissioner) the assessment may not sufficiently explain how recent and reliable the intelligence is; it may fail to answer all the aspects of the proportionality argument in the way set out in the Codes of Practice; some reviews, which are intended merely to provide an update and inform the Authorising Officer of developments, can be over repetitive; occasionally formulaic entries on the issue of collateral intrusion and how this should be managed on a case-by-case basis are offered; and in relation to the use of CHIS, the risks inherent in what they are doing, and the level of “tradecraft”, that is how the CHIS is met, debriefed and rewarded, is not detailed in sufficient precision to enable the Authorising Officer to be satisfied with the arrangements for managing the CHIS.
- 13.6.** These issues are rarely systemic, and significantly, when they arise, are almost invariably picked up by the Authorising Officer. That represents an efficient working system. For the OSC, apart from the use of undercover police officers, which the report will shortly address, the area which causes greatest concern is the use of CHIS. As with the use of undercover police officers, every such use is immensely sensitive. The use of any and every CHIS is quite unlike any other covert technique, which apart from potential compromise or equipment malfunction, are generally predictable and directly manageable. With every CHIS, an individual human being is involved, and each has his or her personal traits, or domestic situation, or problems, or relationships which bear on the risks to which they may be exposed. One factor contributing to the problem is that some of those acting as CHIS are not accustomed to, and indeed resent, or, at least, do not wish to co-operate with the provision of any formal police or law enforcement structures. The records which are necessarily maintained in relation to the authorisation and ongoing use of every CHIS are inevitably complex and must be completed carefully and in sufficient detail by those responsible for the safety and welfare of any individual who has been authorised as a CHIS. During the inspections, the Inspectors examine the records very closely and many of their recommendations are directed to this issue.

- 13.7.** The OSC has no oversight responsibilities in relation to the activities of the Intelligence and Security Services. Nevertheless police forces work closely with the Services, and the supervisory responsibilities of the OSC therefore extend to counter terrorism units across the United Kingdom. Occasionally this means that we can see or discuss how the arrangements are aligned and work in practice. If only because more than one authority is involved in these processes, they become more complex, and there are occasions when the constraints on the exercise of differing responsibilities may lead to variations of practice in relation, for example, to record keeping. Obviously high levels of mutual respect and cooperation are essential in the public interest, but in the exercise of their statutory responsibilities Authorising Officers are not entitled to ignore their personal obligation to consider whether the particular form of proposed covert activity for which they are responsible is necessary and proportionate and that the potential for collateral intrusion has been properly addressed. The creation of the Investigatory Powers Commissioner's Office will produce greater cohesion.
- 13.8.** My final observation under this heading is to note that many forces now pool their key investigative and operational resources to provide a collaborative service through a variety of regional alliances. As I have already indicated, the OSC plans to match its inspection processes to meet these new ways of working. At present the development of these collaborative arrangements are at different stages with different forces. For the OSC inspection purposes unfettered access to key individuals and all relevant documentation remains an absolute necessity. Sometimes they are not in the same location. As the terms and processes of each collaboration or regional units settle down, this process should become easier.

14. Undercover Operations

- 14.1.** The oversight regime was introduced relatively recently, but the OSC now has just over three years experience of it throughout the United Kingdom, save for Scotland, where the period of experience is just under three years. The deployment of any undercover police officer is a matter of great sensitivity. It frequently involves considerable personal bravery on the part of the individual police officer. It also requires extremely careful management by dedicated units, designed to avoid the police officers either becoming involved in unnecessary personal risks, and simultaneously, ensuring that they do not trespass beyond the authorised parameters of the engagement.
- 14.2.** As with CHIS, the relevant documentation is extremely detailed and requires close attention. I do not propose to offer any examples of operational activity. However I should record that the OSC has been able to observe with admiration, and gratitude, the high level of personal risk undertaken by many police officers acting undercover.

14.3. The OSC has identified examples of very high standards, with excellent personal documentation by officers responsible for undercover units, as well as individual Authorising Officers. Following our Inspections, the OSC has also been able to identify potential for difficulty under the arrangements currently in force, where there is room for improvement. These, in summary, are:

- i. the need to ensure that those charged with the statutory roles of managing the undercover officer day-to-day (section 29(5) of RIPA and section 7(6) of RIP(S)A) are not unduly influenced or undermined by officers in charge of the wider operational activity, who inevitably have different responsibilities;
- ii. Statutory Instrument 2013/2788 is complex and its construction is not always entirely clear. There are however rather too many errors in the process of notifying the Surveillance Commissioners when new authorisations for undercover officers are made, and this extends to a few instances when no notification has been made at all, or where a required renewal has been missed altogether;
- iii. the potential for collateral intrusion arising from the deployment of an undercover officer, even if taken into account in practice, is not always documented to a sufficient standard;
- iv. although risk assessments have become much more accurately reflective of the levels of the skills, ability, and training and experience of the relevant officer, occasionally they are less impressive;
- v. the methods and standards of record-keeping vary widely from one undercover unit to another, an issue which should be resolved by the use of revised forms and guidance from the College of Policing.

14.4. The material available findings by the OSC from its inspection of undercover activities during the last year have recently been passed to the Chair of the National Undercover Working Group. We shall continue to provide every possible assistance to it.

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

15.1. As explained earlier in the report, the use of covert surveillance by public authorities has steadily declined. Nevertheless, while they are vested with statutory powers, the process of inspection remains a necessary ingredient of the exercise of the OSC's responsibilities. I shall not repeat the reasons why a programme of continuing training remains a necessity even for those authorities which do not intend or expect to use the powers.

- 15.2.** As discussed earlier one major consequence of the OSC inspections has been the emergence, during the course of discussions, of investigations being made by public authorities through use of social media and the Internet. For example, it may help to show whether counterfeit goods are being offered for sale on a Facebook page, or reveal that someone who claims to be living alone as a single parent has a social media page which provides a different story, or perhaps, particularly sensitive, enable a check to be made whether concerns about the welfare of a child or vulnerable adult may be justified. When individuals choose to go public or advertise themselves, they cannot normally complain that those who look at their social media sites are disregarding their rights to privacy. However if the study of an individual site becomes persistent, issues under the legislation may arise.
- 15.3.** The resources available to the OSC do not enable me to say positively that issues relating to the use of social media sites have arisen or are arising in every local authority. What matters is that this potential certainly exists. Senior officials at local authorities should therefore be made aware of it, and have the necessary policy documents and training and awareness arrangements in place to address it. The issue has been recognised in the forthcoming Home Office and Scottish Government Codes of Practice (which will be issued at a convenient date after the introduction of the Investigatory Powers Act 2016). However, in advance of the issue, and because of repeated findings in reports made to me by Inspectors and Assistant Surveillance Commissioners throughout this year, I acted on my own initiative. I therefore wrote to all local authorities in April 2017 explaining my concerns, and urging them to undertake internal checks of the use of social media by no doubt well-intentioned members of their staff, and to ensure that appropriate guidance and training should be provided.
- 15.4.** An extract from the letter reads:

“It has become steadily more apparent that a number of officers working for public authorities, particularly those with responsibilities for the care of children and vulnerable adults have started to use the [social media and internet] sites, acting in good faith and on their own initiative. RIPA issues do not normally arise at the start of any investigation which involves accessing “open source” material, but what may begin as a lawful overt investigation can drift into covert surveillance which falls within the legislation. Although the investigation of crime is not normally a “core function” of the Council, the protection of children and vulnerable adults certainly is, and any continuing and deeper study of the social media site in question would only be justified by the exercise of that protective function.

These are complex legislative provisions, and without appropriate training and awareness council officers cannot be expected to appreciate and apply them. They may therefore act unlawfully. Ignorance would provide no defence to them personally, nor to the Council for which they were working.

The Surveillance Commissioners have issued further guidance on this issue, and identified circumstances when an appropriate authorisation under the legislation would be required or advisable. The guidance is available on the OSC website, as a public document, with the OSC Procedures and Guidance. Note 289 is relevant and I highlight it for your attention.

It would be sensible for an internal audit of the use of social media sites and the Internet for investigative or official business made across all departments to be undertaken now. That would provide the necessary information about the extent to which formal training or awareness of these complex provisions is required.”

- 15.5.** A copy of this letter was sent to the Chair of the Local Government Association and the National police lead for child protection issues, Chief Constable Simon Bailey of the Norfolk Constabulary.
- 15.6.** As I reported last year, many local authorities have first-class arrangements in place for the use of covert tactics, even if, as a matter of policy, they do not intend to deploy them: others do not. Where necessary arrangements to ensure compliance are not in place, I require a report from the Chief Executive after a given period, say six months, about how the inadequacies have been addressed, and indicating that a further inspection may have to be arranged. There have been, and will continue to be occasional inspection revisits. One such revisit will have taken place by the time this report is published. I should, however, highlight that the problem of the non-compliant local authority should be kept in perspective. These authorities very rarely use or attempt to use the statutory powers, and the occasions when they have been in breach of the legislative provisions remain very rare indeed. The point, as one of my Inspectors helpfully paraphrased it, is that while they are vested with these significant powers they should remain “match fit”. The inspection process provides both an encouragement and a check that they are.

16. Prisons

- 16.1.** At paragraphs 5.12-5.16 of my last report, I described the concerns which were arising in relation to the use of covert powers in the Prison Service. I was and remain deeply concerned.
- 16.2.** For a number of years NOMS has been obliged to operate under considerable pressures. The reasons are pretty evident, and need no recitation by me. The problems impact on every aspect of prison work and life, on prison staff and inmates. Intelligence and information (sometimes not much more than gossip not falling within the legislation) are essential ingredients of a safe disciplined prison environment. At the same time law enforcement agencies understandably value intelligence gathering from within prisons to assist with the detection and prevention of serious and organised crime and terrorism usually being planned to take place outside the prison establishment. All covert activity, whether within or outside a prison, is carefully and identically regulated by statute.

- 16.3.** In my last report I recognised that covert activities in prison establishments give rise to particular and unique problems. The Governor is directly responsible for all matters of safety and security. It needs very little imagination to appreciate that the use of a CHIS in prison requires extreme caution. Quite apart from the safety and protection of any individual inmate who provides information, controversy and misunderstandings about “informers” can escalate the tensions to which every prison establishment is susceptible. It is hardly surprising that notwithstanding the potential value to the detection and prevention of serious crime the number of authorisations for covert surveillance in prisons has reduced.
- 16.4.** Making every allowance for the complexities of the working environment in individual prisons, and the difficulties of achieving a balance between the many demands on NOMS, it is troublesome that it has not always proved possible for recommendations made by OSC Inspectors to be addressed. At the end of the most recent inspection in February 2017 ten formal recommendations (an unusually high number) were made in the report of the Inspectors. It included several that were repeated from those made in the 2016 report, and some of those were, themselves, repeated entries from earlier inspections.
- 16.5.** OSC Inspectors have visited NOMS Headquarters as well as a selection of prisons in England to address and resolve some of these difficulties. Their detailed findings continue to make sobering reading. Apart from the normal post report visit I have myself again discussed the issues personally with Mr Michael Spurr CB, the Chief Executive of NOMS. I have also appointed one of my Inspectors to act as the lead contact between the OSC and NOMS, and he will be readily available to provide ongoing assistance to hasten improved standards of compliance.
- 16.6.** My discussions with Mr Spurr and some of his senior officials lead me to believe that my concerns are well understood and that appropriate steps will now be taken to address them.

17. Conclusion

- 17.1.** The OSC, and now the Investigatory Powers Commissioner’s Office, provides the guarantee of impartial and independent scrutiny of the use of covert tactics by those vested with law enforcement powers, and safeguards the rights of each citizen against unlawful interference. This body, publicly accountable, operates without interference from any state authority. Its responsibilities are to ensure that significant powers available to be exercised in specific circumstances where the public interest may be at serious risk, are exercised within the clear limits permitted by statute.

- 17.2.** I have greatly enjoyed working with a group of outstanding men and women, who, without exception, have been immensely competent, independent of mind, and committed to operating cohesively, by advice and encouragement, and where necessary by unequivocal criticism, to secure high standards of compliance with complex legislation. From time to time I have asked one or other's help individually, and it has been unhesitatingly offered. Beyond the Commissioners and Inspectors, I draw attention to the calm industrious atmosphere in the office itself. It is sometimes thought that on occasions like this, it might be invidious to identify any single individual. I propose to do so, safe in the knowledge that every single member of the OSC would share my view that in Clare Ringshaw-Dowle it has been blessed with a remarkable, unself-serving, high quality, innately modest Chief Surveillance Inspector. I am grateful to each and every member of the OSC for support and kindness to me personally.
- 17.3.** I wish Sir Adrian every success when he takes over his new and formidable responsibilities as the Investigatory Powers Commissioner.

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

	2014-2015			2015-2016			2016-2017		
	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)	2020	71	2091	2099	64	2070	1796	46	1842¹

PRIOR APPROVALS

	2014-2015			2015-2016			2016-2017		
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total
Number of cases	183	5	188	171	10	181	172	6	178²
By category:									
• Dwelling	125	5	130	124	6	130	130	6	136
• Office premises	27	0	27	27	4	31	20	0	20
• Hotel bedroom	28	0	28	17	0	17	17	0	17
• Matters subject to legal privilege	2	0	2	3	0	3	4	0	4
• Confidential journalistic material	0	0	0	0	0	0	0	0	0
• Confidential personal information	1	0	0	0	0	0	1	0	1

¹ Statistics provided by the law enforcement agencies.

² Statistics provided from the Office of Surveillance Commissioners Authorisation Register (OSCAR) database.

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

	2014-2015			2015-2016			2016-2017		
	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)	309	12	321	270	19	289	222	15	237³

³ Statistics provided by the law enforcement agencies.

Inspection priorities

Subject to annual inspection

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

Subject to inspection every other year

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

Subject to inspection every third year

British Broadcasting Corporation

Charity Commission

Department of Health – Medicines and Healthcare Products Regulatory Agency

Financial Conduct Authority

Fire and Rescue Services in England and Wales

Food Standards Agency

Gambling Commission

General Pharmaceutical Council

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

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

Maritime and Coastguard Agency

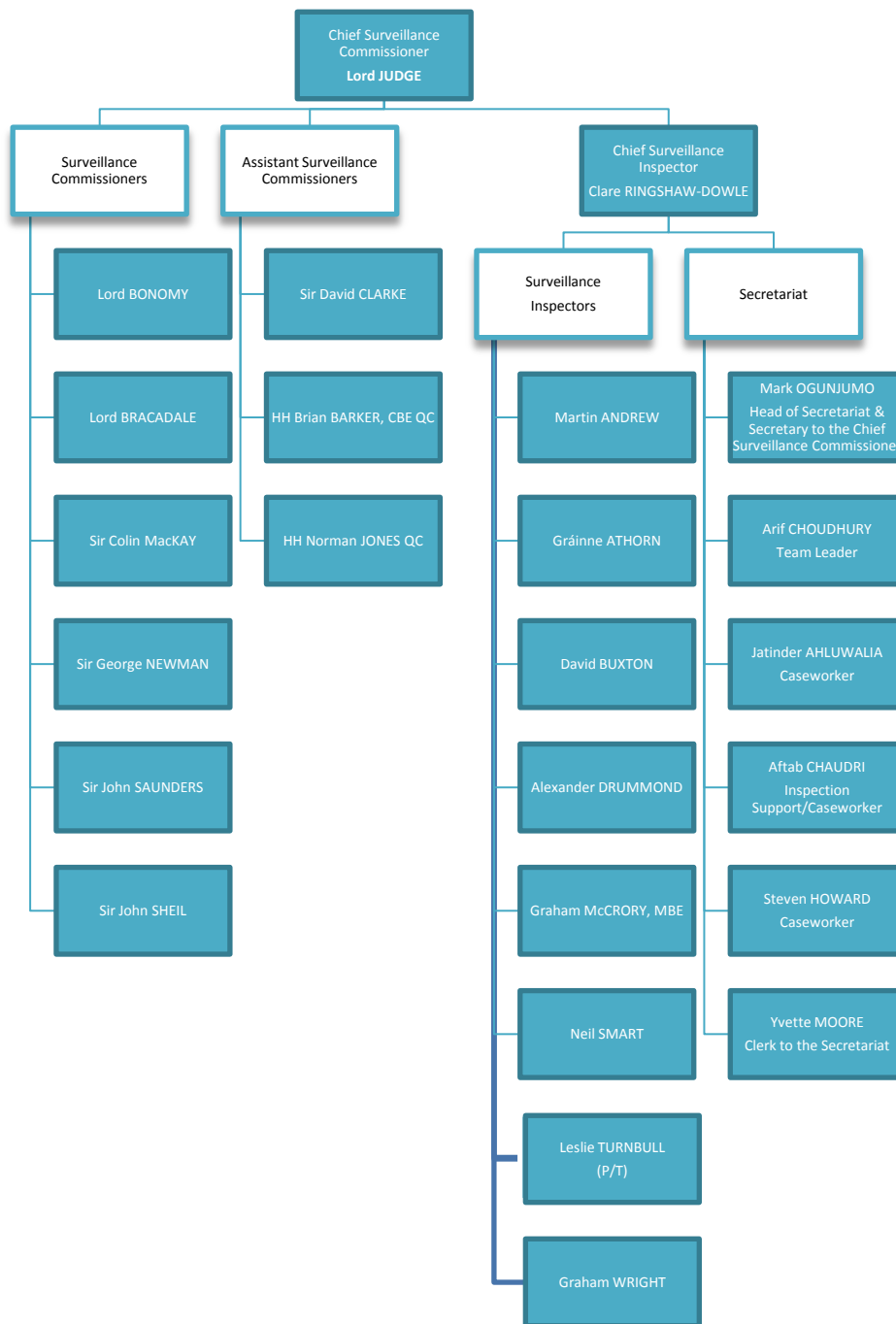
Office of the Information Commissioner

Scottish Accountant in Bankruptcy

Appendix D

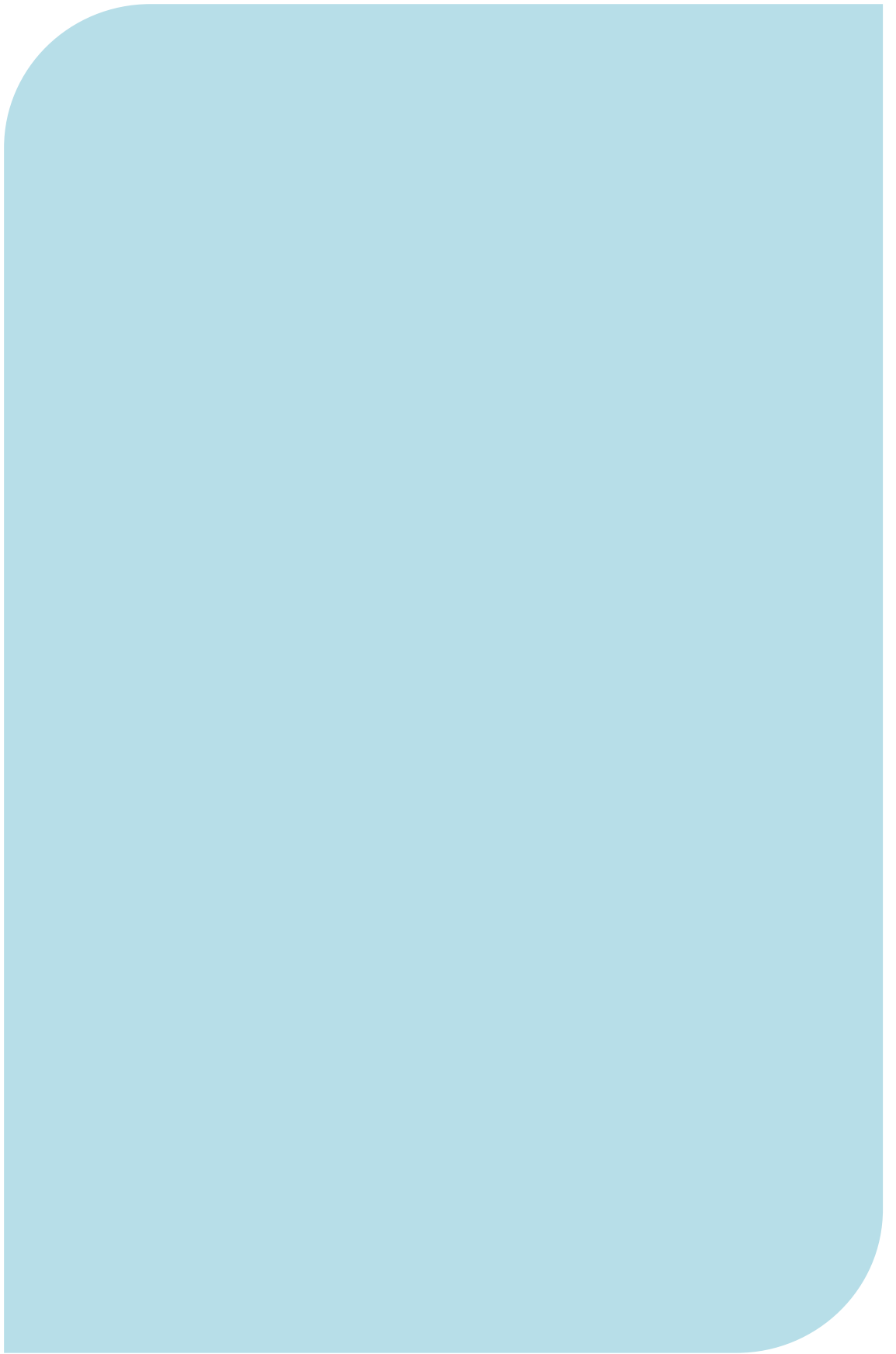
OSC expenditure for April 2016 – March 2017

Description	Total (£)
Staff costs, including recruitment and training	1,327,628
Travel and subsistence	127,935
Conferences and meetings	9,250
IT and telecommunications	32,890
Stationery, including printing, postage and publications	8,658
Office and security equipment	332
Accommodation	128,280
Other	10,210
Total	1,645,183



Members who have left during the reporting period:

Sir Scott Baker
 Lord MacLean
 Les Turnbull
 Martin Andrew





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