

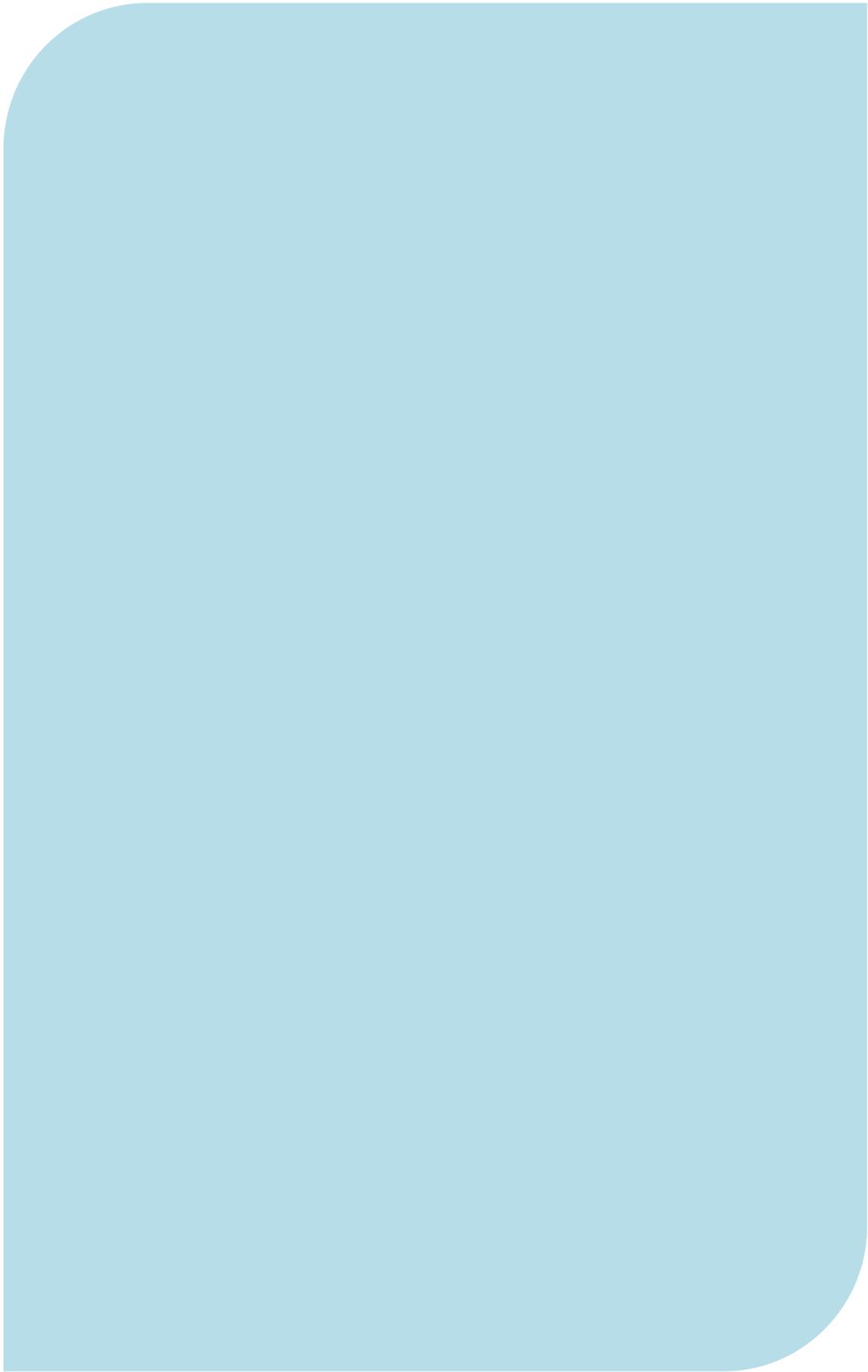


Office of Surveillance  
Commissioners

## ANNUAL REPORT

of the Chief Surveillance Commissioner  
to the Prime Minister and  
to the Scottish Ministers  
for 2013-2014

HC 343  
SG/2014/92



# ANNUAL REPORT

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to the Prime Minister and

to the Scottish Ministers

for **2013-2014**

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

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

Ordered by the House of Commons  
to be printed on 4 September 2014

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by the Scottish Ministers  
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# Contents

Page

<b>1. Introduction</b> .....	3
<b>2. Overview of the year</b> .....	4
<b>3. Particular matters relating to the OSC</b> .....	5
<i>Reporting to the Prime Minister and the Scottish Ministers</i> .....	5
<i>OSC guidance</i> .....	5
<i>Inspection programme</i> .....	6
<i>Oversight of local authority authorisations granted by magistrates</i> .....	6
<i>Commissioners' meetings</i> .....	6
<i>Presentations and conferences</i> .....	6
<i>Liaison</i> .....	7
<i>Home Office support</i> .....	7
<i>Changes in personnel</i> .....	8
<i>Recognition</i> .....	8
<i>Expenditure</i> .....	8
<b>4. Statistics relating to the use of property interference and covert surveillance</b> .....	9
<i>General</i> .....	9
<i>Property interference</i> .....	10
<i>Intrusive surveillance</i> .....	10
<i>Urgency provisions</i> .....	11
<i>Directed surveillance</i> .....	11
<i>Covert human intelligence sources (CHIS)</i> .....	13
<i>Section 49 – encryption</i> .....	14
<i>Irregularities</i> .....	14
<b>5. Key issues arising from my inspections</b> .....	16
<i>Police undercover operations</i> .....	16
<i>The impact of The Protection of Freedoms Act 2012</i> .....	18
<i>Collaborative working arrangements</i> .....	20
<i>Availability of senior officers</i> .....	20
<i>Social Networks</i> .....	20
<i>Common inspection findings</i> .....	21
<i>The need for inspection</i> .....	23
<i>Public reassurance</i> .....	23
<b>6. The year ahead</b> .....	24

## Appendices

<b>A</b>	Authorisations given under Part III of the Police Act 1997 (as amended) during last three years.....	25
<b>B</b>	Authorisations given under Part III of the Police Act 1997 (as amended) for the last three years by offence.....	26
<b>C</b>	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.....	27
<b>D</b>	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.....	28
<b>E</b>	Inspection priorities.....	29
<b>F</b>	OSC expenditure for April 2013 – March 2014.....	31
	Members of the Office of Surveillance Commissioners as at 31 March 2014.....	32

## 1. Introduction

- 1.1. This is my eighth report since taking up my appointment as the Chief Surveillance Commissioner in July 2006 and relates to the period 1<sup>st</sup> April 2013 to 31<sup>st</sup> March 2014.
- 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. Since 1<sup>st</sup> January 2014, the Surveillance Commissioners now grant prior approval for the renewal of all law enforcement "relevant sources" (commonly termed undercover officers)<sup>1</sup>.
- 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.
- 1.6. I also act as the Investigatory Powers Commissioner for the Sovereign Base Areas, Cyprus, under the Regulation of Investigatory Powers Ordinance 2012. My office undertakes an annual inspection and I report separately to the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia.

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<sup>1</sup> Currently limited to "relevant sources" authorised under RIPA. There is no equivalent regime in Scotland under RIP(S)A, although this is expected to be introduced by way of a RIP(S)A Order in due course.

## 2. Overview of the year

- 2.1. The statistics relating to property interference, intrusive surveillance, directed surveillance and CHIS (covert human intelligence source) are set out in section 4. From next year, we shall also provide statistics relating to the authorisation of “relevant sources”.
- 2.2. The main change to OSC business in this reporting year has been the introduction of responsibilities in relation to “relevant sources”. I refer to this in paragraphs 5.1 – 5.15.
- 2.3. The Protection of Freedoms Act 2012 has now been in operation for a sufficiently long period for me to comment upon its perceived impact. I provide details at paragraphs 5.16 – 5.25.
- 2.4. We continue to witness on inspections the effect of reduced resources and the loss of experienced officers. The financial climate of recent years has led to an increased number of public authority collaborations, many of which are now on a regional scale. This requires a flexible approach to our inspection regime.
- 2.5. Public authorities continue to tackle traditional criminality, but are increasingly faced with the challenges brought about by the criminal use of new technology, much of that criminality being conducted in the virtual on-line world. As a corollary, such technological advancement also provides public authorities with fresh ways of obtaining their intelligence. It is my role to ensure that such investigative activity is lawful, though the statutory basis is not always easy to find.
- 2.6. This has been a year in which the covert tactics used by law enforcement agencies and the security and intelligence services have been frequently in the media. Others comment on this as they see fit. For my part, it is not my responsibility to give a view upon how much or how little use is made of the tactics that I oversee. That is a matter initially for Parliament and then for those individual officers to whom the law has granted the power to authorise, within such financial and other constraints as are imposed on them by those determining policy for the public authority by which they are employed.
- 2.7. Within the past year, my Surveillance Inspectors have undertaken the inaugural inspection of Police Scotland, following the completed merger of that country’s constituent individual forces in 2013.

### 3. Particular matters relating to the OSC

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

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

#### *OSC guidance*

- 3.2. My Commissioners will provide an updated version of their 2011 Guidance to public authorities later in 2014. This document is written specifically for those working in public authorities who may wish to seek or authorise covert tactics, and I continue to see no need to give this Guidance wider publication.
- 3.3. In line with other departments and bodies, my office was required to redevelop its website in line with new government standards. This has been a positive development, as my Secretariat will now be able to update the site content itself without the need for intervention by others. It is planned to develop a new section of the website later this year, which will provide controlled access for key officials within the public authorities and enable the provision of more immediate updates to the Commissioners' Guidance and such other matters as may be helpful.
- 3.4. The new website provides general advice to those with an interest in our work, as to who we are and what we do. It does not, for obvious reasons, contain details about operational activity or methods, nor the extent or types of covert activity undertaken by those so empowered. My Annual Reports (all of which are available on the website) provide this type of detail where it can appropriately be disclosed.
- 3.5. My office is frequently asked for advice by public authorities about matters of interpretation in relation to particular cases. There is a danger that they view any response from my office as a panacea for any future challenge, or that this removes the need for them to reach their own decisions. I understand that these areas of activity by public authorities can throw up all sorts of variables and make decisions on particular facts hard to reach. That is why Parliament has determined that officers of a suitably senior rank must reach their decision whether or not to authorise on the merits of each individual case. My Commissioners, Surveillance Inspectors, and Secretariat cannot, nor should they, provide advice on individual scenarios. Were they to do so, this might jeopardise later considerations for approval and the inspection process, both of which must remain impartial.
- 3.6. The Commissioners' Guidance is therefore concerned with matters of general principle. Armed with this Guidance, Authorising Officers can consider their decision based on the individual application presented to them, and ought to make the most of internal legal advice usually available from within their public authority. The old adage "please do not ask for credit as a refusal may offend" has some resonance within this context.

- 3.7. Where guidance is given, during an inspection, or following a one-off enquiry to my office, this should not be seen as representing the views of the Commissioners, or as having lawful authority. The trial judge is the ultimate arbiter of fairness and admissibility of evidence. I also warned in my report last year of the dangers of extrapolation – guidance should not be viewed as a “one size fits all” solution. Each case must, to satisfy the considerations of individual human rights, be assessed on its own merits.

### *Inspection programme*

- 3.8. The public authorities which I currently inspect are at Appendix E. As reported last year, many now have formal or informal collaborative arrangements in place. Where possible, we organise the inspection programme to take this into account – both for expediency and to avoid unnecessary duplication.

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

- 3.9. The changes brought about for local authorities by The Protection of Freedoms Act 2012 have now had time to bed in. My Surveillance Inspectors and Assistant Surveillance Commissioners have identified a downward trend in the number of applications made and authorisations granted, which may or may not be attributable to this enactment. A number of local authorities have decided not to engage in covert activity as a matter of policy, but the reasons for that decision vary and are not always expressed.
- 3.10. What has become clear is that the knowledge and understanding of RIPA among magistrates and their staff varies widely. Adequate training of magistrates is a matter for others, but I highlight the need. The public is not well served if, through lack of experience or training, magistrates are not equipped effectively to exercise the oversight responsibility which the legislation requires. I am aware, for example, of one magistrate having granted an approval for activity retrospectively, and another having signed a formal notice despite it having been erroneously completed by the applicant with details of a different case altogether.
- 3.11. I provide further detail at paragraphs 5.16 – 5.25.

### *Commissioners’ meetings*

- 3.12. The Commissioners have met on three occasions during the reporting period.

### *Presentations and conferences*

- 3.13. Our capacity to address presentations and conferences remains limited. My Chief Surveillance Inspector has been able to represent my office on several law enforcement agency authorising officer courses and will continue to do so when core business allows.

- 3.14.** My Chief Surveillance Inspector and one of my Surveillance Inspectors will (in May 2014) observe one of the newly introduced Senior Authorising Officer courses run by the College of Policing, which has a particular bearing on the authorisation of “relevant sources” at that more senior level, following the introduction of Statutory Instrument 2013/2788<sup>2</sup>.

### *Liaison*

- 3.15.** My Chief Surveillance Inspector continues to be my main point of contact with external stakeholders. She is a member of the ACPO RIPA Peer Review Group, and has occasional meetings with the Chair and Secretary of the National Undercover Working Group. She also liaises with those in the Home Office charged with responsibility for RIPA and PA97, and with her opposite numbers in similar oversight bodies.
- 3.16.** During the past year, my office has provided advice to both the Home Office and Her Majesty’s Inspectorate of Constabulary on matters relating to the use and authorisation of undercover operatives by law enforcement agencies and the terms of the 2013 Statutory Instrument number 2788. One of my Surveillance Inspectors has devoted a considerable amount of time and effort to this on my behalf.
- 3.17.** My office has also provided comments to the consultation by the Home Office on the planned revisions to the RIPA and PA97 associated Codes of Practice.

### *Home Office support*

- 3.18.** The Home Secretary is required by PA97 to provide me with the support necessary to fulfil my responsibilities.
- 3.19.** My office is independent of government, and yet my officials and Inspectorate are subject to Home Office travel and accommodation restrictions that may meet the needs of those requiring the occasional night away from home, but are frequently inadequate for those who spend approximately a third or more of their year working away from home for up to a week at a time. My Chief Surveillance Inspector is also required to report to a Home Office official for line management purposes, despite the fact that she, as was the case for her predecessor, works directly, and solely, to me.
- 3.20.** As I have stated in many previous reports, my office is required, again through being tied to the Home Office procurement regime, to have telecommunication and IT facilities provided at excessive ongoing cost, and with equipment that is not capable of providing the necessarily secure means we require. The equipment by which most of our notification and prior approval process is managed is now seriously antiquated and will, purportedly, become defunct in 2018.

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<sup>2</sup> The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013

**3.21.** During the past year, my office has needed to appoint two new Surveillance Inspectors – one to replace the newly appointed Chief Surveillance Inspector, and the other to provide increased manpower for the new “relevant source” responsibilities. Changes to the structure of my Secretariat have also required there to be a recruitment process for a Senior Executive Officer and an Executive Officer. Despite my independence, I have not been allowed – as has previously been the case – to undertake my own recruitment process, but have been tied to that used for the wider Civil Service. That it has taken no less than seven months to achieve this, through no delay on this office’s part, is a matter that ought to concern those responsible.

### *Changes in personnel*

**3.22.** In August 2013, my previous Chief Surveillance Inspector, Mr Sam Lincoln, decided to move on from the OSC after eight years with us. He was a proactive and invigorating Chief Inspector and made a major contribution to the raising of compliance standards by public authorities throughout the UK. He was succeeded in September 2013 by Mrs Clare Ringshaw-Dowle who had been one of my Surveillance Inspectors for the past 8½ years.

### *Recognition*

**3.23.** I wish to record, once again, my thanks to the Commissioners, Assistant Commissioners, Surveillance Inspectors and members of my Secretariat, for the indispensable support which they have given me in performing my statutory role. My thanks also go to the staff of the Security & Protection Group, Northern Ireland and to 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*

**3.24.** I summarise the expenditure of the OSC at Appendix F. My budget for the year was £1.6m and, partly due to staffing changes and the miscalculation by others of our accommodation costs, my end of year actual expenditure was £118k under budget.

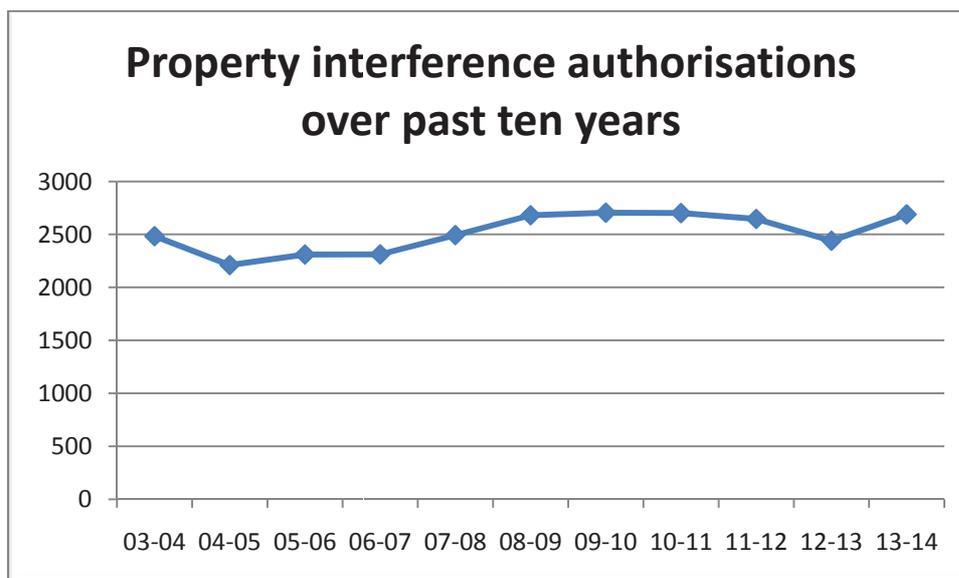
**3.25.** I have been allocated a slightly increased budget (£1.7m) in the forthcoming year to reflect my office’s new responsibilities under Statutory Instrument 2013/2788, but in real terms this will merely cover the cost of employing an additional Surveillance Inspector. A bid for additional monies to cover the associated costs of the prior approval and notification process was unsuccessful: when the new procedures have been in place for sufficient time for their actual cost to become apparent, I shall seek any necessary further monies. (I describe the present position in paragraphs 5.7 to 5.10 below.)

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

### *General*

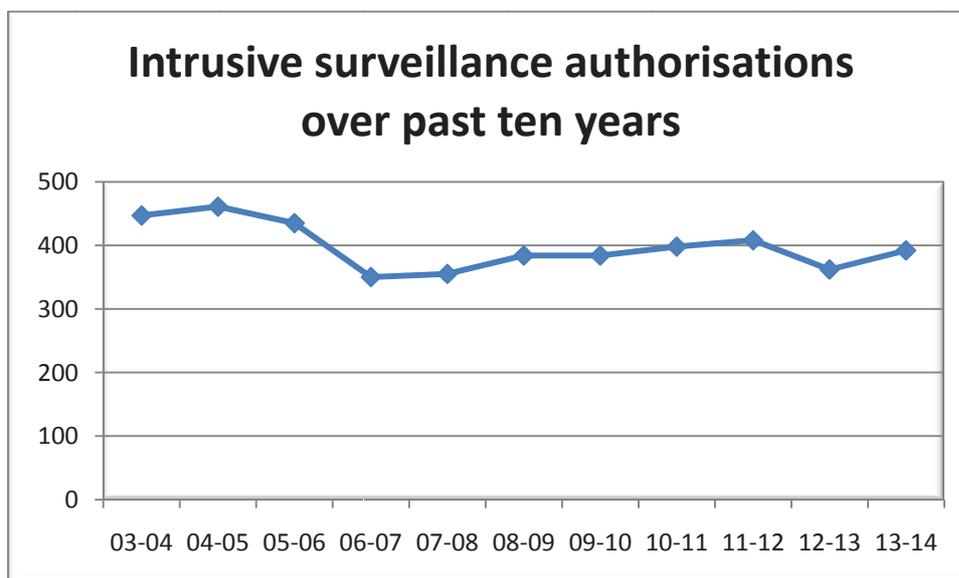
- 4.1. Statistics provided by law enforcement agencies and those taken from my Secretariat's database for property interference and intrusive surveillance authorisations for the past three years are set out in tables at Appendices A-D. The chart comparisons below show the overall trend for each type of activity over the past ten years as reported to me when I request statistics for my report. Statistics can only provide a general record and ought not to be misconstrued. It is not for me to promote more or less covert activity, but to report upon that usage and the performance, in compliance terms, of those empowered to use such tactics.
- 4.2. The following statistics and illustrative charts are based upon a return rate of 100% from the law enforcement agencies, and of 96.6% from all other public authorities. I am once again slightly disappointed that a few public authorities appear to treat my request for statistical returns as an option. My Secretariat provides more than adequate notice for this information to be collated: in any case, it ought to be quickly attainable from the Central Record that each public authority is required to maintain under the Home Office Codes of Practice.
- 4.3. I have therefore decided that, as from next year, those public authorities which have failed to respond within the set deadline will be named in my annual report.
- 4.4. It is worth reiterating that these statistics only reflect the information provided to me, which I must assume is accurate. The figures would not reveal covert activity conducted outwith the formal authorisation process: part of the inspection process is directed to identifying whether any such activity is likely to have occurred.

## Property interference



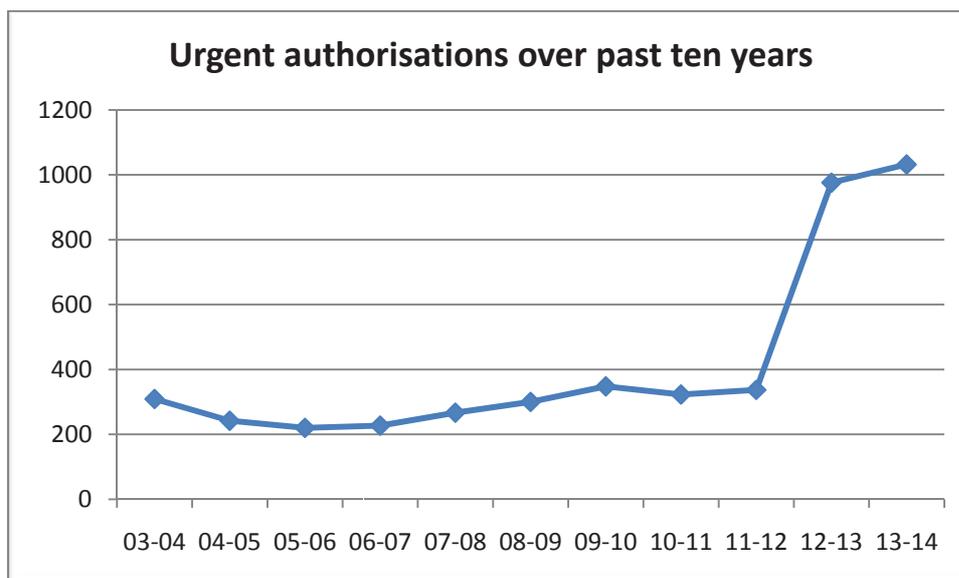
- 4.5.** Excluding renewals, property interference authorisations were granted on 2,689 occasions; an increase of 249 on the previous year. No authorisations were quashed by Commissioners.

## Intrusive surveillance



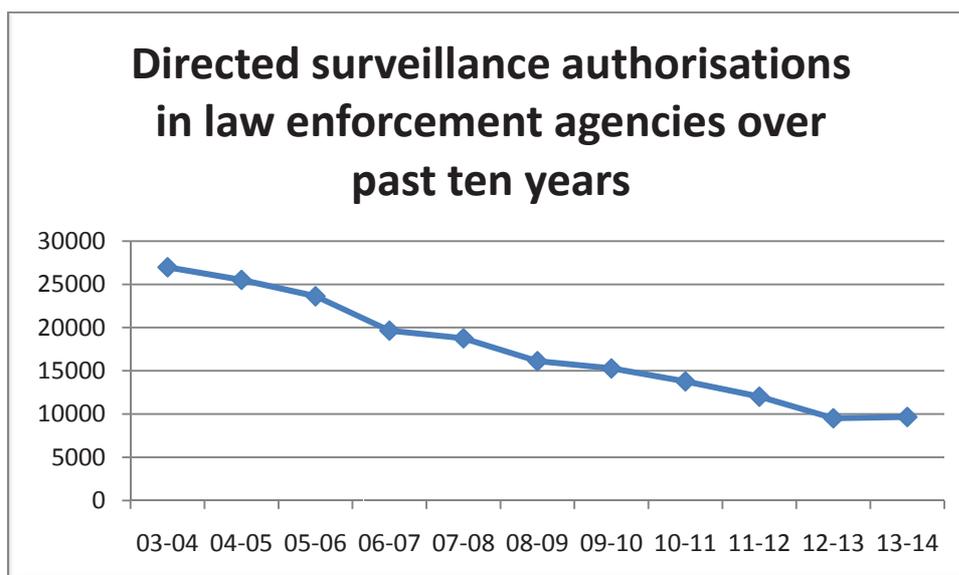
- 4.6.** The number of intrusive surveillance authorisations increased slightly this year compared to last, from 362 to 392. Two authorisations were quashed by a Commissioner.

## Urgency provisions

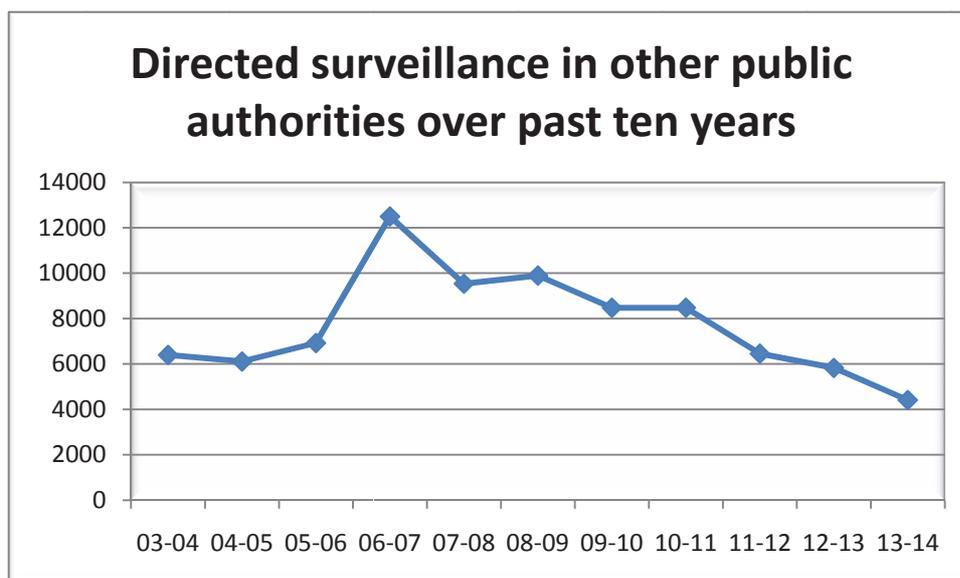


- 4.7. The urgency provisions allowed by the legislation were reportedly used on 1,032 occasions. In 2012-13 I had noted a significant increase, and this increase has continued into this reporting year, though at a far less exponential rate. Without a protracted exercise involving the public authorities concerned, it is difficult to conjecture as to the reason for the high number of such authorisations. It is worth stating that the urgency provisions represent below 5% of the total number of authorisations granted in 2013-14.

## Directed surveillance

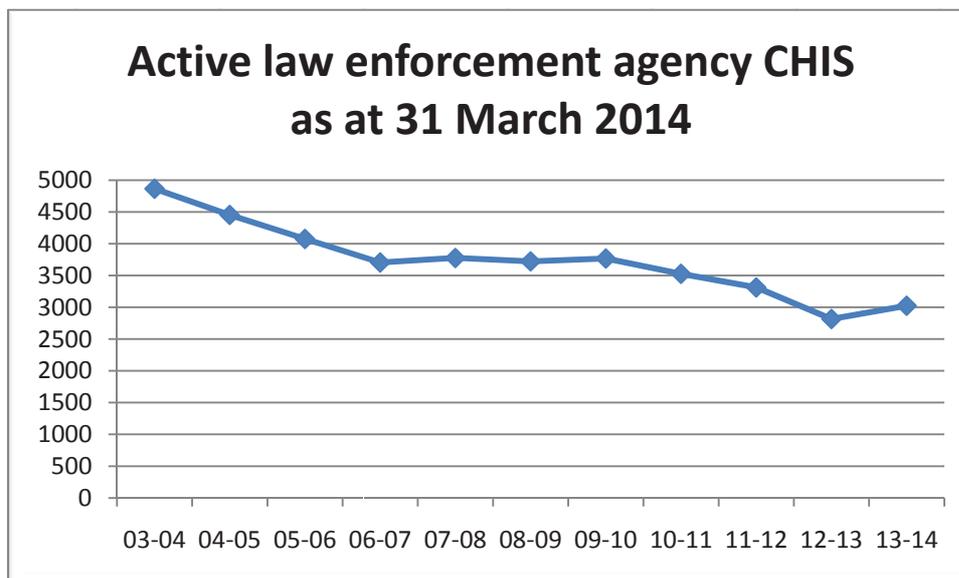


- 4.8. Law enforcement agencies authorised the use of directed surveillance on 9,664 occasions, with 1,484 extant at the end of March 2014. This reflects a very slight increase on the previous year when the comparable figures were 9,515 and 1,118.

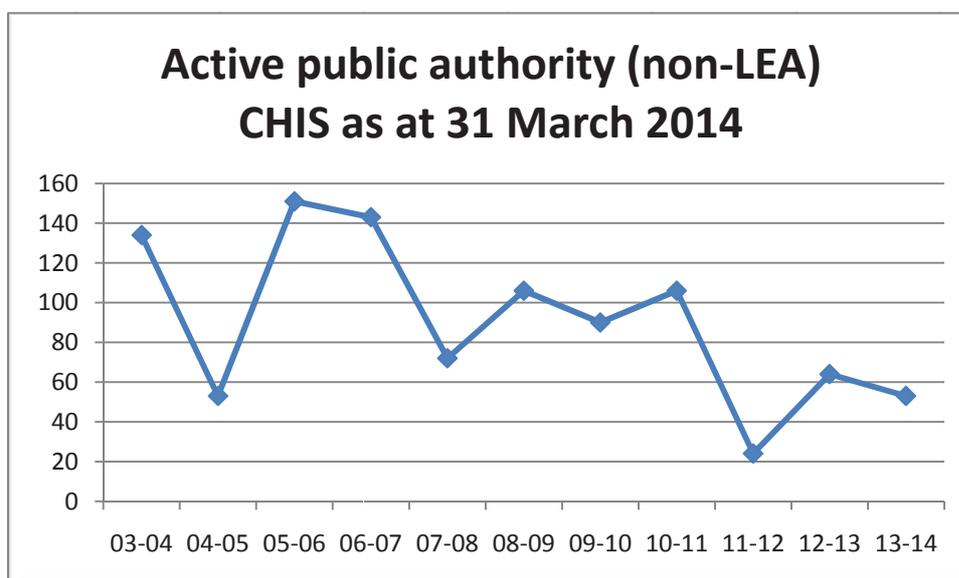


- 4.9.** Other public authority returns showed that directed surveillance had been authorised on 4,412 occasions. This shows a continued downward trend (from 5,827 such authorisations in the previous year). As I explained in last year's report, the vast majority (73%) of these authorisations were obtained by the Department for Work & Pensions and may well include authorisations which had more traditionally been authorised by benefit teams working within local councils.
- 4.10.** A total of 517 were presented to a magistrate for approval under The Protection of Freedoms Act 2012. Just 26 were rejected.

## Covert Human Intelligence Sources



- 4.11.** During this reporting year, 4,377 CHIS were authorised by law enforcement agencies; 3,523 were cancelled within the same year (including some who may have been already authorised from preceding years); and at the end of March 2014, 3,025 remained authorised.



- 4.12.** Within other public authorities, there remained 53 authorised CHIS at the end of the reporting period. Only a handful (3.7%) of these public authorities use CHIS, often for matters such as trading standards investigations.

## Section 49 – encryption

- 4.13.** During the period to which this report relates, NTAC<sup>3</sup> granted 76 approvals from 76 applications. Permission was not sought in six cases after NTAC approval. From the remainder, 37 had permission granted by a Circuit Judge, of which 33 have so far been served. Of these, seven were complied with and 17 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 four of the eleven people who 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.
- 4.14.** One conviction related to the importation of controlled substances, the other related to an IIOC<sup>4</sup> offence. Other offences include: domestic extremism, terrorism, insider dealing, fraud, evasion of excise duty, drug trafficking, people trafficking and drug possession with intent to supply.
- 4.15.** 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, once approved, should be served without delay and the information supplied to NTAC as soon as possible.

## Irregularities

- 4.16.** Law enforcement agencies reported to me 79 irregularities during the period covered by this report, and other public authorities reported four. This compares to totals in previous years as follows (99 reports in 2012-13; 81 in 2011-12; and 129 in 2010-11). The nature of such irregularities changes little from one year to another, and has included such matters as installation of surveillance equipment without a valid authorisation; overdue switching off of a recording device after cancellation of the authorisation; and inadvertent trespass (property interference) where one police force boundary meets another. In no case has there been anything to suggest wilful misconduct or bad faith.
- 4.17.** It is worth reiterating that 83 reports represents a tiny proportion of the total number of authorisations legitimately granted in the same period and the fact that such reports are made to me and, for the most part, relate to short periods of unauthorised activity, demonstrates that the reporting authorities have in place effective oversight processes. Such reports are invariably accompanied by a full explanation of what led to the error or oversight and what steps have been taken by the public authority to seek to avoid any recurrence.

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<sup>3</sup> National Technical Assistance Centre

<sup>4</sup> Indecent Images of Children

- 4.18.** Failure to obtain an authorisation under the Acts for which I have oversight is not unlawful, and where irregularities have been reported, I have no sanction. But it is nonetheless important that I am advised of such matters, to ensure that robust internal oversight can be demonstrated, that irregularities do not become, in effect, a regularity; and lest there be consequences for the safety of any future legal process which ought to be drawn to the attention of those concerned.

## 5. Key issues arising from my inspections

### *Police undercover operations*

- 5.1. This aspect of policing has continued to be the subject of heightened interest amongst the public, the media, Parliament, and the courts. In my report for 2011-12, paragraph 5.5, I indicated that, if undercover officers, whatever professional nomenclature may be applied to them, fulfil the functions of a CHIS as defined in Part II of RIPA, they should be authorised and managed accordingly. In the absence of much substantive case law, my Commissioners have provided guidance for a number of years on matters of compliance in relation to such CHIS, and my Surveillance Inspectors, many of whom have vast experience from running such operations in their previous careers, have continued to pay particular attention to these authorisations (and the associated records required to be maintained under Statutory Instrument 2000/2725<sup>5</sup>) during their routine inspections.
- 5.2. During this reporting year, there have been several developments following the original disclosures by Mark Kennedy. In some cases, extensive reports are readily available in the public domain, and others will no doubt provide further details in due course.
- 5.3. There are several cases currently before courts and tribunals which stem from the revelations arising from the case of Mark Kennedy and others.
- 5.4. The Chief Constable of Derbyshire Constabulary, Mr Mick Creedon, is undertaking a review (named Operation Herne) of certain activities by undercover officers, including the use of deceased children's identities for use by undercover operatives; the alleged sexual relationships conducted by undercover officers as part of their "legend"; alleged "smears" against the family of murdered teenager Stephen Lawrence; and other kindred matters. Mr Creedon has already placed within the public domain some emergent findings.
- 5.5. In early March 2014, Mark Ellison, QC, published a report into possible police corruption and the use of undercover tactics in the investigation of the murder of Stephen Lawrence.
- 5.6. HMIC is due to deliver to the Home Secretary (perhaps by the time this report has been published) its findings from an extensive review of undercover policing. As previously stated, one of my Surveillance Inspectors has provided assistance to the HMIC team as part of a reference group and, as a fellow oversight body, the OSC looks forward to the findings in that report in due course.

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<sup>5</sup> The Regulation of Investigatory Powers (Source Records) Regulations 2000

- 5.7.** The biggest recent development for the OSC has been the introduction of a prior approval process<sup>6</sup> for “relevant sources” – those undercover operatives employed by the law enforcement agencies who have been authorised for longer than twelve months (either continuously or cumulatively in respect of a particular operation). From 1<sup>st</sup> January 2014, such “relevant sources” must be granted a renewal of their use and conduct by a Senior Authorising Officer (the ranks, generally Chief Constable or an equivalent, are set out in Statutory Instrument 2013/2788) subject to the prior approval of a Surveillance Commissioner. In addition, any newly authorised “relevant source” must be notified to the Surveillance Commissioners, as must their subsequent cancellation.
- 5.8.** The Statutory Instrument came into effect very soon after it had been laid before Parliament and both the OSC and the law enforcement community have had to determine our processes and procedures in fast time. I am pleased to report that, with a few teething troubles which were to be expected, the prior approval and notification process appears to have settled in very quickly.
- 5.9.** What has become readily obvious, however, is the amount of paperwork involved. Once again, the antiquated means of getting these highly sensitive documents from the law enforcement agencies to the Surveillance Commissioners is adding to the vulnerability of the machines to overload and possible failure. A secure means of transferring such documentation via IT systems as opposed to outmoded facsimile machines, is now a dire need.
- 5.10.** The Surveillance Commissioners have only just begun to consider these “relevant sources” and it is too early for me to report on their views about the content and quality of the documentation containing the decisions of those senior law enforcement officers. I am able, however, to provide a necessarily restricted overview of the findings of my Surveillance Inspectors over the course of the past year. I do not normally provide this level of detail, but in light of the aforementioned scrutiny from various parties, I do so in greater detail for this past year.
- 5.11.** The following matters have all been raised through the appropriate channels with the Chair of the National Undercover Working Group, and by my Surveillance Inspectors during their numerous inspections of law enforcement agencies over the past few years, so, though they may be new to some readers of this report, they have long been notified to those responsible for RIPA compliance.

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<sup>6</sup> Currently limited to “relevant sources” authorised under RIPA. There is no equivalent regime in Scotland under RIP(S)A, although this is expected to be introduced by way of a RIP(S)A Order in due course.

- 5.12.** My Surveillance Inspectors sometimes find a lack of clarity, on documentation and in practice, about which officers are fulfilling the functions required by Section 29(5) of RIPA. These officers perform a vital function in the day to day management and oversight of undercover operatives (“relevant sources”) on behalf of, and reporting directly to, the Authorising Officer. We have strongly criticised the agencies where we have identified that those undertaking these roles are part of the wider operational team.
- 5.13.** My Surveillance Inspectors still encounter CHIS risk assessments for undercover operatives that are overly generic or too formulaic. The focus must be on the individual and their unique abilities, experience, risks, etc. Using a “one-size fits all” risk assessment, with just the pseudonym or URN (unique reference number) changed each time, is unlikely to bear close scrutiny in court or otherwise.
- 5.14.** When additional undercover operative(s) are added to an existing operation, all Authorising Officers must clearly set out their consideration of necessity, collateral intrusion, proportionality and risks in relation to each new operative, with clear use and conduct parameters: different operatives may have different roles to portray and subjects to engage. Their authorisation validity (as dictated by Statutory Instrument 2013/2788) should always be made clear on the form to assist in running a timeline and ensuring any notifications/renewal requests to the OSC are not overlooked.
- 5.15.** Formal reviews should provide the Authorising Officer with an update on what has occurred since the previous one. There can be too much “cut and paste” content several months into a longer-running operation. Collateral intrusion, in particular, is all too often a formulaic entry, month after month. By way of example of the importance of this statutory consideration, there are currently before the courts matters which appear to have involved collateral intrusion of the most intimate nature.

### ***The impact of The Protection of Freedoms Act 2012***

- 5.16.** The Protection of Freedoms Act 2012 has now become a more routine practice for those in local authorities (in England and Wales) wishing to use Part II of RIPA for the prevention or detection of crime. In my last report, I noted some of the challenges this may present to a local authority wishing to tackle criminality that is of sufficient concern to residents, but would be unlikely to meet the stipulated minimum six months sentence upon conviction.
- 5.17.** Over the past year, my Surveillance Inspectors and Assistant Surveillance Commissioners have completed in excess of 140 council inspections in England and Wales. On each inspection, senior officers are asked about the impact of The Protection of Freedoms Act 2012 and how they are tackling criminality for which directed surveillance can no longer be authorised. (There is no such limitation in relation to the use of a CHIS, but this tactic tends not to be widely used by councils, as the statistics show.) My Inspectorate team also looks at the level of use of covert tactics by the public authority over recent years, and explores the likely reasons behind any significant change.

- 5.18.** Whilst I cannot generalise too much, it would be fair to say that there has been a continuing steady decline in the use of directed surveillance by local councils which may, or may not, have resulted from the introduction of the need to seek a magistrate's approval. In one borough council there had been 47 directed surveillance authorisations between 2010 and the introduction of The Protection of Freedoms Act 2012 and none in the 16 months thereafter.
- 5.19.** For several years now, we have seen a gradual, though in some cases very severe, diminution in the funding and resources available to public authorities. We are often told that the cost of conducting surveillance, in terms of manpower, time and equipment, is now difficult to justify.
- 5.20.** Although the wherewithal to conduct such activity may have disappeared, the problems which it had traditionally tackled have not. Councils have, therefore, resorted to different measures, such as a more overt response to criminality, through increased patrols by neighbourhood wardens and the like, or increased working with other bodies and the private/commercial sector to tackle anti-social activities.
- 5.21.** Not all criminality can be successfully tackled through overt means alone. A clear example is benefit fraud: we have seen a gradual reduction of the use of directed surveillance by locally based benefits teams in councils, as this now tends to be authorised and managed, albeit with council officers' assistance, by the Department for Work & Pensions.
- 5.22.** Where councils have continued to use their RIPA powers, we have sometimes identified a lack of a corporate approach to the new process. Some councils have established or used existing relationships with their local magistrates' court to ensure that both parties were prepared for the impact of the new Act; some have gone so far as to provide a training input to local magistrates and their clerks, so they understand RIPA and the type of case and associated documentation which will be presented to them.
- 5.23.** Other councils have gone to the court with their RIPA paperwork, only to find a complete lack of awareness of the process, and this has led, in some cases, to delays. By the time the magistrate finally looks at the case, the intelligence behind it might now be unreliable, or the resources to undertake the surveillance no longer available for the desired duration.
- 5.24.** We have also identified a range of approaches by public authorities as to who should present the case to the magistrate. I have always argued that this should be the Authorising Officer – the person statutorily responsible for making judgements as to the necessity, collateral intrusion and proportionality of the proposed activity. However, my Inspectorate has rarely encountered this in practice – instead, the more likely officer to attend the court, by dint of their specialised training and perceived familiarity with RIPA, is a member of the legal team, the applicant, the lead investigating officer, or a member of the Trading Standards team. I am aware that the Home Office guidance makes no stipulation, but, as a matter of good practice, I continue to urge the attendance of the Authorising Officer.

- 5.25.** It is also disappointing that public authorities find such disparate levels of knowledge within the magistrates' court. This is a matter that ought to have been tackled by those responsible for their training. Most public authorities now require their Authorising Officers to have completed RIPA training before they can so act, and this is obviously good, if not essential, practice which should be no less a requirement for magistrates.

### ***Collaborative working arrangements***

- 5.26.** I have commented in previous reports about the growth of collaborative arrangements, and in the past year there have been further joint ventures between police forces and councils, and the establishment of regional teams serving a wide variety of enforcement/investigative interests. My Inspectorate will continue to ensure that there is a compliant legal basis for any covert activities undertaken by these units or collaborative partnerships and that the policies and processes underpinning those activities are satisfactory.
- 5.27.** Wherever possible, the annual inspection programme seeks to ensure that collaborative entities are inspected either jointly, or individually during a defined period, alongside their counterparts. By doing so, my Surveillance Inspectors can better assess those collaborative processes and corporate standards, and seek to lessen the impact of the inspection process in terms of the required engagement of key members of staff.
- 5.28.** I have not had cause to inspect any private organisation that has conducted covert activity on behalf of a public authority, but I continue to reserve the right to do so as may be necessary.

### ***Availability of senior officers***

- 5.29.** I acknowledge that, in these straightened times, there are heavy demands placed upon senior officers within public authorities. Nonetheless, there have been a number of occasions in the past year, in both law enforcement and other public authorities, when the Senior Responsible Officer or Chief Officer has been unavailable to meet my Inspectors. Given that they provide notice well in advance of inspection dates, I expect senior officers to make themselves available unless there are genuinely extenuating circumstances.

### ***Social Networks***

- 5.30.** This is now a deeply embedded means of communication between people and one that public authorities can exploit for investigative purposes. I am reasonably satisfied that there is now a heightened awareness of the use of the tactic and the advisable authorisations under RIPA that should be considered. Although there remains a significant debate as to how anything made publicly available in this medium can be considered private, my Commissioners remain of the view that the repeat viewing of individual "open source" sites for the purpose of intelligence gathering and data collation should be considered within the context of the protection that RIPA affords to such activity.

- 5.31.** In cash-strapped public authorities, it might be tempting to conduct on line investigations from a desktop, as this saves time and money, and often provides far more detail about someone's personal lifestyle, employment, associates, etc. But just because one can, does not mean one should. The same considerations of privacy, and especially collateral intrusion against innocent parties, must be applied regardless of the technological advances. It is worth repeating something I said in my 2011-2012 report, paragraph 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 the device used; the act of surveillance is of primary consideration and this is defined at section 48(2-4) of RIPA (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.”*

- 5.32.** Access to social networking sites by investigators in all public authorities is something we examine on inspections. Many, particularly the law enforcement agencies, now have national and local guidance available for their officers and staff. However, many local authorities and government departments have still to recognise the potential for inadvertent or inappropriate use of the sites in their investigative and enforcement role. Whilst many have warned their staff of the dangers of using social media from the perspective of personal security and to avoid any corporate damage, the potential need for a RIPA authorisation has not been so readily explained.
- 5.33.** I strongly advise all public authorities empowered to use RIPA to have in place a corporate policy on the use of social media in investigations. Some public authorities have also found it sensible to run an awareness campaign, with an amnesty period for declarations of any unauthorised activity or where, for example, officers have created false personae to disguise their on line activities.

### **Common inspection findings**

- 5.34.** I do not, for obvious reasons, divulge in this Report details of operations, or authorisation contents, nor comment upon the performance of individual public authorities. The inspection reports completed by my Assistant Surveillance Commissioners and Surveillance Inspectors, and endorsed by me, contain sufficient detail for the Chief Officer of each public authority to appreciate the context of the findings and any accompanying recommendations. It is, I am pleased to report, a rare occasion for remedial action not to result.

- 5.35.** Where it has not, this has usually been due to the absence or departure of key officers. Where the recommendations have to be repeated at the following inspection, this is specifically highlighted. It may sometimes be the case that the public authority has done all it can to remedy the compliance failings, but it is the nature of RIPA and PA97, that an authorisation will only be as good as its author. That is why training, feedback and internal quality assurance plays a key role between formal OSC inspections.
- 5.36.** The overall quality of authorisations within law enforcement agencies has now, in general, reached a good standard and, in some cases, very good indeed. In other public authorities, a knowledgeable and thoughtful Authorising Officer, who can make all the difference, is somewhat rarer.
- 5.37.** The following are the main issues upon which we have cause to comment:
- Unsubstantiated and brief, or, conversely, excessively detailed intelligence cases
  - Poor and over-formulaic consideration of potential collateral intrusion and how this will be managed
  - Poor proportionality arguments by both applicants and Authorising Officers – the four key considerations (identified by my Commissioners and adopted within the Home Office Codes of Practice) are often not fully addressed
  - A surfeit of surveillance tactics and equipment being requested and granted but rarely fully used when reviews and cancellations are examined
  - At cancellation, a lack of adequate, meaningful update for the Authorising Officer to assess the activity conducted, any collateral intrusion that has occurred, the value of the surveillance and the resultant product; with, often, a similarly paltry input by Authorising Officers as to the outcome and how product must be managed
  - On the CHIS documentation, a failure to authorise a CHIS promptly as soon as they have met the criteria; and in many cases (more typically within the non-law enforcement agencies) a failure to recognise or be alive to the possibility that someone may have met those criteria
  - Some risk assessments can be over-generic and not timeously updated to enable the Authorising Officer to identify emergent risks
  - Discussions that take place between the Authorising Officer and those charged with the management of the CHIS under Section 29(5) of RIPA are not always captured in an auditable manner for later recall or evidence
  - As resources become stretched within police forces, the deputy to the person charged with responsibilities for CHIS under Section 29(5)(b) often undertakes those functions: as with an Authorising Officer, this is a responsibility which cannot be shared or delegated
  - Outside pure documentary issues, a lack, in some public authorities, of ongoing refresher training for those that require it; and a need for an improved level of personal engagement in the oversight process by the Senior Responsible Officer.

### *The need for inspection*

- 5.38.** I, along with my Inspectorate team, am often asked why an OSC inspection is necessary when there has been no use of the powers I oversee, or where compliance levels have attained good heights.
- 5.39.** Without OSC inspection of public authorities, there would be no external, independent oversight of several hundred organisations which have a mandate to conduct investigations and tackle criminal behaviour. Although these bodies may be able to achieve this effectively through overt means, Parliament and the public expect there to be someone who can check and test such a claim. My Inspectors and Assistant Surveillance Commissioners occasionally discover activities that ought to have been authorised, particularly, for example, in social media monitoring.
- 5.40.** My inspections are not so frequent as to be burdensome, and require no preparation on the part of those being inspected – though most elect to prepare. Hurriedly delivered training just prior to the arrival of my Surveillance Inspectors and Assistant Surveillance Commissioners, or errors identified through a last minute internal check of the Central Record and documentation, make a poor impression, however well-intentioned.
- 5.41.** Also, although good levels of compliance can be, and usually are, achieved and maintained, change in a few key parties, or excessive restructuring and cost saving measures, can cause standards to slip.

### *Public reassurance*

- 5.42.** During the past year disclosures by Edward Snowden; inquiries into the police service for historical actions; and current court hearings about interception and the activities of undercover officers have given rise to public concern.
- 5.43.** No system of oversight can ever be perfect. But the OSC is, predominantly, judge-based and its complete independence underpinned by the legislation. I, and those assisting me, have unfettered access to the records of authorised covert activities, and can question, and if necessary challenge, those charged with their authorisation and management. The statistics provided by the public authorities show a relatively small increase in the use of the powers by the law enforcement agencies, with a considerable decline in the authorisation of directed surveillance by the other public authorities over the past year. It is also highly unlikely, given the robust processes and internal scrutiny in place within public authorities, let alone ever-tightened resources, that, save in very rare circumstances, unauthorised activity has occurred.
- 5.44.** In general, all public authorities welcome the OSC inspection process and wish to achieve good levels of compliance with the legislation. We have never encountered an Authorising Officer who does not recognise the weight and importance of his statutory role of independence and responsibility. Having read the several hundred reports completed for me this year, I am satisfied that the public has no cause for any general concern. If it were otherwise I would say so.

## 6. The year ahead

- 6.1. I anticipate continued development of collaboration agreements in England and Wales.
- 6.2. My office will undertake the inaugural inspection of the National Crime Agency in May 2014.
- 6.3. I will monitor the impact of Statutory Instrument 2013/2788 as it affects my office in its management of the notification and prior approval renewal process of “relevant sources”.
- 6.4. I will monitor the impact of these additional responsibilities on my budget and request additional funding if the increase for the coming financial year proves to be insufficient.
- 6.5. I will continue to press the Home Office for a satisfactory and affordable secure means of communication amongst my geographically dispersed Commissioners and Surveillance Inspectors and with our stakeholders.
- 6.6. I will await the outcome of the Scottish Independence Referendum in September 2014 and the impact on my jurisdiction in Scotland of subsequent legislation, if any.

## Appendix A

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

	2011-2012			2012-2013			2013-2014		
	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)	2495	151	2646	2343	97	2440	2631	58	2689 <sup>7</sup>

**PRIOR APPROVALS**

	2011-2012			2012-2013			2013-2014		
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total
Number of cases	212	24	236	225	18	243	183	4	187 <sup>8</sup>
By category:									
• Dwelling	156	20	124	158	16	174	141	3	144
• Office premises	34	3	52	47	2	49	31	1	32
• Hotel bedroom	19	1	23	17	0	17	11	0	11
• Matters subject to legal privilege	3	0	4	1	0	1	0	0	0
• Confidential journalistic material	0	0	0	1	0	1	0	0	0
• Confidential personal information	0	0	0	1	0	1	0	0	0

<sup>7</sup> Statistics provided by the law enforcement agencies.

<sup>8</sup> Statistics provided from the Office of Surveillance Commissioners Authorisation Register (OSCAR) database.

## Appendix B

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

	2011-2012			2012-2013			2013-2014		
	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total	England, Wales & N.I.	Scotland	Total <sup>9</sup>
Assault	45	1	46	51	0	51	65	1	66
Burglary/Robbery	119	1	120	269	0	269	235	0	235
Bribery and Corruption	-	-	-	35	0	35	28	0	28
Conspiracy	6	0	6	34	0	34	77	0	77
Drug trafficking	1334	95	1429	1397	71	1468	1295	49	1344
Firearms offences (including armed robbery)	175	4	179	115	4	119	83	1	84
Fraud	-	-	-	59	0	59	92	1	93
Kidnap/extortion	117	2	119	140	0	140	150	2	152
Money laundering	184	5	189	148	0	148	105	1	106
Murder/loss of life	191	30	221	189	11	200	146	2	148
Organised illegal immigration	24	0	24	13	0	13	19	0	19
Sexual offence	-	-	-	40	2	42	39	0	39
Tax evasion	21	0	21	14	0	14	8	0	8
Terrorism	18	2	20	14	0	14	16	1	17
Other	261	11	272	49	1	50	31	0	31

<sup>9</sup> Statistics extracted from the Office of Surveillance Commissioners Authorisation Register (OSCAR) database.

## Appendix C

**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**

	2011-2012			2012-2013			2013-2014		
	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>364</b>	<b>44</b>	<b>408</b>	<b>336</b>	<b>26</b>	<b>362</b>	<b>383</b>	<b>9</b>	<b>392<sup>10</sup></b>

<sup>10</sup> Statistics provided by the law enforcement agencies.

## Appendix D

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

	2011-2012			2012-2013			2013-2014		
	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total	England, Wales & N.I	Scotland	Total <sup>11</sup>
Assault	10	0	10	5	0	5	15	0	15
Bribery and Corruption	-	-	-	3	0	3	4	0	4
Burglary/Robbery	10	0	10	3	0	3	9	0	9
Conspiracy	2	0	2	0	0	0	5	0	5
Drug trafficking	169	15	184	79	4	83	118	0	118
Firearms offences (including armed robbery)	21	1	22	4	0	4	9	0	9
Fraud	-	-	-	2	0	2	7	1	8
Kidnap/extortion	11	0	11	3	0	3	3	0	3
Money laundering	19	1	20	2	0	2	9	0	9
Murder/loss of life	81	22	103	31	4	35	53	2	55
Organised illegal immigration	2	0	2	3	0	3	1	0	1
Sexual offence	-	-	-	1	0	1	5	0	5
Tax evasion	4	0	4	0	0	0	0	0	0
Terrorism	2	2	4	1	0	1	2	0	2
Other	33	3	36	1	0	1	2	0	2

<sup>11</sup> Statistics extracted from the Office of Surveillance Commissioners Authorisation Register (OSCAR) database.

## Inspection priorities

## Appendix E

### *Subject to annual inspection*

British Transport Police  
 Department for Work and Pensions  
 Environment Agency  
 HM Revenue and Customs  
 Home Office – Immigration Enforcement  
 Home Office – Border Force  
 National Crime Agency (*formerly the Serious Organised Crime Agency*)  
 National Offender Management Service - HM Prison Service  
 National Resources Wales  
 Northern Ireland Prison Service  
 Office of Fair Trading (*now the Competition and Markets Authority*)  
 Police forces for England and Wales  
 Police Scotland  
 Police Service of Northern Ireland  
 Port of Dover Police  
 Port of Liverpool Police  
 Royal Mail Group plc  
 Royal Military Police  
 Scottish Prison Service

### *Subject to inspection every other year*

British Broadcasting Corporation  
 Care Quality Commission  
 Civil Nuclear Constabulary  
 Department for Environment and Rural Affairs  
 Department for Business, Innovation and Skills  
 Driver and Vehicle Standards Agency  
 Gangmasters Licensing Authority  
 Health and Safety Executive  
 Independent Police Complaints Commission  
 Marine Scotland  
 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  
 Police Investigations and Review Commissioner  
 Royal Air Force Police and Security Service  
 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 Conduct 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)

Maritime and Coastguard Agency

Office of the Information Commissioner

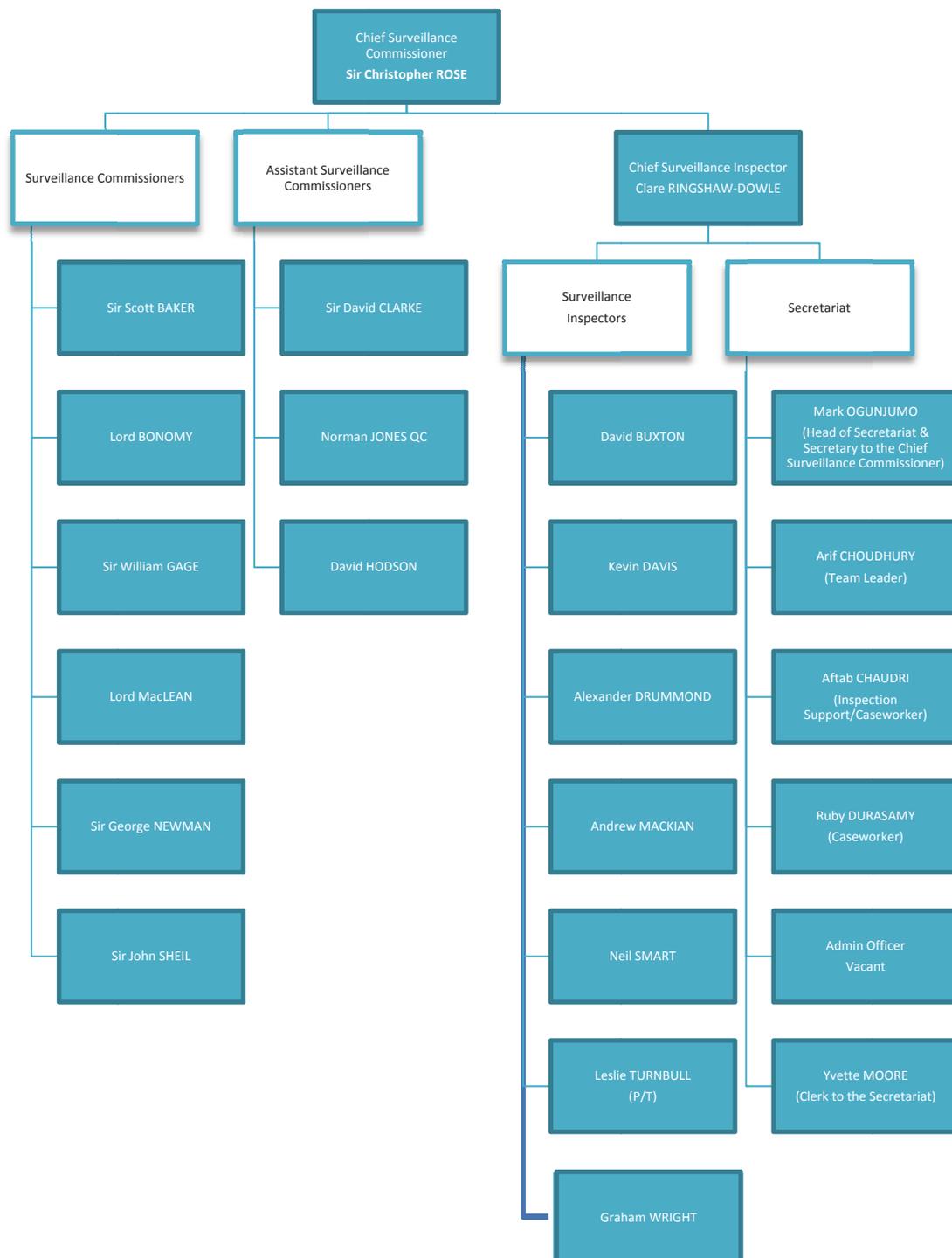
Postal Services Commission

## Appendix F

## OSC expenditure for April 2013 – March 2014

Description	Total (£)
Staff costs, including recruitment and training	1,207,257
Travel and subsistence	119,880
Conferences and meetings	14,303
IT and telecommunications	1,650
Stationery, including printing, postage and publications	5,253
Office and security equipment	11,875
Accommodation	123,600
Other	670
<b>Total</b>	<b>1,484,488</b>

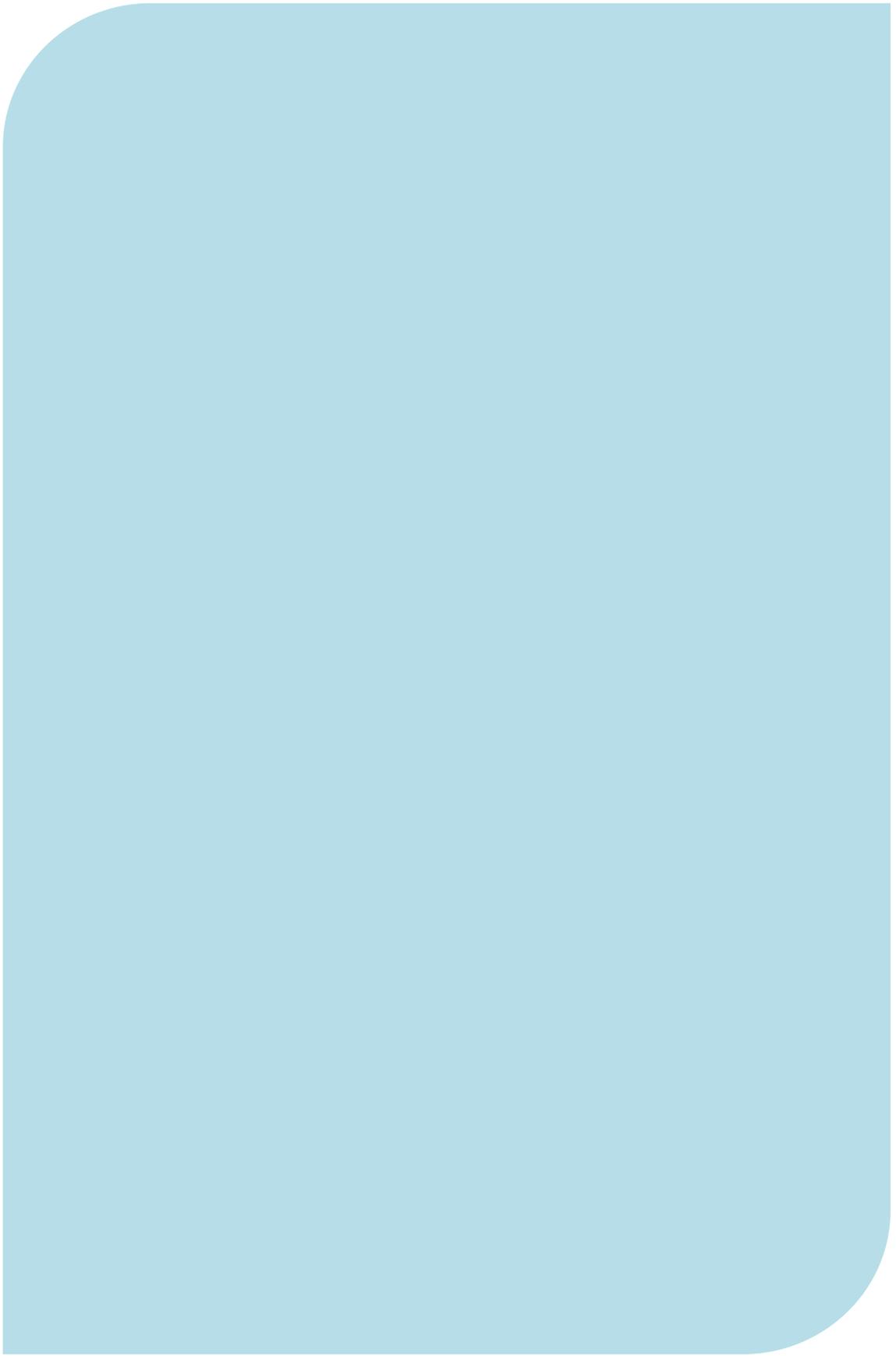
## MEMBERS OF THE OFFICE OF SURVEILLANCE COMMISSIONERS AS AT 31 MARCH 2014



Members who have left during the reporting period:  
 HH Dr Colin Kolbert  
 Mr Sam Lincoln









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