**Performance and Resources Scrutiny Programme 2019**

**Report to: the Office of the Police, Fire and Crime Commissioner for Essex**

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1. **Purpose of Report**

This report is for information only and outlines the positive results of the joint inspection by the Investigatory Powers Commissioners Office (IPCO) for both Kent and Essex Police in January 2019.

1. **Recommendations**

This report is for the board to note, no decisions required.

1. **Executive Summary**

The Serious Crime Directorate were inspected by the Investigatory Powers Commissioners Office (IPCO) between 21/01/2019 and 24/01/2019 on behalf of both forces.

This is an annual inspection which is conducted to assess the level compliance of Essex and Kent Police with the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016 and Part III of the Police Act 1997 in respect of their use and management of communications data, covert surveillance, covert human intelligence sources (CHIS), equipment interference and property interference.

The report concluded that the standards of compliance across both Forces has been found to be of a good standard. All officers and staff engaged with were found to be keen, positive in their attitude to both the inspection and RIPA compliance and willing to take on board constructive criticism and ideas to further improve standards. The Inspectors highlighted that the governance by the SRO in communications data was an example to other areas

The Rt. Hon. Lord Justice Fulford said “I am most pleased to note that both Forces have performed well with regards to compliance in the area of investigatory powers and it follows that congratulations should be offered to yourselves, your senior command teams and the officers and staff with whom my Inspectors engaged. We noted a tangible sense of officers and staff seeking to achieve the highest standards. The CAB team, Authorising Officers and Senior Responsible Officer (SRO) T/ACC Rob Fordham have been instrumental in the delivery of notably good compliance regimes, in the context of having to manage complex operations dealing with significant crime types.”

**4.0 Introduction/Background**

IPCO provides independent oversight of the use of investigatory powers by intelligence agencies, police forces and other public authorities. IPCO replaced the former OSC and IOCCO scrutiny organisations in for regulating and overseeing how public authorities use the investigatory powers available to them under existing law.

Although the IPCO inspection was joint, two reports were received for the relevant areas of the policing being inspected, the split is as follows and will be referred to and 1 and 2 throughout this report:-

1. To assess the compliance of these public authorities with the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016 and Part III of the Police Act 1997 in respect of their use and management of covert surveillance, covert human intelligence sources (CHIS), equipment interference and property interference.

The primary focus of this inspection was the Central Authorities Bureau (CAB), IPD but other departments were visited and include Dedicated Source Units, Technical Services Units and Covert Support.

The below summarises the outcomes of the report:-

Only one recommendation was made, this was regarding the auditing of all Internet Intelligence and Investigations research (formally known as open source).

Overall, this report was very positive and of note are the following paragraphs:-

5.2 CHIS – the applications and authorisations viewed were completed to a consistently high standard with significant consideration of necessity, proportionality and collateral intrusion. Good grip was demonstrated by the Authorising officer.

5.5.1 A selection of directed surveillance authorisations were reviewed. Authorisations were well formed and contained significant consideration of the requirement for the tactic, what other less intrusive tactics had been attempted / considered, and the need to utilise the tactic to develop best intelligence and / or evidence. The statutory considerations of necessity and proportionality were therefore evident. Collateral intrusion considerations were also well formed with specific consideration given and documented within reviews as to the development of the surveillance operation and the potential associated collateral intrusion which may have occurred.

5.7.1 Applications and subsequent authorisations for higher level surveillance tactics (Intrusive surveillance and Property Interference) were of a high quality. Consideration of the necessity and proportionality for the use of the requested tactic was documented in detail by the authorising officer which in the main was the respective Chief Constable for the Force. All applications were developed by professional applicants within CAB and had the benefit of review by the Force Authorising Officer before being placed before the Senior Authorising Officer.

5.10.1 The CAB serves both Forces and staff within continue to complete regular checks and oversight of RIPA applications, authorisations and compliance matters. The CAB staff are instrumental in the maintenance of good standards.

6.1 Standards of compliance across both Forces has been found to be of a good standard. All officers and staff engaged with were found to be keen, positive in their attitude to both the inspection and RIPA compliance and willing to take on board constructive criticism and ideas to further improve standards.

In August 2019 Charter will be implemented, this system will assist with streamlining the covert operations and will provide access for all who wish to apply. Currently COSMoS is housed on Net C which is only available to select individuals and terminals are not easily accessible.

1. To assess compliance with the legislation and procedures governing the acquisition of Communications Data (CD) under Chapter 2 of Part I of the Regulation of Investigatory Powers Act 2000 (RIPA).

The department inspected was the collaborated Communications Intelligence Unit which forms part of the Investigatory Powers Department, Serious Crime Directorate.

The below summarises the outcomes of the report:-

Overall Kent Police and Essex Police comply with the Part I RIPA and its Code of Practice (CoP) by acquiring communications data lawfully and for correct statutory purposes. A good standard of application is produced across the board and the principles of necessity, proportionality and collateral intrusion are justified. Applications are processed and authorised in a timely fashion and the SPoC pursues opportunities to train applicants and adhere to CoP. Designated Persons (DP) discharge their statutory duties responsibly with structures and working practices in place to ensure independence.

The internal oversight functions performed by the SRO D/Supt Hooper and SPoC were seen to be robust and maintain critical scrutiny across the procedures by which CD is acquired these were highlighted as best practice. Good use is made of the urgent oral provisions where it is justified and proportionate to do so, but to protect the integrity of this process it must be explained why the use of a formal written application is not suitable.

In general, this report was favourable, with three recommendations. Of note are the following paragraphs:-

3.1.2 The internal oversight functions performed by the SRO and SPoC were seen to be robust and maintain critical scrutiny across the procedures by which CD is acquired. Good use is made of the urgent oral provisions where it is justified and proportionate to do so.

5.1.1 Overall, applications were found to comply with the requirements set out in the CoP with applicants providing sound reasoning of necessity, a good overview of the investigation or operation, and linked the CD required to devices and persons relevant to the enquiry.

5.1.9 It was evident that collateral intrusion was well understood, and efforts were applied to minimise unnecessary intrusion. On occasions when applicants sought to identify callers’ contacts when several known calls were made, the applicants would request multiple datasets over tight periods rather than a single far more intrusive application spanning a wider period covering all calls.

5.1.10 During the relevant period, 50 applications for CD were made by the Professional Standards Department, of which 26 were submitted for consideration by a DP, with 18 being approved (relating to 8 investigations). All 18 approved applications were examined and found to be necessary and proportionate for preventing or detecting crime. Sound considerations of necessity were given, including clear attribution of the devices relevant to the investigation. The objective for acquiring the data was clear and any periods of data requested were tightly focused around the alleged criminal activity. The SPoC was acting as an effective gatekeeper, supporting the DP, for example by highlighting relevant policies. The DPs, principally the SRO T/Detective Chief Superintendent Stuart Hooper, exhibited care in considering these applications.

5.2.1 A query based search within the Optica workflow system identified 36% of applications submitted during the relevant period were returned by the SPoC for redevelopment. The majority were returned as the SPoC had rightly identified deficiencies with the justification of necessity and proportionality.

5.2.2 On almost 500 occasions the SPoC identified that incorrect data had been specified by the applicant, this exhibits an attention to detail which will help prevent errors from occurring.

5.2.5 It was clear from the returns by the SPoC that a great deal of advice is offered by the SPoCs to the applicants. In terms of supporting the Designated Person, the SPoCs commonly give a written assessment as to whether they believe the application is necessary and proportionate and provide a short summary of what the application is about.

5.6.1 The inspection confirmed good use is made of the urgent oral provisions (often to assist with safeguarding individuals whose life is at risk). Since the previous inspection it was identified that 1,057 authorities had been granted orally under grade 1. The processes in place and 24 / 7 SPoC coverage offers an excellent service in such urgent matters and the volume of such activity provides an indication of how reliant Kent Police and Essex Police are in being able to utilise communications data as a matter of extreme urgency.

5.7.1 The SPoCs attend training and tradecraft events to develop their knowledge and skills. The IPCO inspectors sat with a SPoC who provided an overview upon training output and current guidance being offered to applicants in readiness of OCDA. This was seen to be comprehensive and served to maintain high standards.

5.10.1 The SRO robustly oversees the performance of the SPoC unit which is a key factor in the maintenance of high levels of compliance. He is one of the most active DPs and through monthly SRO reviews is closely aware of how the SPoC is performing. These reviews are fully documented and are an impressive record of the SRO’s oversight. They include: a review of all reportable and recordable errors; the performance of applicants; the time taken by individual SPoCs and DPs to process applications; review of DP’s written considerations; DP returns and DP independence; and review of any application relating to a sensitive profession.

**5.0 Current Work and Performance**

An action plan has been implemented and the following recommendations are being progressed:-

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| **Recommendation** | **Recommendation type** | **Action** |
| Report 1 Internet Intelligence and Investigations Research (formally known as Open Source). To ensure that there is RIPA compliance in this area, the SRO should be satisfied that procedures are in place for the auditing of all Internet Intelligence and Investigators research being undertaken. | Critical recommendation - affects compliance status if not addressed. | * A software solution has been identified that will capture research and provide an audit function for users. The system is Longarm which provides this function and many more which will enhance the work already been undertaken by Investigators. A trial was agreed, however, this is no longer supported from an IT perspective. Further work is now ongoing to procure Longarm without a trial.
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| Report 2Steps should be taken to ensure that applicants provide bespoke considerations to justify consequential ‘future’ subscriber checks.  | Recommendation observed potential for improvements. | * A team meeting was held in March, all CIU staff members (SPOCs) were briefed and the inspection report shared. The CIU Supervisor has also made contact with applicants to make them aware of this recommendation. NFA.
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| Report 2Measures must be introduced to ensure that Designated Persons (DPs) provide endorsement of their urgent oral authorities; and applications / authorisations for Grade 2 urgent oral cases must be explicit as to why the written process cannot be undertaken.  | Core recommendation improvements must be made.  | * CIU staff members will call DPs and record the considerations including why the written process cannot be undertaken. They will then follow this up with an email requiring a response from the DP. These cases will remain open until a response is received. Any applications that remain open for a month should be notified to the RIPA Manager. NFA.
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| Report 2Steps must be taken to ensure a) the accuracy of data collected relating to sensitive professions; and b) find a solution that enables relevant fields within Optica to be amended by SPoC where it is appropriate to do so (to include sensitive professions, crime type and statutory purpose). | Core recommendation improvements must be made.  | * Optica is the workflow system utilised for communications data. A request has been made to the Home Office to amend the layout of drop down options. Currently the sensitive profession option is beside ‘not sensitive’ and is therefore incorrectly chosen. In addition there will be notification to check that the applicant requires the former if he / she has selected it. User Acceptance Testing for this begins in June with implementation scheduled for July 2019.
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**6.0 Implications (Issues)**

As highlighted above a long-term solution to the first recommendation has not yet been secured. A one month trial for a system called Longarm was agreed through the DCCs board supporting the NPOCC national trials, however, the necessary work by the IT department was not proportionate for the trial. Enquiries are now being undertaken to procure Longarm which will also focus on demonstrations from similar companies offering comparable services.

A system such as Longarm is necessary for those undertaking III research, as it will act as an audit function for their work. It will also hide the IP address of the user, therefore allowing covert investigations to remain hidden from those persons being targeted. A number of other Forces already have Longarm and recommend it.

In the interim a dip sample by supervisors will be implemented and monitored.

**6.1 Links to Police and Crime Plan Priorities**

The work undertaken by the Central Authorities Bureau and the Communications Intelligence Bureau is reactive by its very nature as the teams quality assure and process applications and any associated submissions received from units such as Intelligence functions. The applications vary in crime type and cover both level 1 and 2, therefore they include the criminality lists in the Police and Crime Plan namely anti-social behaviour, domestic abuse, serious violence, gangs and organised crime and crimes against children and vulnerable people.

The teams ensure that staff are digitally equipt skilled and enabled.

There is a tremendous amount of hard work that goes into ensuring this sometimes controversial area of policing is used effectively and in such a way that the public have confidence in the legitimacy of these policing tactics.

**6.2 Demand**

Technology is increasingly embedded in our daily lives, changing the shape of society and the nature of the crimes we investigate

90% of the data on the internet has been created in the last 2 years, and within 5 years there will be 50 billion smart connected devices all developed to collect, analyse and share data

Communications technology has evolved rapidly over the last twenty years and the rate of change will only increase. That evolution has brought with it huge challenges for law enforcement. The increasingly complex world of communications technology and the changing ways in which we communicate with each other, technologies that cross communications platforms and geographical boundaries all make it more difficult for us to tackle the serious threats that we all face. We have seen a continual increase in demand to support investigations in Essex and investigations now involve an element of digital data which is fundamental to a successful investigation and the prevention and detection of crime

The Office for Communications Data Authorisations (OCDA), part of the surveillance watchdog IPCO will take responsibility for the non-urgent communication data authorities following a judicial review. This was due become operation in July 2018 but will not now be up and running until at least November 2019

**6.3 Risks/Mitigation**

The only current risk is that if a permanent solution is not found to audit III research before the next inspection Kent and Essex are likely not to be able to discharge the action.

**6.4 Equality and/or Human Rights Implications**

There has been no identified impact on equality, diversity or human rights.

**6.5 Health and Safety Implications** There are no health and safety implications.

**7.0 Consultation/Engagement**

No others have been consulted whilst writing this paper.

**8.0 Actions for Improvement**

With reference to the first recommendation, work has been carried out to ensure that those undertaking III research keep appropriate records of their research; this has been communicated via the extranet to both Forces. The long term goal is outlined above.

With regards to recommendations 2 and 3, monthly scrutiny and oversight, meetings within IPD will ensure compliance of these issues and that going forward we do not lapse back into these practices.

Concerning the last recommendation, liaison has been undertaken with the Home Office to rectify the issue outlined and action has been taken.

**9.0 Future Work/Development and Expected Outcome**

Liaison is now ongoing with IT and Procurement regarding the III recommendation. Two further companies have been identified which provide a similar audit function and they have been contacted to provide a demonstration of their systems.