

[REDACTED]

Security Service (MI5)

My oversight of MI5 in 2013 occurred as follows:

Pre-reading days: 4 July and 27 - 28 November

Inspection Days: 11 July and 5 December

'Under-the-bonnet' visit: 6 December

Open:

My inspection visit to MI5 began with a general update from the Deputy Director General regarding current threats to the UK and subsequent priorities of MI5.

(July: The DDG began with a formal threat assessment nationally and internationally and event since my last inspection [REDACTED])

[REDACTED]

Notes of Inspection. Action Points and/or Closed Report

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NR

COVERT HUMAN INTELLIGENCE SOURCE

CHIS Participation in Criminality

[REDACTED] CHIS participate in criminality. For example, [REDACTED]

We discussed the difficult decisions that MI5 make [REDACTED]

I was briefed about a case were participation in criminality [REDACTED]

[REDACTED] As part of my oversight, I am not concerned if CHIS go ahead with criminal activity. Instead I am looking at the public interest

[REDACTED]

[REDACTED]

[REDACTED]

I was provided with a copy of their official guidance: "Guidance on the use of Agents who participate in Criminality".

[REDACTED]

NR

[REDACTED]

NR

[REDACTED]

[REDACTED]

[REDACTED]

NR

[REDACTED]

[REDACTED]

[REDACTED]

NR

[REDACTED]

[Redacted]

NR

[Redacted]

CHIS Participation in Criminality

I am now required to conduct oversight of this in MI5 ie:

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

Some of the cases I saw looked very broad but MI5 explained [REDACTED] as well as the necessity and proportionality for the cases.

[REDACTED]

NR

Future of Oversight

[REDACTED]

NR

Talking to people in the business is also important. MI5 agreed and suggested inviting observers in future.

[REDACTED]



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IPCO

Investigatory Powers
Commissioner's Office

PO Box 29105, London
SW1V 1ZU

Andrew Parker
Director General of MI5

5 September 2018

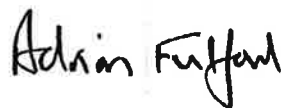
Dear Andrew

ISC 2016 Round 2 inspection report and disclosure


Please find attached a belated inspection report arising from an Inspection undertaken by Sir Mark Waller and his staff in December 2016. This report was written in the spring of 2017 by two of my inspectors based on the hand written notes of Sir Mark and his staff officer, both of whom had left the ISC by then. Neither of the inspectors involved in producing this report were involved in the inspection and the draft version was sent to MI5 for fact checking and comment in late May 2017. Initial comments were received from MI5 on 1 June and emails indicate that the amended draft report was sent for final fact checking soon after but only a holding response was received with respect to this report. Unfortunately, this is where the trail goes cold and neither my office nor MI5 have been able to track down a finalised and formally issued version of this report. This failure only came to light during the recent IPT disclosure exercise regarding Participation in Criminality. I am content that this final version of the report should form the basis of any disclosure to the IPT.

This failure took place during a period of transition; nevertheless we have introduced new procedures to better track the production, approval and issue of inspection reports.

Yours sincerely



The Rt. Hon. Lord Justice Fulford
The Investigatory Powers Commissioner



Report of the Intelligence Services Commissioner for 2016

CONFIDENTIAL ANNEX

The Rt Hon Sir Mark Waller

July 2017

**Excluded from publication under Section 60(5) of the Regulation of Investigatory Powers Act
2000**

Pages 2 and 3 withheld on relevancy grounds



ADDITIONAL FUNCTIONS

Under paragraph 59A of RIPA, inserted by the Justice and Security Act, the Prime Minister may direct me to keep under review the carrying out of any aspect of the functions of the intelligence services.

The Prime Minister has to date issued three such directions, placing all of my oversight on a statutory footing:

- the acquisition, use, retention, disclosure, storage and deletion of bulk personal datasets including the misuse of data and how this is prevented;
- compliance with the Consolidated Guidance;
- the application of the Security Services guidelines on the use of agents who participate in criminality and the authorisations issued under them.

In a letter to me dated 27 November 2014 the Prime Minister said the direction to oversee CHIS participation in criminality would not be avowed given the potential damage to national security were its existence to be made public. However, the existence of a "third direction" was revealed by GCHQ to the Investigatory Powers Tribunal, and therefore made public, during this year. I have had requests to make public the subject matter of this direction, with which I have not complied. However, the Government will need to consider how it communicates any additional oversight it asks the Investigatory Powers Commissioner to undertake.

Pages 5 to 19 withheld on relevancy grounds

[REDACTED]

CHIS Participation in Criminality (PIC) – MI5

In his letter of 27 November 2014, the Prime Minister directed me to keep under review: the application of MI5's guidelines on the use of agents who participate in criminality and the authorisations issued under them. In the letter the Prime Minister said this direction would not be avowed given the potential damage to national security were its existence to be made public.

For my review, I am concerned to assess whether in my opinion what can be called "the public interest test" is being properly applied. MI5 identify all cases in which participation in criminality has been authorised and I make a selection, which is close to 100 per cent. I am satisfied that great care is taken only to authorise participation in criminality when the public interest test is fulfilled. My only further comments are as follows:

In the case of agent [REDACTED] I was concerned that MI5 had failed to accurately reflect the CHIS's participation in criminal activity [REDACTED]

[REDACTED] PIC [REDACTED] rather vaguely referred to [REDACTED]

[REDACTED] I recommended that [REDACTED] PIC [REDACTED] should be more explicit to avoid any confusion.

[REDACTED]

[REDACTED]

NR

[REDACTED]

[Redacted]

[Redacted]

NR

[Redacted]

Pages 22 to 38 withheld on relevancy grounds



RECOMMENDATIONS

Please note that these recommendations have been redacted from the open report due to the sensitivities of the cases involved. A full list of public recommendations is available in the Commissioner's Annual Report.

Organisation	Category	Recommendation
[Redacted content]		

NR



[Redacted]

[Redacted]

NR

MIS	CHIS
-----	------

[Redacted]

NR

MIS	CHIS	Agent Participation [Redacted] should be explicit about the criminality involved to avoid any confusion.
-----	------	--

[Redacted]

NR

[Redacted]

Pages 41 to 53 withheld on relevancy grounds



Report of the Intelligence Services Commissioner for 2015

CONFIDENTIAL ANNEX

The Rt Hon Sir Mark Waller

July 2016

Excluded from publication under Section 60(5) of the Regulation of
Investigatory Powers Act 2000



Pages 2 to 11 withheld on relevancy grounds

[REDACTED]

[REDACTED]

NR

CHIS Participation in Criminality

MI5

In his letter of 27 November 2014, the Prime Minister directed me to keep under review: the application of the Security Services guidelines on the use of agents who participate in criminality and the authorisations issued under them. In the letter the Prime Minister said this direction would not be avowed given the potential damage to national security were its existence to be made public.

As I set out in my report for 2014, MI5 has an internal process and guidelines for authorising agent participation in criminality. These guidelines have been in place since the early 1990s and arose out of the need for agents recruited and run by MI5 sometimes to engage in criminality, [REDACTED]

[REDACTED]

MI5 CHIS have been authorised to participate in:

[REDACTED]

[REDACTED]

[REDACTED]

For my review, I am concerned to assess whether in my opinion what can be called "the public interest test" is being properly applied.

No authority can make criminal conduct non-criminal. [REDACTED]

[REDACTED]

In my oversight I am prepared to make an assessment of whether participation would be likely to satisfy the public interest test. In my view, this test would be satisfied if the guidelines were adhered to.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It seemed that MI5 had given approval for this operation confirming that it was necessary and proportionate in the interest of national security. I was concerned that MI5 should not have approved

[REDACTED] MI5 wrote to me on [REDACTED] explaining that

[REDACTED]


[REDACTED] I accepted that the public interest test would be satisfied.

[REDACTED]

NR

[REDACTED]

Pages 15 to 96 withheld on relevancy grounds



Report of the Intelligence Services Commissioner for 2014

CONFIDENTIAL ANNEX

The Rt Hon Sir Mark Waller

June 2015

Excluded from publication under section 60(5) of the Regulation of Investigatory Powers Act 2000

Pages 2 to 49 withheld on relevancy grounds

[REDACTED]

11. AGENT PARTICIPIATION IN CRIMINALITY

I have been directed to keep under review:

- the application of the Security Services guidelines on the use of agents who participate in criminality and the authorisations issued under them.

In a letter to me dated 27 November 2014 the Prime Minister stated that this direction would not be avowed given the potential damage to national security were its existence to be made public.

In summary:

- In 2014 the Security Service had [REDACTED] CHIS authorised to participate in criminality.
- On 31/12/14 the extant number of authorisations to participate in criminality was [REDACTED]
- [REDACTED]
- [REDACTED]
- The total number of authorisations in 2014 was [REDACTED]
- The number of authorisations extant on 31/12/14 was [REDACTED]

The following are examples of the types of criminality in which Security Service CHIS have been authorised to participate during 2014:

[REDACTED]

The Security Service has an internal process for the authorisation of agent participation in criminality. These guidelines have been in place since the early 1990s and arose out of the need for agents recruited and run by MI5 to

[REDACTED]

[REDACTED]

sometimes engage in criminality, [REDACTED]
[REDACTED]

[REDACTED] It is sometimes necessary for example to allow participation in criminality [REDACTED]
[REDACTED]

The Guidelines set out the circumstances in which internal authorisation may be given [REDACTED]
[REDACTED]
[REDACTED]

So far as my review is concerned I am concerned to assess whether in my opinion what can be called "the public interest test" is being properly applied.

No authority or anything I can say can make conduct non-criminal. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] In my oversight I am prepared to make an assessment of whether participation would be likely to satisfy a public interest test. If the guidelines were adhered to, this would in my view be satisfied.

In each of the cases I have reviewed the guidelines have been adhered to and the public interest test would have been satisfied.

The Security Service cannot currently identify precisely how many CHIS authorisations involve participation in criminality. In future they will keep a record of this.

Among the CHIS selected for inspection there were some cases which need special mention. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Pages 53 to 65 withheld on relevancy grounds



Report of the Intelligence Services Commissioner for 2013

CONFIDENTIAL ANNEX

The Rt Hon Sir Mark Waller

26th June 2014

Excluded from publication under section 60(5) of the Regulation of Investigatory Powers Act 2000

Pages 2 and 3 withheld on relevancy grounds

[REDACTED]

2. EXTRA-STATUTORY FUNCTIONS

Under paragraph 59A of RIPA, inserted by the Justice and Security Act, the Prime Minister may direct me to keep under review the carrying out of any aspect of the functions of the intelligence services. I have requested that such directions are given in relation to my extra-statutory functions, but until they are, I will continue to provide oversight on an extra-statutory basis.

In my open report I have set out my statutory functions and one of my extra-statutory functions relating to the Consolidated Guidance to Intelligence Officer and Service Personnel on Detention and Interviewing Detainees and on Passing and Receipt of Intelligence Relating to Detainees (Consolidated Guidance).

In addition to this I have been asked to oversee certain other matters and report in the Confidential Annex on the same:

[REDACTED]

NR

2.3 Agent Participation in Criminality

By letter dated 27th November 2012 from the Prime Minister, I was asked (and I have agreed) to keep under review the Security Service's long standing policy for their agent handlers to agree to agents' participation in crime in circumstances where it is considered such involvement is necessary and proportionate [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] For this function again it may be that this too will become the subject of a direction under section 59A.

2.4 Justice and Security Act

As I said in my open Report, my extra-statutory roles could be placed on a statutory footing through a direction from the Prime Minister.

The Prime Minister must publish such directions "except so far as it appears to the Prime Minister that such would be contrary to the public interest or prejudicial to:

- National Security,
- The prevention or detection of serious crime,
- The economic well-being of the United Kingdom, or
- The continued discharge of the functions of any public authority whose activities include activities that are subject to review by the Intelligence Services Commissioner."

I would like to discuss further what directions should be given and how much should be made public. I would prefer my oversight in relation to bulk data and its use to be made public and it is for consideration whether my oversight should be extended to the use by the agencies of operational data obtained under Part II of RIPA or ISA sections 5 and 7. It may be possible to make public that an oversight of the Secretary of State's powers to give directions under section 94 exists but it is difficult to see how any report could be made in an open Annual Report. I am content for my oversight of agent participation in criminality not to be published.

[REDACTED]

10. AGENT PARTICIATION IN CRIMINALITY

By letter from the Prime Minister dated 27 November 2012 I was asked (and agreed) to provide extra-statutory oversight of the participation in criminal activity by Security Service agents.

10.1 Security Service

The Security Service has an internal process for the authorisation of agency participation in criminality. These guidelines have been in place since the early 1990s and arose out of the need for agents recruited and run by MI5 to sometimes engage in criminality, [REDACTED]

[REDACTED] These activities [REDACTED] are sometimes necessary to protect national security [REDACTED]

The Guidelines set out the circumstances in which internal authorisation may be given [REDACTED]

[REDACTED] They provide as follows:

Introduction

1. These Guidelines are intended to provide guidance to agent-running sections on the use of agents who participate in criminality.
2. Part II of the Regulation of Investigatory Powers Act 2000 ("RIPA") creates a regime for authorising the conduct and use of Covert Human Intelligence Sources ("CHISs"). This regime applies to the Service's use of agents, and the Service conducts its agent operations in accordance with RIPA, its subordinate legislation and the CHIS Code of Practice issued under it.
3. RIPA does not provide any immunity from prosecution for agents or others who participate in crime. Section 27 of RIPA provides that conduct specifically authorised under a CHIS authorisation is "lawful for all purposes", [REDACTED]

4. Subject to this, neither RIPA nor the Code of Practice provides for CHISs to be authorised to participate in criminality. However, the Service has established its own procedure for authorising the use of agents participating in crime [REDACTED]

5. [REDACTED] the nature of the work of the Service is such that its agents are frequently tasked to report on sophisticated terrorist and other individuals and organisations whose activities may pose a threat to national security and/or involve the commission of serious offences. In those circumstances it may sometimes be

LPP

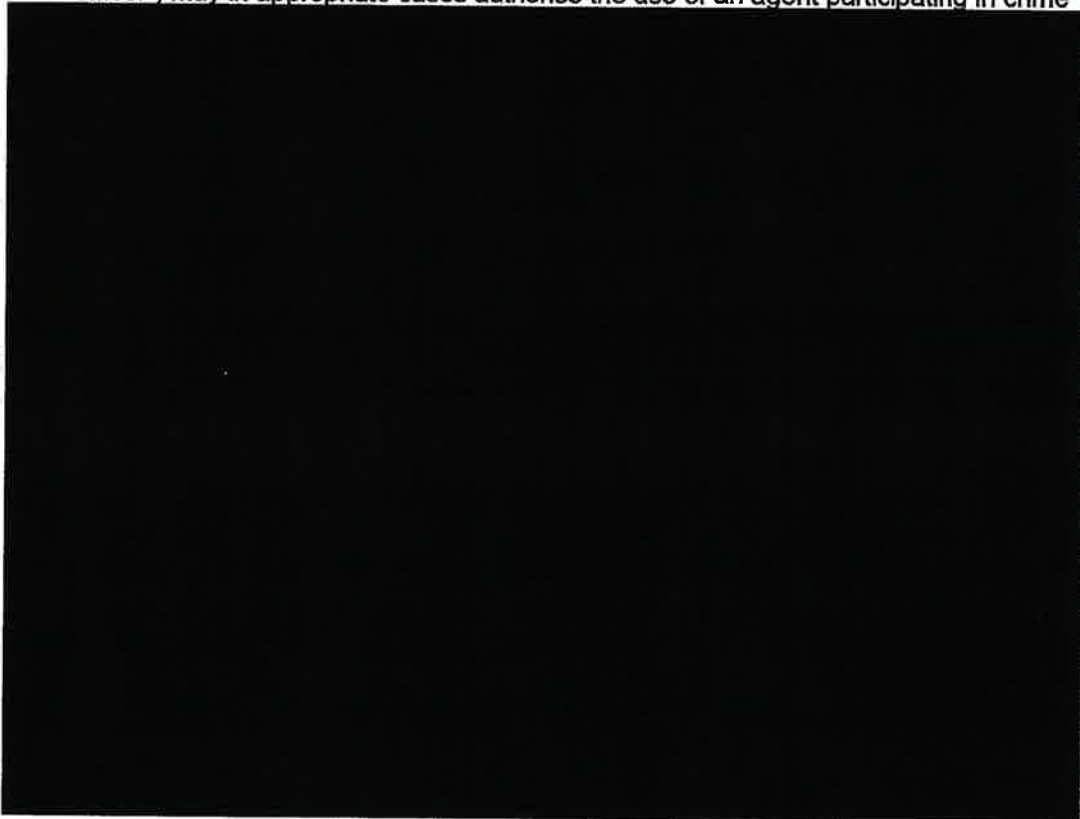
[REDACTED]

[REDACTED]

necessary and proportionate for agents to participate in criminality in order to secure or maintain access to intelligence that can be used to save life or disrupt more serious criminality, or to ensure the agent's continued safety, security and ability to pass such intelligence.

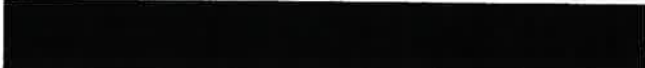
Authorisation of use of participating agent

6. An officer empowered to issue a CHIS authorisation under RIPA (an "authorising officer") may in appropriate cases authorise the use of an agent participating in crime



Effect of an authorisation

9. An authorisation of the use of a participating agent has no legal effect and does not confer on either the agent or those involved in the authorisation process any immunity from prosecution. Rather, the authorisation will be the Service's explanation and justification of its decisions should the criminal activity of the agent come under scrutiny by an external body e.g. the police or prosecuting authorities. In particular, the authorisation process and associated records may form the basis of representations by the Service to the prosecuting authorities that prosecution is not in the public interest. Accordingly, any such authorisation should, on its face, clearly establish that the criteria for authorisation are met, in terms which will be readily understood by a prosecutor.



[REDACTED]

Procedure

10. [REDACTED]

11. It is vital that full and accurate records are made of everything said to an agent on the subject of participation and of his response.

[REDACTED] it should be clearly explained to the agent that the authorisation process does not bestow on the any immunity from prosecution.

[REDACTED]

[REDACTED]

As the Guidelines set out, an authorisation is provided on the express understanding that it carries no immunity from prosecution. In the event that an agent was ever considered for prosecution for an authorised crime, MI5 would need to make representations to the Crown Prosecution Service arguing that a prosecution would not be in the public interest. The authorisation setting out the justification for the participation in criminality would form the basis of this argument.

[REDACTED]

[REDACTED]

So far as my review is concerned I am concerned to assess whether in my opinion what can be called "the public interest test" is being properly applied. Nothing I can say can make conduct non-criminal but I am prepared to express a view as to whether I think the test is being properly applied.

In 2013, the Security Service had [REDACTED] authorised to participate in criminality. Of these I scrutinised [REDACTED] authorised to participate in criminality⁷.

On 31 December 2013, the extant number of Security Service CHIS authorised to participate in criminality was [REDACTED]

The following are examples of the types of criminality in which Security Service CHIS have been authorised to participate during 2013:

[REDACTED]

No authority or anything I can say can make conduct non-criminal. [REDACTED]

[REDACTED]

In my oversight I am prepared to make an assessment of whether participation would be likely to satisfy a public interest test. If the guidelines were adhered to, this would in my view be satisfied.

Having looked at [REDACTED] cases of CHIS authorised to participate in criminality I can say that, in my view, in each case the guidelines have been adhered to and the public interest test would have been satisfied.

[REDACTED]

[REDACTED]

Pages 32 to 74 withheld on relevancy grounds



**Report of the
Intelligence Services Commissioner
2012**

CONFIDENTIAL ANNEX

The Rt Hon Sir Mark Waller

Excluded from publication under section 60(5) of the Regulation of Investigatory Powers Act 2000

Pages 2 and 3 withheld on relevancy grounds

[REDACTED]

Statutory and Extra-Statutory Functions

In my open report I have set out my statutory functions and one of my extra-statutory functions relating to the Consolidated Guidance to Intelligence Officer and Service Personnel on Detention and Interviewing Detainees and on Passing and Receipt of Intelligence Relating to Detainees (Consolidated Guidance). In addition to this I have been asked to oversee:

[REDACTED]

NR

Agent Participation in Criminality

By Letter dated 27th November 2012 from the Prime Minister, I was asked (and I have agreed) to keep under review the Security Service's long standing policy for their agent handlers to agree to agents participation in crime in circumstances where it is considered such involvement is necessary and proportionate

[REDACTED]

I am in the process of establishing a system for carrying out this task.

[REDACTED]

Pages 5 to 55 withheld on relevancy grounds



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Investigatory Powers
Commissioner's Office

MIS Inspection Report – Covert Human Intelligence Sources and Directed Surveillance

Date: 9 – 12 April 2018

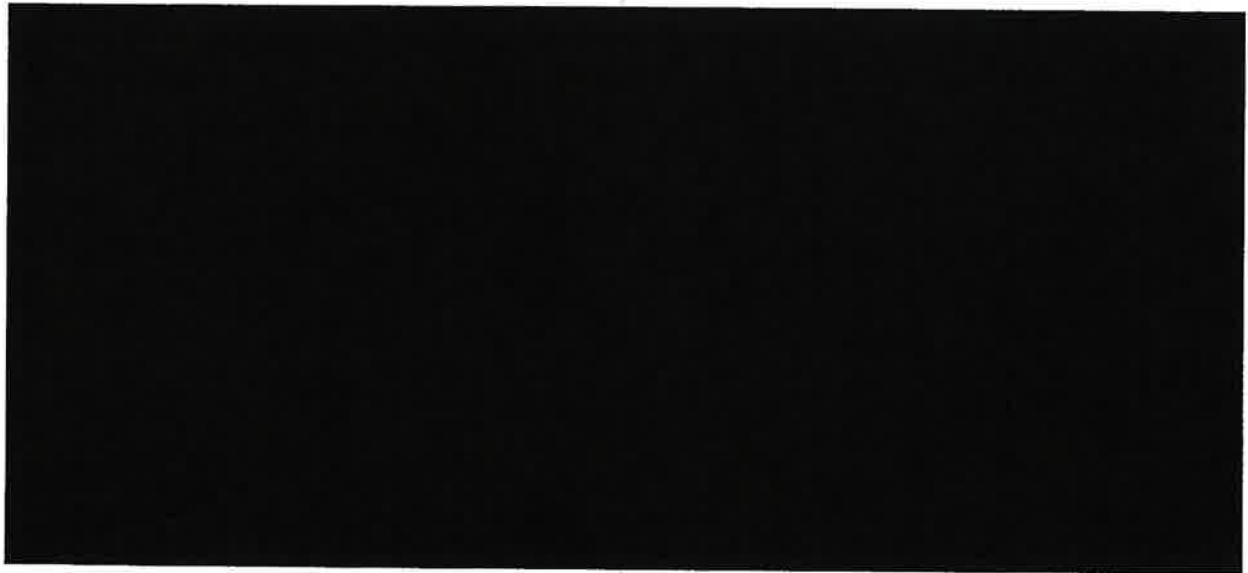
Led by [redacted] Commissioner Sir John Goldring and inspectors [redacted] NR

Authorisation	Current no.	New since last inspection (those still extant in current no.)	Cancelled or expired since last inspection	No. selected for inspection
CHIS*	[redacted]	[redacted]	[redacted]	[redacted]
DSA	[redacted]	[redacted]	[redacted]	[redacted]
Errors reported since last inspection				

NR

[redacted] CHIS cases authorised to participate in criminality (PIC), [redacted]
 [redacted] number of CHIS authorised to participate in
 criminality was [redacted]

Summary assessment and recommendations



NR



Pages 2 and 3 withheld on relevancy grounds

[Redacted]

[Redacted]

N

14. We found that CHIS Participation in Criminality (PIC) was well considered

[Redacted] The activity authorised was in our view justified and in line with MI5 guidance.

[Redacted]

Main report

[Redacted]

N

[Redacted]

Pages 5 to 10 withheld on relevancy grounds

[Redacted]

[Redacted]

NR

62. CHIS included PIC

good standard with clear explanations of necessity

and proportionality

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

69. We noted that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This seems proportionate

70. [REDACTED]

[REDACTED]

The necessity case was strong

[REDACTED]

[REDACTED]

Participation in criminality for this CHIS was well considered and proportionate to the aims set out.

[REDACTED]

NR

[REDACTED]

[REDACTED]

NR

[REDACTED]

NR

83. [REDACTED] PIC

CHIS,

[REDACTED]

[REDACTED]

NI

[REDACTED]

[REDACTED]

[REDACTED]

NR

[REDACTED]

92. [REDACTED] PIC was referred to

[REDACTED] There was very comprehensive consideration of the necessity, proportionality and ethics of authorising this activity

[REDACTED]

[REDACTED]

NI

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Pages 16 to 18 withheld on relevancy grounds



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Investigatory Powers
Commissioner's Office

MIS Inspection Report – Protective Monitoring, Section 5 Property Warrants and Intrusive Surveillance, CHIS and Directed Surveillance Authorisations.

Date: 16 – 20 October 2017

Led by Sir John Goldring - inspectors 

NR

Authorisation	Current no.	New since last inspection	Cancelled or expired since last inspection	No. selected for inspection October 2017
S5 Warrants				
DSAs				
CHIS				
Errors reported since last inspection				

NR

NR

Summary assessment and recommendations



NR



Pages 2 to 12 withheld on relevancy grounds

[REDACTED]

N

[REDACTED]

NR

84. [REDACTED] There was clear consideration regarding a number of difficult issues including participation in criminality (PIC), [REDACTED]

NR

NR

[REDACTED] There were no recommendations [REDACTED]

NR

[REDACTED]

NR

86. [REDACTED] PIC [REDACTED] well considered and clearly met the guidance.

[REDACTED]

[REDACTED]

NR

88. [REDACTED] complex and difficult case [REDACTED] PIC [REDACTED] met the guidelines. [REDACTED]

NR

[REDACTED]

NI

[REDACTED]

[REDACTED]

[REDACTED]

NR

91.

[REDACTED]

NR

There was also clear evidence that Participation in Criminality had been well considered

NR

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

98.

[Redacted]

NR

PIC

authorised

PIC was necessary

and met the guidelines.

[Redacted]

[Redacted]

[Redacted]

NR

[Redacted]

[REDACTED]

[REDACTED]

NR

[REDACTED]

[REDACTED]

106. CHIS was correctly authorised for participation in criminality

[REDACTED]

[REDACTED]

NR

[REDACTED]

NR

[REDACTED]

Pages 17 to 21 withheld on relevancy grounds





SIA Inspection Overview 2017 R1

Organisation	Security Service
Dates	Selection day: 8 May 2017 Reading days: 12-15 June 2017 Inspection: 30 June 2017

Warrants and Authorisations					
Statistics					
Type	Held	Selected	New (since last inspection)	Cancelled (since last inspection)	
PW	[Redacted]				NR
PSW	[Redacted]				
ISW	[Redacted]				
DSA	[Redacted]				
CHIS	[Redacted]				
Total	[Redacted]				NR

Detail					
[Redacted]					NR

General Discussion					
1. DDG hosted the Inspection and provided Sir Adrian Fulford, Sir John Goldring and the Inspectors with an overview of the current threat picture, [Redacted]					NR

[Redacted]					NR
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Pages 2 and 3 withheld on relevancy grounds

[REDACTED]
CHIS

NR

Participation in Criminality

16. The inspectors pointed to inconsistencies in a number of cases [REDACTED]

[REDACTED]
[REDACTED] The inspectors recommended that this
should be more consistent in the future.

[REDACTED]

[REDACTED]

[REDACTED]

NR

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NR

Page 7 withheld on relevancy grounds