



**Corporate Policy and Guidance
On
The Regulation
Of Investigatory Powers Act 2000**

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Contents

1. Corporate Guidance

- 1.1 Forward
- 1.2 Employee or Non-RIPA Surveillance
- 1.3 CCTV Use
- 1.4 Lancashire County Council Auditing

2. Definitions

- 2.1 Definitions
- 2.2 Communications Data

3. Covert Surveillance

- 3.1 Introduction
- 3.2 Collateral Intrusion
- 3.3 Records of Authorisations
- 3.4 Authorisation of Directed Surveillance
- 3.5 Covert Video Camera and Audio Recording Equipment
- 3.6 Grounds for granting Authorisation
- 3.7 Duration of authorisation
- 3.8 Renewal
- 3.9 Cancellation
- 3.10 Records
- 3.11 Handling Product from Surveillance Activities
- 3.12 Storage of Product
- 3.13 Disposal of Product

4. Guidance Notes for the Authorisation of Directed Surveillance

- 4.1 Activity Involved
- 4.2 Directed Surveillance via Recording of telephone conversations
- 4.3 Test purchasing of age restricted products

5. Covert Human Intelligence Sources (C.H.I.S.)

- 5.1 Introduction
- 5.2 Further Guidance on the C.H.I.S. Process
- 5.3 Management of Sources
- 5.4 Designated handlers and Controllers for the use of Covert Human Intelligence
- 5.5 Security and Welfare Sources
- 5.6 The Application for Authorisation
- 5.7 Duration of Authorisation
- 5.8 Renewals and Reviews
- 5.9 Cancellations
- 5.10 Source Records

6. Risk Assessments for all RIPA Surveillance Activities

7. Communications Data

- 7.1 Accessing Communications Data
- 7.2 What is Communications Data?
- 7.3 Who are Communication Service Providers?
- 7.4 What information can be obtained from Communications Service Providers?
- 7.5 How can this information be obtained
- 7.6 Contact with the Communications Industry
- 7.7 The Role of the Single Point of Contact (SPOC)
- 7.8 The Role of the Authorising Officer
- 7.9 The Application Process
- 7.10. Records and Errors
- 7.11 Further Relevant Documentation

8. Seeking JP approval for authorisations

9. Lancashire County Council Auditing of Authorisations and Records

10. Inspections by the Investigatory Powers Commissioner's Office

11. Complaints

12. Management Records

General Statement of Policy

- This policy document relates to use by Lancashire County Council officers of directed surveillance, covert human intelligence sources and access to telecommunications information, for the prevention and detection of crime.
- The County Council is committed to upholding human rights.
- As a public body and responsible employer, the County Council wants to conform to the letter and spirit of the requirements of the Regulation of Investigatory Powers Act 2000, (RIPA) the Investigatory Powers Act 2016, (IPA) and associated regulations and codes of practice relating to the use of covert surveillance, the use of covert human intelligence sources, and access to communications data.
- County Council officers will only undertake surveillance work when it is both necessary and proportionate to the ends it seeks to achieve.
- From 1 November 2012 local authorities have been required to obtain judicial approval prior to using covert techniques. Local authority authorisations for CHIS and Directed Surveillance under RIPA are only be given effect once an order has been granted by a justice of the peace in England and Wales, a sheriff in Scotland and a district judge (magistrates' court) in Northern Ireland.
- Additionally, from this date local authority use of directed surveillance under RIPA will be limited to the investigation of crimes which attract a 6 month or more custodial sentence, with the exception of offences relating to the underage sale of alcohol and tobacco.

From 1 November 2018 a new serious crime threshold applies to the acquisition of some communications data.

Corporate Guidance

1.1 Foreword

1.1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) and Investigatory Powers Act 2016 (IPA) provide a framework for certain bodies (including local authorities) to undertake their duties aimed at preventing or detecting crime, which may interfere with a citizens normal human rights in respect of privacy by the use of 'covert surveillance', Covert Human Intelligence Sources (CHIS) i.e. undercover officers/informants and to obtain certain limited communications data.

1.1.2 The use of these techniques must be "necessary" and "proportionate" to the investigation i.e. simple, overt methods of gathering information are not available and the matter under investigation should not be trivial.

1.1.3 The legislation establishes detailed requirements in respect of the seniority, training awareness of Authorising Officers (referred to as 'Designated Officers' in the Act) and also the formal assessment and recording processes before undertaking any surveillance activity.

1.1.4 The Authorising Officer is required to be an officer at least at the following level within the authority:

- Director
- Head of Service
- Service Manager or equivalent

The Authorising Officers for the Council are The Head of Trading Standards and Trading Standards Managers within Trading Standards as authorised by the Director of Corporate Services.

1.1.5 This guidance addresses the detailed requirements of RIPA/IPA and codes of practice in relation to:

- the covert surveillance of individuals,
- the use of covert human intelligence sources, including undercover officers/agents/informants,
- the recording of telephone conversations
- for obtaining communications data.

This guidance provides a summary and overview of the legislation and codes of practice. DO NOT seek to rely on it alone. In the event of any doubt, any senior managers, or applicants, should refer to the relevant legislation or code and consult the Director of Corporate Services or the Head of Trading Standards before any action is taken.

1.1.6 The Acts and relevant Codes of Practice (as amended in September 2018) had effect from 1 October 2000 and impose requirements as regards authorisation, procedures and records, which must be followed by Public Authorities undertaking investigations which fall within the scope of the Act

1.1.7 Appropriate staff should familiarise themselves with the guidance and procedures, the legislation and the Codes of Practice. If in any doubt advice and guidance should be sought from an appropriate officer before undertaking any enforcement activities which may fall within the scope of the Act.

1.1.8 Lancashire County Council is committed to carrying out its enforcement functions in an equitable, practical and consistent manner. We are committed to these aims and to maintaining a fair and safe environment. This guidance demonstrates our desire to carry out our criminal investigations in a fair and equitable manner that respects all human rights and contributing to this commitment.

1.1.9 Enforcement activities of the Council that fall within the remit of the RIPA/IPA are subject to monitoring and oversight by the Investigatory Powers Commissioner's Office.

1.1.10 Complaints made regarding activities of the Council, which are within the scope of RIPA/IPA, can be investigated by the Investigatory Powers Tribunal.

1.1.11 The Council may be liable to claims alleging breaches of an individual's rights under the Human Rights Act 1998 if officers fail to follow the requirements of the legislation and Codes of Practice.

1.1.12 Failure to follow the legislation and Codes may also adversely affect the admissibility of any evidence obtained using methods covered by RIPA/IPA. The safety of members of the public supplying information to the Council may also be compromised where an authorisation is not in place.

1.1.13 When undertaking any covert investigation, officers should have regard to the health and safety of persons affected by the activity. This may include themselves, colleagues and members of the public and the person you are being asked to observe. A risk assessment of the investigation technique being proposed should be undertaken, having regard to Corporate Health and Safety Policy and any supplementary guidance issued.

1.1.14 The monitoring of Internet and e-mail use is regulated by the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, made under RIPA.

1.2 Employee or Non-RIPA Surveillance

1.2.1 RIPA does not apply where surveillance is undertaken otherwise than for 'the detection or prevention of crime' for example as part of an internal investigation into possible employee misconduct where the investigation may be of a disciplinary nature rather than being primarily aimed at detecting criminal offences*. However, as such surveillance may infringe an individual's Human Rights in respect of privacy, then similarly to RIPA, the procedures of authorisation and assessment should be followed with the Authorising Officer using RIPA criteria in considering the surveillance request. Assessment and Approval forms, similar to RIPA, must be used in considering surveillance activity.

1.2.2 Similarly, child custody/protection investigations requiring surveillance should follow the same principles and use the non-RIPA Application forms*. Copies of appropriately completed forms should be kept with the investigation file and the original sent to the Central Register in Information Governance.

1.2.3 Where surveillance is undertaken otherwise than for the prevention or detection of crime, reference should be made to the corporate policy on shadow RIPA authorisations.

1.2.4 *Note that where there is a clear likelihood at the outset of an investigation, or during an investigation it becomes apparent that criminal proceedings will result, the full RIPA regime, including application for magistrate's approval, should be followed. This may include cases of child abuse or neglect, abuse of vulnerable adults, or major employee fraud/theft. In all cases

the authorising officers will be the designated Trading Standards Managers (including the Head of Trading Standards and the Trading Standards Managers).

1.3 CCTV Use

1.3.1 CCTV surveillance systems are not normally caught by the Act where signs or cameras are visible or members of the public are aware that such systems are in use. However there may be occasions when public authorities use CCTV systems for the purposes of a specific directed investigation or operation. In such cases, authorisation for directed surveillance may be necessary. A protocol has been produced to protect those officers responsible for such systems from being pressured into carrying out directed surveillance without an appropriate authorisation.

1.4 Lancashire County Council Auditing

1.4.1 For appropriate corporate reporting and auditing of activities to ensure awareness and ongoing compliance with RIPA/IPA policies. Contact: Director of Corporate Services

2 Definitions

2.1 Surveillance and Covert Human Intelligence Sources

The Regulation of Investigatory Powers Act 2000

Authorising Officer Means the person(s) designated under Sections 28 and 29 of the Act to grant authorisations for directed surveillance and the use and conduct of a Covert Human Intelligence Source, respectively. The Head of Trading Standards and Trading Standards Managers in Trading Standards are designated as authorising officers by the Director of Corporate Services.

Conduct of a Source - Any action of that source falling within the terms of the Act or action incidental to it. (i.e. what they do)

Confidential Material Matters of legal privilege, confidential personal -
Includes: information (e.g. medical records), confidential journalistic material

Controller - Means the person or designated managerial officer responsible for overseeing the use of the source.

Covert Human Intelligence Sources - Commonly known as Agents, Informants, Undercover Officers. (NB. See RIPA and the Codes of (CHIS) Practice for the definition)

Covert Surveillance - surveillance carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is taking place.

Directed Surveillance - Surveillance is directed if it is covert but not intrusive and is undertaken:

- a) for the purpose of a specific investigation/operation.
- b) is likely to result in the obtaining **private information** about a person (whether one specifically identified for the purposes of the investigation or operation or not).
- c) Otherwise than by way of an immediate response to events or circumstances and it would not be reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

Handler - An investigating officer having day to day responsibility for:

- dealing with the source on behalf of the authority.
- directing the day to day activities of the source.
- recording the information supplied by the source.
- monitoring the security and welfare of the source.

Intrusive Surveillance - Covert Surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle **and** involves the presence of any individual **on** the premises or **in** the vehicle or is carried out by means of a surveillance device.

Private Information - in relation to a person or business, this includes any information relating to an individual's private, business or family life. Information which is non-private may include publicly available information such as web sites, business reports, and commercially available information.

Senior Responsible Officer (Surveillance) - An officer responsible for the integrity of RIPA processes for the authority and compliance with Part II of the Act. The Senior Responsible Officer for Surveillance and CHIS is the Director of Corporate Services.

(Note: See Senior Responsible Officer for Communications Data)

Surveillance includes:

- monitoring, observing or listening to persons, their movements, their conversations, or their activities or communications.
- recording anything monitored, observed or listened to in the course of surveillance.
- Surveillance by or with the assistance of a surveillance device (any apparatus designed or adapted for use in surveillance e.g. cameras and microphones.)

2.2 Communications Data

Investigatory Powers Act 2016 (IPA)

Brings together all of the powers already available to law enforcement and the security and intelligence agencies to obtain communications and data about communications.

Communications Service Provider (CSP)

These include telecommunications, Internet (including e-mail) and postal service providers.

Designated Person

These are the officers who must be made aware of any application for communications data prior to it being submitted to the OCDA currently three Trading Standards Managers.

Senior responsible Officer (Communications Data)

An officer responsible for the integrity of RIPA/IPA processes in relation to the Acquisition of Communications data under the Act, currently the Head of Trading Standards.

Single Point of Contact (SPOC)

All local authorities who wish to acquire communications data under the Act must be party to a collaboration agreement. We are required to be members of NAFN and use NAFN's shared SPoC services. The accredited SPoCs at NAFN will scrutinise the applications independently. They will provide advice to the local authority ensuring it acts in an informed and lawful manner. (CSPs will not deal with enquires to obtain communications data from an officer who is not listed with them as being a nominated SPOC).

3. Covert Surveillance Policy and Procedures

3.1 Introduction

3.1.1 Covert Surveillance means **surveillance which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.**

3.1.2 An authorisation provides lawful authority for a Public Authority to carry out covert surveillance.

3.1.3 Any /Service seeking to use covert surveillance techniques must seek authorisation.

3.1.4 Whenever surveillance takes place and is for the purpose of obtaining, or is likely to obtain private information about a person (whether or not they are the target of the operation) an authorisation should be obtained.

3.1.5 By obtaining an authorisation, the surveillance operation is carried out in accordance with the law and the safeguards that exist.

3.1.6 Prior to granting an authorisation the Authorising Officer must be satisfied that the proposed surveillance is **necessary** on specific grounds and is **proportionate** to what it seeks to achieve.

3.1.7 Careful consideration must also be given to any Community sensitivities that may be exacerbated by any individual surveillance operation.

3.1.8 Before applying for an authorisation, the Investigating Officer should consider whether the evidence sought could be obtained by alternative possibly non covert methods.

3.1.9 The Authorising Officer must also believe that the surveillance is proportionate to what it seeks to achieve and is not excessive.

Note for All Applications for Authorisations

Necessity

For interference with an individual's private, family or business life to be necessary, the action must be for the purpose of preventing or detecting crime, be necessary to secure best evidence and the authoriser should be satisfied that less covert or intrusive action would not serve the appropriate purpose.

Proportionality

The test for proportionality goes far beyond selecting the least intrusive method of investigation. The activity to be observed must not be trivial and must warrant the surveillance to be instigated.

The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair. Proportionality should contain a consideration of four elements:

- Balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence.
- Explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others.
- Considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives of obtaining the necessary result.
- Evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

3.2 Collateral Intrusion

3.2.1 The officer seeking the authorisation should also consider the possibility of collateral intrusion (this is where interference with the privacy of others not subject to the original surveillance may occur). Steps should be taken to assess the risk and where possible reduce the risk of collateral intrusion. Where unforeseen collateral intrusion occurs during an operation, the Authorising Officer must be notified and consideration given to amending the authorisation following a review. A separate Lancashire County Council CCTV protocol exists which also refers to avoiding collateral intrusion.

3.2.2 Consideration must also be given as to whether or not the surveillance activities of the Service take place where similar activities are also being undertaken by another agency e.g. the Police, Benefits Agency, Environment Agency and liaison with other enforcement agencies should be considered where appropriate.

3.3 Records of Authorisations

3.3.1 A record of all authorisations must be maintained for five years following the end of the authorisation for Covert Surveillance and CHIS. The record should include not only those authorisations granted, but also those which are refused. Records relating to Communications Data are retained by NAFN and liable to be inspected by the Investigatory Powers Commissioner's Office (IPCO).

3.3.2 All CHIS and Directed Surveillance records including JP authorisations must be supplied electronically by email to Information Governance for the Central Record of authorisations. For the Acquisition of Communications data, the record is maintained by the National Anti Fraud Network (NAFN). Nominated Authorising Officers may retain copy records for their own reference. Copies of all relevant documents should be returned electronically to the applying officer. An officer from Information Governance will advise Authorising Officers of the status of authorisations when renewals, cancellation etc. are required.

3.3.3 Due to the sensitive nature of **all documentation** covered by the Act, consideration **must** be given to the means by which copies are forwarded to the central record to ensure confidentiality. Records of authorisations, renewals and cancellations should be forwarded by email to Information Governance.

3.4 Authorisations for Directed Surveillance

3.4.1 An authorisation is required for covert surveillance undertaken:

- (a) for a specific investigation or operation; and
- (b) where the surveillance is likely to result in obtaining private information about any person (whether they are the subject of the surveillance or not).

3.4.2 Directed surveillance is conducted where the observation is for the purpose of gathering private information to produce a detailed picture of a person's life, activities and associations.

3.4.3 An authorisation is not required for covert surveillance carried out as an immediate response to events or circumstances which could not be foreseen. However, if this surveillance continues for a substantial period of time, or is recommenced after some time has elapsed, an authorisation may be required.

3.4.4 **Local Authorities cannot undertake intrusive surveillance.** Therefore, authorisations will not be granted for covert surveillance on residential premises or in any private vehicles where an individual or surveillance device is present on such premises or vehicle.

3.4.5 Where the surveillance activity is likely to result in **confidential material** being obtained, the Authorising Officer within Lancashire County Council will be **the Chief Executive, or in his absence the person acting as Head of Paid Service** (see paragraph 4.3 of the Code of Practice on Covert Surveillance). In practice, advice should be sought from the Director of Corporate Services.

3.5 Covert Video Camera and Audio Recording Equipment

3.5.1 This type of equipment may be considered for the purpose of recording the transaction/activity and obtaining photographic evidence of individuals or activities e.g. Trading Standards test purchases etc. Concealed cameras and voice recorders may be used to record activities and conversations without the knowledge of the other party.

3.5.2 The deployment of such equipment clearly has the potential for not only obtaining personal information in relation to the suspect, but also collateral intrusion into the activities of other persons in the vicinity of the operation.

3.5.3 Whilst the use of such equipment does not automatically require an authorisation, consideration should be given to safeguard against any challenge as to Human Rights infringements. The manner in which such equipment is used may also invoke the requirements relating to **Covert Human Intelligence Sources**. Prior to such covert use of equipment, advice should always be sought from an Authorising Officer or the Head of Trading Standards.

3.6 Grounds For Granting Authorisations

3.6.1 Surveillance **must** be shown to be necessary on specific grounds. Investigations undertaken by Local Authorities can only be authorised:

For the purposes of preventing and detecting crime

3.6.2 The Council operates parallel procedures for Non-RIPA investigations/surveillance (Ref paragraph 1.2)

3.6.3 Local Authorities are not able to issue urgent authorisations.

3.6.4 Officers should normally be able to prepare applications in advance to enable a written authorisation to be obtained.

3.7 Duration of Authorisation

3.7.1 An authorisation is valid for three months, unless cancelled.

This begins on the day on which the Authorising Officer grants the application, the expiry date will be considered to be three months minus one day (authorisation ceases at 23:59) from the date of signature by the Authorising Officer.

3.7.2 The Authorising Officer should ensure that a system is in place to review authorisations before it ceases to have effect. It is a matter for the Authorising Officer to determine how frequently a review is necessary and practicable. This is stated within the authorisation as a control measure. The authorisation should also be reviewed prior to expiry to determine whether a renewal is required and can be justified. It is a requirement that review forms are maintained as part of the Central Record of authorisations.

3.8 Renewal

3.8.1 An authorisation may be renewed for a further period of three months. It may be renewed more than once provided that the renewal continues to meet the criteria for authorisation. The number of occasions it has been renewed should be recorded.

3.8.2 A record should also be made of the following:

- Any significant changes to the previous authorisation
- Why it is necessary to continue the surveillance
- The value to the investigation of the information obtained so far by surveillance
- An indication of the length of time further surveillance may be necessary

3.9 Cancellations

3.9.1 The Authorising Officer who granted or who last renewed the authorisation must cancel it if satisfied that the directed surveillance no longer satisfies the criteria outlined in this procedure.

3.9.2 An authorisation should also be cancelled once the activity which was the subject of the authorisation has been completed. **The authorisation should not be left to lapse as a result of the time limit expiring.**

3.9.3 The reason for cancellation of the authorisation must be detailed on the cancellation form. The cancellation form should be sent to the Central Record by the Authorising Officer.

3.10 Records

3.10.1 Material obtained as a result of surveillance activities should be recorded on the "Record of Product obtained by Directed Surveillance Form".

3.10.2 A copy of this form should be forwarded to the Authorising Officer to be filed with the Authorisation form. The original should be retained by the Investigating Officer as part of the case file. Internal procedures within some services may require that all authorisations and case materials are held within a specific secure location. A copy should be retained on the case file.

3.10.3 A record must also be maintained of the period over which surveillance has taken place.

3.11 Handling Product from Surveillance Activities

3.11.1 "Product" from Covert Surveillance activities may consist of:

- Photographs
- Video film
- Voice recordings
- Surveillance log
- Officer's notes

3.11.2 The above may be required as evidence in current or future criminal proceedings. Officers must have regard to the provisions of the Criminal Procedure and Investigations Act 1996 in relation to unused material. Product obtained via an authorisation may be used by the authority in other investigations.

3.11.3 Although specific legislation and the Data Protection Act 2018 provide for the disclosure of information in certain circumstances, additional controls are introduced by RIPA.

3.11.4 The use of any product obtained by authorised surveillance activities outside of the local authority or the Courts should only be authorised in the most exceptional circumstances. This requirement seeks to prevent product from being used for grounds other than that for which it was obtained. **Joint operations should make reference to the potential use of evidence by each agency.**

3.11.5 Officers may receive requests from other agencies for product, which may include photographs of suspects, descriptions and vehicle details. Where this information has been obtained under an authorisation, further guidance should be sought from the Authorising Officer since disclosure may not be permitted under the provisions of the Code of Practice.

3.12 Storage of Product

3.12.1 Officers should ensure that evidential protocols are observed to ensure the integrity, security and confidentiality of material. This will ensure that the requirements of the Data Protection Act are addressed.

3.13 Disposal of Product

3.13.1 Officers should ensure that personal data is not kept for longer than necessary for the purpose for which it was obtained. Product which is not required as evidence should not be retained any longer than necessary. It will be necessary to retain product for a sufficient time to safeguard the Council against any civil claims against infringement of an individual's Human Rights. **A period of five years** ensures that all of the retention period requirements are addressed.

3.13.2 Product which has been destroyed should have this fact recorded on the record of product obtained by Directed Surveillance and be signed by the officer

3.13.3 An amended copy of this Record form should be forwarded to the Authorising Officer indicating destruction of the product obtained from the surveillance activity.

4 Guidance Notes for the Authorisation of Directed Surveillance

4.1 Activity Involved

Does the activity involve:

The necessary and proportionate systematic covert surveillance of an individual which is likely to gather private information?

If so, an authorisation is required

4.1.1 Low-level activity for example, to determine whether a premise is still trading, will not require authorisation. Surveillance carried out in response to immediate events will also not require authorisation. However, if the surveillance activity continues for any period of time, an authorisation will be required.

4.1.2 The Authorising Officer must be satisfied that the authorisation is:

Necessary for the purposes of preventing and detecting crime or is pursuant to Council Policy for Non-RIPA surveillance (Ref Paragraph 1.2)

4.1.3 The Authorising Officer must also believe that the surveillance is proportionate to what it seeks to achieve, and is not excessive.

Where the identity of the subject is known to the officer, measures should also be taken to verify (where appropriate) the address under surveillance (e.g. electoral register, business rates, utility suppliers). The Authorising Officer must include some control measures within the authorisation e.g. reviews, circumstances in which the surveillance must be stopped.

4.1.4 The application should provide the background to the investigation and details of other methods which have failed to provide the information being sought or why other methods are not appropriate.

4.1.5 The description of the activity to be undertaken should be as comprehensive as possible describing how the surveillance will be undertaken, where it will occur and any equipment (e.g. cameras, video camera) which will be used. The investigating officers must not employ techniques which are not permitted by the authorisation.

4.1.6 The information being sought should be described and how this may provide evidence of the offence or other matter being investigated. The potential for collateral intrusion should be identified and plans to avoid/minimise such intrusion.

4.1.7 A statement must also be included as to the likelihood of obtaining confidential material/religious material e.g. the premises are a residential property, not located near any medical, religious or legal establishments, therefore there is no likelihood of obtaining any confidential/religious material.

4.1.8 If confidential material is being sought, or is likely to be obtained, a higher level of authorisation is required. This authorisation can only be given by the Chief Executive (or in their absence by the Head of Paid Service). Further guidance should be sought from the Director of Corporate Services if confidential material becomes relevant to the investigation.

4.1.9 Where applications for authorisations are refused, records of the refused application must also be maintained stating the reasons for the refusal and a service number. Copies of these refusals must be sent for inclusion in the central record.

4.2 Directed Surveillance via Recording of Telephone Conversations

4.2.1 The interception of communications sent by post or public telecommunications systems or private telecommunications systems attached to the public network may only be authorised by the Secretary of State.

4.2.2. The attachment of a general surveillance device e.g. "wiretapping" to a telecommunications system can only be undertaken under a warrant **(this is not available to the Council)**.

4.2.3 However an exception to the rule requiring a warrant exists, where one party to a telephone conversation consents and where an authorisation for directed surveillance is obtained. See Section 48(4) of RIPA.

4.2.4 For example, a member of the public may consent to the recording of a telephone conversation made by or to him/her. An officer may seek to record such a conversation to assist with an investigation into another person's activities.

4.2.5 An officer may also request a colleague to telephone another person as part of an investigation or may make the call himself or herself. These situations may require an authorisation to be granted depending on the nature of the information to be obtained. Where the call is a simple call to enquire about the availability or description of goods or services on offer for supply as any consumer would enquire, and is not recorded, an authorisation will not be required.

4.2.6 Where the person giving consent is not present and a recording made, this activity is deemed to be intrusive surveillance and is beyond the scope of activities authorised for the Council.

4.2.7 Where the Officer acts in an overt capacity, i.e. clearly identifying the fact that they represent the Council, the activity will not require a directed surveillance authorisation.

4.2.8 Where the Officer makes/receives the call acting covertly, with the possibility of private information being obtained and a relationship being entered into, a CHIS authorisation will be required. This will cover any directed surveillance activity which is undertaken by the CHIS.

4.2.9 Similarly if a member of the public or another person acting as a covert source is asked to record a telephone conversation made/received by them, a CHIS should be in place.

4.3 Test purchasing of age restricted products

4.3.1 Juveniles may only be authorised as a CHIS by the Head of Paid Service.

4.3.2 Officers should have regard to the Regulatory Delivery code of Practice in determining whether directed surveillance authorisation will be necessary in the context of the planned operations.

4.3.3 Where the information obtained relates only to whether a sale is made or not, and no other information is likely to be obtained which is not already known to the officer directed surveillance authorisation is not necessary.

5 Covert Human Intelligence Sources (C.H.I.S.)

5.1 Introduction

5.1.1 This section of the guidance document deals with Covert Human Intelligence Sources (CHIS), more commonly known as undercover officers and informants/agents.

Authorisation is a two-stage process:

- (a) to use a source
- (b) an authority for the conduct of a source

NB: Juvenile surveillance CHIS – normally no-one under 18 years or any vulnerable individual should be considered as a CHIS (see 5.6 – 8)

5.1.2 A CHIS is a person who establishes or maintains a personal or other relationship with another person for the covert purpose of:

- (a) Using such a relationship to obtain information or to provide access to information to another person, or
- (b) Disclosing information obtained by the use of such a relationship or as a consequence of such a relationship.

In addition, a person who covertly provides information to a public authority is potentially a CHIS if he has obtained that information in the course of or as a consequence of the existence of a personal or other relationship, whether or not the relationship has been established or maintained for that purpose. A repeat informant, if it becomes apparent that he obtains his information in that way, is a CHIS to whom a duty of care is owed, if the information is acted upon. Legal advice should be taken before acting on the information provided by such a source.

5.1.3 The relationship is used covertly if, and only if, it is conducted in a manner calculated to ensure that the person is unaware of its purpose.

5.1.4 The Council receives complaints/information routinely from the public and traders regarding the alleged activities of individuals. The actions of these complainants do not generally fall within the definition of a covert source since they are a one off provision of information. However, a person may become a covert source if an ongoing relationship with the Council develops and activities described in paragraph 5.1.2 above are carried out.

5.1.5 Where the nature of the complaint relates to a matter where an officer requests the complainant to obtain further information covertly via a relationship with another individual, this activity is likely to fall within the scope of RIPA. An authorisation will therefore be required before seeking such information. By following the authorisation procedures, the Council will also be in a position to seek to safeguard the identity of the source in any subsequent legal proceedings. Further guidance should be sought from the Director of Corporate Services on this issue to ensure that the identities of any such individuals are safeguarded in the event of any legal proceedings, tribunals or disciplinary hearings.

5.1.6 The Code of Practice on Covert Human Intelligence Sources relates not only to sources (which may commonly be referred to as informants) but also the activities of sources, which consist of undercover officers who establish or maintain a covert relationship to obtain information and evidence.

5.1.7 Before a source may be engaged or an undercover officer deployed the use must be authorised. A separate authorisation for the conduct is also required. The use authorisation effectively registers the source with the Council. The conduct will address each separate operation/investigation in which that source may be involved.

5.1.8 In most cases, the use and conduct of a source will be restricted to a single investigation. However, situations may arise where different conducts are required which can be done once the use authorisation is in place. An example would be officers of a Service who undertake investigations which require different undercover stories to be adopted. The use authorisation enables them to undertake such covert activities. The conduct authorisation addresses each different cover story and activity within a different investigation/operation.

5.1.9 The same authorisation form is used for both use and conduct, with the deletion of Use*/Conduct* as appropriate. A conduct authorisation should be traceable back to the original use authority. A handler and controller must also be designated as part of the authorisation process and detailed records of the use, conduct and tasking of the source maintained.

5.1.10 An Authorising Officer is a person entitled to give an authorisation for the use or conduct of a source in accordance with Section 29 of the RIPA. The Head of Trading Standards and Trading Standards Managers have been designated as authorising officers.

5.1.11 The use of a CHIS should be **necessary** and **proportionate** to the matter being investigated (see para 3.1.9).

5.1.12 Failure to obtain an authorisation may render the Council liable to a claim of infringing the human rights of an individual and may adversely affect the admissibility of any evidence obtained by the use of covert methods employed by a source. It is also established that a public authority owes a duty of care to a CHIS. Failure to undertake a robust risk assessment and authorisation may also adversely affect the position of the Council in the source suffering any harm as a result of the activity in which they have been engaged.

5.1.13 Careful consideration must be given to any potential sensitivities which may exist before deciding whether to use a CHIS in a particular community or against a particular individual.

5.1.14 A separate directed surveillance authorisation is not required where any surveillance device (technical equipment) is used in the presence of the covert source.

5.1.15 A CHIS carrying surveillance equipment can be invited to enter residential premises or a private vehicle. However, the CHIS cannot install surveillance equipment in residential premises or a private vehicle since this activity constitutes intrusive surveillance and is not available for use by local authorities.

5.2 Further Guidance on the C.H.I.S Process.

5.2.1 When seeking an authorisation for an individual to act as a CHIS, consideration needs to be made of their potential role in the investigation. Are they prepared to be a witness? Do they need to be given protection as a result of providing information? The source may also be able to provide information relating to several different matters worthy of investigation.

5.2.2 The motives of potential sources need to be considered as part of the evaluation process. Could they be motivated by possible rewards or revenge? The aim could be to deflect attention away from themselves towards other individuals.

5.2.3 Has consideration been given to building up a detailed profile of the potential source and their associates? In all cases, a face-to-face meeting with the complainant or any other person considered as a potential source should take place. Please be aware that the individual may have needs in respect of language, hearing or sight.

5.2.4 Directed surveillance may be needed to evaluate the source. Consideration should be given in certain circumstances to carrying out checks on the source with the Police. A thorough risk assessment must be carried out on the potential source and the proposed conduct.

5.3 Management of Sources

5.3.1 Tasking is the assignment given to the source by the handler/controller asking him/her to obtain information or to take action to obtain information.

5.3.2 All authorisations should be in writing and in place before tasking a source. Every source must have a designated handler and controller.

5.4 Designated Handlers and Controllers for the Use of Covert Human Intelligence Sources

5.4.1 Where the CHIS is a complainant or an informant, the Handler will be the Investigating Officer and the Controller will be their line manager. Where the CHIS is employed by the Council acting in an undercover capacity, the Handler will be the officer's line manager and the Controller will be another manager within the Service. This arrangement will ensure that an officer does not act as a Controller and Authorising Officer thereby ensuring a level of independent scrutiny.

5.5 Security and Welfare of Sources

5.5.1 A source has no licence to commit crime. In certain circumstances it may be advisable to provide written guidance to the source explaining what is being requested of them and the limits of the tasking. The source should be asked to sign such a document to confirm that they understand the terms of reference.

5.5.2 A public authority deploying a source should take into account the safety and welfare of the source when carrying out any actions in relation to the authorisation or tasking. The foreseeable consequences of the tasking should also be considered.

5.5.3 A Risk Assessment should be undertaken to evaluate the source and to determine the risk to the source of any tasking and the likely consequences should the identity and role of the source become known to the subject or others involved with the subject.

5.5.4 The handler should draw to the attention of the controller:

- The Risk Assessment.
- The Conduct of the Source.
- The Safety and Welfare of the Source.

A Handler is responsible for:

- Dealing with the source on behalf of the Council.
- Directing the day to day activities of the source.
- Recording the information supplied by the source.
- Monitoring the security and welfare of the source.

5.5.5 Where a source is known or suspected of being involved in crime, consideration should be given to their motives in supplying information. It may also be a prudent step in the management of such a source to have two officers present during any meetings with the source. Background checks on the potential source via the Police Local Intelligence Officer should also be considered.

5.5.6 Special provisions exist for the conduct in use of juvenile sources (Under 18).

A source under 16 cannot be engaged to use a relationship with any person having parental responsibility for them. A source under 16 must have an appropriate adult present during any meetings and a risk assessment must also take place before granting or renewing an authorisation for the conduct and use of a source under 18. This will take account of physical and psychological risks.

See the Regulation of Investigatory Powers (Juveniles) Order 2000 (as amended) for detailed guidance.

5.5.7 Special consideration should also be given to the use of vulnerable individuals as a source. This will require the highest level of Authorising Officer (see the code of practice for further guidance).

5.5.8 Authorisations for juvenile sources i.e. a source under the age of 18, when the authorisation is granted, have a duration of 4 months and must be reviewed monthly. **Juvenile and vulnerable source authorisations can only be issued with the authorisation of the Head of Paid Service.**

5.6 The Application for Authorisation

Must include:

5.6.1 The ground on which the authorisation is sought:

- Preventing or detecting crime (or other Lancashire County Council Non-Ripa policy circumstances)
- An explanation of the necessity and proportionality of the Use/Conduct.
- Where the matter relates to a specific investigation, details of that investigation or operation.
- Details of the purpose for which the source will be tasked.
- Details of what the source will be tasked to do.
- Details of the level of authority required having regard to any confidential material that might be obtained as a consequence of the authorisation. (This will invoke the requirement to be authorised by the Chief Executive if confidential material is being sought or is likely to be obtained).

- Details of who will be affected and plans to avoid/minimise collateral intrusion. Where this changes, the Authorising Officer must be informed and the authorisation reviewed.
- A detailed Risk Assessment must have been undertaken. A review may also be required if the assessment is not current.
- The Authorising Officer may wish to impose control measures on the authorisation that is granted.

5.6.2 Unless renewed or cancelled, an authorisation remains in force for:

12 months from the date of issue (Juveniles – four months). The authorisation should be given a unique operation reference number and be recorded in management record file. Conduct authorisations should be referenced to the original use authorisation.

A duplicate/copy of the authorisation should be issued to the officer. This will ensure that the officer has a record of the scope of the activity authorised.

5.6.3 Applications which are refused should also be recorded together with the reasons for the refusal and a service number. Copies of these refusals must be sent for inclusion in the central record.

5.7 Duration of Authorisations

5.7.1 Authorisations have effect for a period of twelve months. It is suggested that the authorisation to use the source has effect for up to 12 months (other than juveniles, see above), however the conduct may be restricted to a shorter period or be made subject to reviews set as a control measure by the Authorising Officer.

5.7.2 Records of authorisations to be retained for a minimum period of five years.

5.7.3 Destruction of the authorisation form should be documented in the Authorising Officers Management Record file.

5.8 Renewals and Reviews

5.8.1 An authorisation may be renewed after the Authorising Officer reviews the use made of the source having regard to:

- a) The tasks given to the source
- b) The information obtained from the source.

If satisfied that the original authorisation criteria are met, a renewal may be granted.

5.8.2 Since an authorisation for a CHIS may remain in force for a period of twelve months, regular reviews should be undertaken to ensure the ongoing validity of the activity and the ongoing welfare and security of the source. Any changes to circumstances may require that further risk assessments are undertaken.

5.8.3 The reviews should be undertaken at intervals of no longer than three months and documented. Additional control measures may also be introduced as a result of a review. The Authorising Officer should implement a system to identify appropriate review dates.

5.9 Cancellations

5.9.1 An Authorising Officer must cancel an authorisation where:

The use or conduct of the source no longer meets the original authorisation criteria.

The procedures for managing the source are no longer in place.

Where possible the source should be informed of the cancellation, and this fact noted on the cancellation. The authorising officer should give directions on the handling, storage or destruction of the product of surveillance.

5.9.2 Where an investigation no longer requires the authorisation to be in place e.g. the evidence has been obtained, it should be cancelled promptly rather than allowed to expire through time, and the reason for cancellation documented.

5.10 Source Records

5.10.1 Records of Use of the source and the product provided by the source should be maintained by the service for a period of five years. Records should not be destroyed without the authority of the Authorising Officer. Destruction of records should be documented in the Central Records file.

5.10.2 The following information must be recorded:

- Authorisation Reference Number
- Authorising Officer
- Identity used by Source (If any)
- Identity of Source
- Reference used in the authority to refer to Source (If any)
- Information relating to security and welfare of Source
- A record that any risks to the security and welfare of the Source have been explained to and understood by the Source
- Records of reviews conducted on the continuing use and welfare of the Source
- The date when the Source was recruited
- The circumstances of the recruitment
- Identity of the Handler and Controller (and details of any changes)
- A record of the tasks and activities given to the Source
- A record of all contacts or communications between the Source and a person representing the Council
- The information obtained through the Source

- How the information is used
- A statement as to whether any payment, benefit or reward is provided by or on behalf of any investigating authority and details of it*.
- Reasons for cancelling/not renewing the authorisation and the date and the time of such a decision.

*(Please seek guidance regarding any payment, benefit or reward you may wish consider from an Authorising Officer).

Notes:

Necessity

For interference with an individual's private, family or business life to be necessary, the action must be for the purposes of preventing and detecting crime or of preventing disorder, be necessary to secure best evidence and that less covert or intrusive action would not serve the appropriate purpose.

Proportionality

The test for proportionality goes far beyond selecting the least intrusive method of investigation. The activity to be observed must not be trivial and must warrant the surveillance to be instigated.

The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair. Proportionality should contain a consideration of these elements:

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

6 Risk Assessments for All RIPA/Surveillance Activities

6.1 Whenever undertaking covert directed surveillance or engaging in the conduct and use of a CHIS, the proposed activity must be the subject of a risk assessment and evaluation of the proposed Source.

6.2 Directed Surveillance activities clearly have the potential to expose staff to hazards should their activities become known to the subject or even to others during the operation. The use of a CHIS has the potential to expose handlers, undercover officers, agents/informants and the public to health and safety risks. A duty of care may also lie with officers and the Council in managing sources.

6.3 Authorising Officers, Controllers, Handlers Undercover Officers and Investigating Officers must all have regard to the Council's Corporate Policy on Health and Safety. This addresses issues such as lone working and violence to staff.

6.4 It is a matter for each Service to determine the training required to ensure that staff are competent to undertake risk assessments of proposed operations/use of covert sources. All incidents/dangerous occurrences during the course of operations should be reported in accordance with the relevant Health and Safety Procedures.

6.5 Consideration should also be given to staff training requirements to engage in covert activities, surveillance and acting in an undercover capacity.

6.6 This section of this guidance document is intended to provide an overview which must be borne in mind when undertaking activities within the scope of RIPA.

6.7 Further Guidance on Health and Safety issues is available from Corporate HR/ Health and Safety sources.

6.8 Risk assessments for directed surveillance operations should be undertaken by the officer in charge of the proposed activity and submitted with the authorisation application.

6.9 Risk assessments for the use of a CHIS should be undertaken by the Handler and considered by the Controller as part of a risk management process. The assessment should then be forwarded to the Authorising Officer with the application. The assessment should consider the Ethical, Personal and Operational Risks of the proposed activity. The evaluation of a potential source is an important part of the application process.

6.10 Risk assessment is not a one-off activity but an ongoing process throughout the operation and use of the source, since circumstances may change and a review may be required.

6.11 The nature of the risks surrounding the deployment and management of individual sources, handlers and operational activities will vary according to a wide range of factors on a case by case basis. Risk assessment allows the handler and controller to advise the Authorising Officer of the plan for managing the risks.

6.12 Authorising Officers will **not** authorise a Directed Surveillance operation or the use of a source without the evidence that the risks have been considered and a plan for their management exists.

7 Communications Data (Investigatory Powers Act 2016)

7.1 Accessing Communications Data

7.1.1 The Investigatory Powers Act 2016 (IPA) and Associated Code of Practice set out a formal legal framework, by which public authorities can obtain communications data by a lawful method, consistent with article 8 of the Human Rights Act 1998.

7.1.2 This section of the guidance document details the systems in place to ensure compliance with IPA when an investigating officer seeks to obtain communications data within the scope of their enquiries.

7.1.3 In a similar manner to the existing provisions of RIPA relating to directed surveillance and the use of a CHIS, a process of submitting an application and securing an authorisation is established by the legislation and code of practice.

For this process the lead Service for the Authority is the Trading Standards Service. The Senior Responsible Officer for this Part of the Act is the Head of Service for Trading Standards. The authoriser for Communications Data is the Office for Communications Data Authorisations (OCDA) which sits within IPCO.

7.1.4 Under Section 60A(1)(a) of the IPA, communications data which local authorities are entitled to access can only be sought for the purpose of:

- **Preventing or detecting serious crime where the data requested is wholly or partially events data.**
- **the purpose of preventing or detecting crime or of preventing disorder where the data requested is entity data.**

The application is therefore put to the tests of necessity, proportionality and seriousness.

7.1.5 Requests for communications data must be made within the prescribed framework and cannot be undertaken directly by an officer as communications service providers will only accept requests for information from accredited officers registered with the Home Office and termed **Single Points of Contact (SPOC)**.

7.1.6 The National Anti Fraud Network NAFN acts as the SPOC on behalf of Lancashire County Council. Applications are made by officers via a secure network, and forwarded to the designated persons in the Trading Standards Service. The Designated Person confirms that the application is appropriate for forwarding to the OCDA, who are the approval body for applications, by means of this network.

7.1.7 Records of all applications, authorisations, notices, cancellations and refusals are maintained by NAFN. These are subject to periodic inspection by the body appointed to have an overview of this Part of the Act, the Investigatory Powers Commissioners Office. As with RIPA there is a Central Record. For this part of the Act it is maintained by NAFN on behalf of Lancashire County Council.

7.2 What is Communications Data

7.2.1 The term 'communications data' includes the 'who', 'when', 'where', and 'how' of a communication but not the content i.e. what was said or written.

It includes the way in which, and by what method, a person or thing communicates with another person or thing. It excludes anything within a communication including text, audio and video that reveals the meaning, other than inferred meaning, of the communication.

It can include the address to which a letter is sent, the time and duration of a communication, the telephone number or email address of the originator and recipient, and the location of the device from which the communication was made. It covers electronic communications including internet access, internet telephony, instant messaging and the use of applications. It also includes postal services.

7.2.2 Communications data is generated, held or obtained in the provision, delivery and maintenance of communications services – i.e. postal services or telecommunications services.

7.2.3 Communications data in relation to telecommunications operators' services and systems includes data held or obtainable by a telecommunications operator or postal operator or which is available directly from a telecommunication system.

7.3 Who are Communication Service Providers

7.3.1 Communications data is obtained from Communications Service Providers (CSPs)

These include:

- Telecommunications Providers
- Internet Service Providers (ISPs)
- Postal Providers

7.4 What Information can be obtained from Communications Service Providers

7.4.1 Information about communications service users

Entity Data

This category mainly includes personal records supplied to the CSP by the customer/subscriber. For example, their name and address, payment method, contact number etc.

- Name of account holder/subscriber
- Installation and billing address
- Method of payment/billing arrangements
- Collection/delivery arrangements for PO Box (but not where from or to)
- Other customer information such as any account notes, demographic information or sign up data (not passwords or personalised access information)

7.4.2 Information about the use of the Communications Service

Events Data

This category mainly includes everyday data collected relating to the customer's use of their communications system. For example, details of the dates and times they have made calls and which telephone numbers they have called.

- Outgoing calls on landline or contract or prepay mobile
- Timing and duration of service usage
- Itemised connection records
- Internet log on history
- Emails log (sent)
- Information on connection, disconnection and reconnection of services
- Information on the provision of conference calling, call messaging, call waiting and call barring
- Information about the provision and use of forwarding/redirection services (postal and telecom)
- Records of postal items, such as records of registered, recorded or special delivery postal items, records of parcel consignments, delivery and collection

7.4.3 Information about Communications Content

Local authorities are not permitted to obtain the actual content of the communication or more detailed information or tracking.

This category mainly includes data generated by the CSP (network data) relating to a customer's use of their communication system (that the customer may not be aware of) for example, cell site data and routing information.

- Information identifying the sender and recipient (including copy recipients) of a communication
- Information identifying any location of a communication (such as mobile phone cell site locations data)
- Routing information identifying or selecting any apparatus through which a communication is transmitted – for example dynamic IP address allocation, web postings and e-mail headers
- Call detail records for specific calls (such as calling line identity – incoming calls)
- Web browsing information (only the web site name is disclosed and not the pages visited on the web site)
- Information written on the outside of a postal item (such as a letter or parcel)
- Online tracking of communications (including postal)
- Signalling information and dialling sequences that affects the routing of a communication (but not the delivery of information) in the investigation of “dial thru” fraud

Please note that these lists are not exhaustive and the CSPs cannot all provide the same information.

7.5 How can this Information be obtained

7.5.1 Under the IPA, communications data which local authorities are entitled to access can only be sought in the case of entity data if it is for the purpose of:

The prevention and detection of crime or preventing disorder

7.5.2 In addition for events data information must satisfy the seriousness of the crime test – section 86(2A) defines this as a crime committed where an adult can be sentenced to imprisonment for 12 months or more, or a crime committed by a person who is not an individual, or a crime which involves the sending of a communication or a breach of a person's privacy.

7.5.3 A CSP only has to provide the data in a reasonable time and if practical to do so. Different CSPs will have different types of data and differing retention periods.

7.5.4 When it becomes clear that a witness statement is required to formally produce the data which has been provided by the CSP, it should be requested without undue delay.

7.5.5 CSPs are entitled to recover reasonable costs incurred in providing the data and supplying witness statements. These vary from one CSP to another.

7.5.6 Where the notice or authorisation is approved by the OCDA, it remains in force for a period of one month.

7.5.70 Notices and authorisations which are no longer required are no longer necessary or proportionate and must be cancelled.

7.6 Contact with the Communications Industry

7.6.1 Notices and, where appropriate, authorisations for communications data can only be channelled through single points of contact officers (SPOCs) within each public authority.

7.6.2 Similarly, requests for a witness statement following receipt of data from a CSP should also be via a SPOC.

7.6.3 SPOCs have been trained via a course accredited by the Home Office and the details of nominated SPOCs within each public authority are held by each CSP.

A CSP will therefore not deal with any request received from another un-accredited source of enquiry.

7.7 The Role of the SPOC

7.7.1 SPOCs will enable a more efficient regime to be developed as they will deal with CSPs and become aware of the data which they hold.

7.7.2 The SPOC plays an important role in the self-regulation and internal quality control of a public authority in ensuring that the requirements of IPA are adhered to in requesting and obtaining communications data.

7.7.3 SPOCs reduce the demands upon CSPs from a great number of sources within a public authority.

7.7.4 A SPOC will be able to advise the applicant officer of the nature and practicalities of obtaining the data which is being requested.

7.7.5 The SPOC will advise the applicant on the content of the application request prior to submission to the OCDA and where necessary refuse the application at that point for stated reasons.

7.7.6 The SPOC provides a safeguard for CSPs in ensuring that applications and notices are genuine.

7.7.7 SPOCs will retain a list of contact points with relevant CSPs.

7.7.8 NAFN provide a SPOC service on behalf of Lancashire County Council, and access details are maintained within the Trading Standards Service.

7.8 The Role of the Designated Person

7.8.1 This officer confirms that the service is aware of the application, and that it is appropriate to be forwarded to the OCDA for consideration.

7.8.2 The Designated Person is required to be an officer at least at the following level within the authority:

- Director
- Head of Service
- Service Manager or equivalent

A designated person should have the necessary training and experience to be competent to authorise activity. A record of designated persons will be kept within the Trading Standards Service.

7.9 The Application Process

7.9.1 The investigating officer should log in to NAFN and complete the relevant online form.

7.9.2 The application should then be submitted to the SPOC via NAFN who will consider the following:

- Whether the data being requested is capable of being provided by the CSP
- The reasons for the data being required in terms of the investigation being conducted and the offence being investigated
- The grounds for necessity and proportionality being addressed
- Should the application be deemed satisfactory, a Notice or authorisation form will be completed, this together with the application form will be submitted to the OCDA for authorisation or refusal. A designated officer at the authority concerned will be notified of the application.

Should the SPOC, however, consider there are grounds refusing the application, the form will be returned to the officer via the network.

When an authorisation is approved by the Authorising Officer, the SPOC will only send it to the relevant CSP following OCDA approval – see 8 below.

A Notice is only valid for a period of one month.

When, during the life of a Notice or authorisation, it is no longer necessary or proportionate or is no longer required by the investigation it must be cancelled.

7.10 Records and Errors

7.10.1 NAFN will retain records of all applications, refusals and authorisations passed to the designated person. Copies of all Notices/authorisations and refusals from the Authorising Officer will be retained.

7.10.2 This will allow a full audit trail for an application for obtaining communications data.

7.10.3 Documentation will be maintained by NAFN for inspection by the Investigatory Powers Commissioner's Office and complaints falling within the remit of the Complaints Tribunal.

7.10.4 Where any errors have occurred in granting authorisations or notices (e.g. subscriber details of an incorrect telephone number being obtained), a record must be kept and the matter explained by means of a report to the Commissioner as soon as practicable. NAFN or the authorising officers will notify the Trading Standards Head of Service of any errors as soon as possible so a report can be sent to the Investigatory Powers Commissioner's Office.

8 Seeking District Judge or lay magistrate (JP) approval for authorisations

8.1 In all cases involving authorisation of Directed Surveillance, and use of CHIS, officers must seek prior approval from a JP before undertaking the activity. For access to Communications Data, approval is now sought from the OCDA.

8.2 If the JP is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate he/she will issue an order approving the grant or renewal for the use of the technique as described in the application.

8.3 The officer will make an appointment at the relevant magistrates' court and will provide the JP with a copy of the original RIPA authorisation or notice and the supporting documents setting out the case. This forms the basis of the application to the JP and **should contain all information that is relied upon**.

8.4 The original RIPA authorisation or notice should be shown to the JP but will be retained by the local authority so that it is available for inspection by the Commissioner's office and in the event of any legal challenge or investigations by the Investigatory Powers Tribunal (IPT). The court may wish to take a copy.

8.5 In addition, the local authority will provide the JP with a partially completed judicial application/order form.

8.6 The order section of this form will be completed by the JP and will be the official record of the JP's decision. The local authority will need to obtain judicial approval for all initial RIPA authorisations/applications **and renewals** and the local authority will need to retain a copy of the judicial application/order form after it has been signed by the JP. There is no requirement for the JP to consider either cancellations or internal reviews.

8.7 Further more detailed guidance and documentation should be accessed via the Home Office Guidance available on the www.gov.uk website.

8.8 Where JP approval is granted, this should be retained on the Central record, and directed surveillance and CHIS activity can commence.

9 Lancashire County Council Auditing of Authorisations and Records

9.1 The Trading Standards Service must annually undertake a review of their activity within the scope of RIPA and complete the annual IPCO return form which must be returned to the Director of Corporate Services.

9.2. The Senior Responsible Officer reviews RIPA activity on a quarterly basis, and reports activity under RIPA to the Cabinet on an annual basis.

9.3 Part of the Audit will focus on a review of Projected Service activity and that all relevant staff have had sufficient training.

9.4 The following will also fall within the scope of the audit:

- Applications
- Authorisations
- Risk assessments
- Reviews and Renewals
- Cancellations
- Records of Product of Directed Surveillance
- Source Records
- Staff Awareness

9.5 The audit will seek to establish compliance of the authorisations/renewals/cancellations and records with the following:

- RIPA /IPA
- Statutory Instruments made under RIPA/IPA
- The Code of Practice on Covert Surveillance

- The Code of Practice on Covert Human Intelligence Sources
- The Code of Practice on Accessing Communications Data
- <https://www.gov.uk/government/collections/ripa-codes>
- Lancashire County Council RIPA corporate policy and work instructions
- Guidance material issued by IPCO.

9.6 Non-conformities identified as a result of the audit will be reported to the relevant Service Management Team. Action taken by local management should be reported back to the Audit team.

9.7 The cross Council audit report will be held within the Central Record.

9.8 The processing of prosecution reports by a service should have regard to compliance with RIPA where investigations include covert surveillance and/or the use of a CHIS and/or obtaining communications data.

10 Inspections by the Investigatory Powers Commissioner's Office

10.1 The Codes of Practice include a section dealing with inspection by the Commissioner. They impose a requirement to comply with requests and to disclose or provide information requested by the Commissioner to allow him to carry out his functions.

10.2 During inspection visits, the codes require certain authorisations to be drawn to the Inspector's attention. These being where the Authorising Officer has authorised an activity he is directly involved in and those where confidential material is sought or obtained.

10.3 A further inspection regime has been established in relation to accessing communications data. These inspections take place through NAFN, with queries raised individually with local authorities where necessary. Similar recourse to the Tribunal exists for complaints against the activities of the authority.

11 Complaints

11.1 An independent complaints procedure is provided by the legislation. Complaints can be made to:

The Investigatory Powers Tribunal
PO Box 33220
London
SW1H 9ZQ
Tel: 0207 035 3711
<http://www.ipt-uk.com/>

12 Management Records

12.1 The management files, authorisations/renewals/cancellations and Source Records **must be kept in a secure place with restricted access**. These files will provide the basis of the audits and be liable for inspection by the Investigatory Powers Commissioner's Office. **Originals of the authorisations (including refusals), reviews, renewals and cancellations, must also be provided to the Central Record. This is managed by the Director of Corporate Services.** Officers forwarding confidential material to the Central Record must ensure that it is forwarded by a secure method.

The Central Record is to be held in a suitable locked cabinet, or secure electronic folder.

Version Control

| | |
|---|--|
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