



Agenda Item 10

Meeting	Authority Meeting
Date	23 May 2024
Location	Merchants House, Glasgow
Title of Paper	Covert Policing Assurance
Presented By	Bex Smith, Deputy Chief Constable Crime
Recommendation to Members	For Discussion
Appendix Attached	No

PURPOSE

This report offers a high-level assurance of the governance, inspection and oversight arrangements for covert policing tactics and operations.

Members are invited to discuss the contents of this paper.

1. BACKGROUND

1.1 The Authority have requested details on the range of assurance and inspections that take place on current covert policing structures and policies within Police Scotland.

2. OVERVIEW OF COVERT POLICING ACTIVITIES

2.1 The covert activities undertaken by Police Scotland, and regulated under various legislative statutes, include:

- The interception of communications;
- Targeted equipment interference;
- The acquisition of communications data;
- Directed surveillance, which means covert surveillance in the course of a specific investigation or operation;
- Intrusive surveillance, which means covert surveillance conducted in relation to anything taking place on residential premises or in a private vehicle;
- The use of covert human intelligence sources [known as a 'CHIS'] and 'relevant sources' (which are undercover officers).

2.2 The above covert activity is undertaken by Police Scotland and the following Acts define the regulations and legal requirements for using these tactics:

- The Regulation of Investigatory Powers Act 2000 [RIPA]
- The Regulation of Investigatory Powers (Scotland) Act 2000 [RIPSA]
- Police Act 1997 [PA97]
- Investigatory Powers Act 2016 [IPA2016]

2.3 Compliance with the covert activity defined in the above Acts is further controlled through:

- Codes of Practice issued by the Home Office and Scottish Government; and
- Authorised Professional Practice and Manuals of Guidance.

2.4 Police Scotland is held accountable for compliance with all aspects of the legislation and various Codes of Practice through a robust external and internal governance regime. These are detailed below.

3. EXTERNAL COMPLIANCE AND OVERSIGHT

3.1 External oversight around covert policing is provided by the Investigatory Powers Commissioner's Office (IPCO), the Scottish Ministers, the Investigatory Powers Tribunal (IPT), His Majesty's Inspectorate of Constabulary in Scotland (HMICS), Police Investigations and Review Commissioner (PIRC), and Crown Office & Procurator Fiscal Service (COPFS).

3.2 The Investigatory Powers Commissioner's Office (IPCO)

Formed in 2017, IPCO established a world leading oversight regime to improve accountability for the use of investigatory powers. The Commissioners undertake two key functions relevant to holding Police Scotland to account for covert policing activity:

(i) IPCO Annual Inspection

Police Scotland is inspected by IPCO on an annual basis and during such inspections, all covert activities undertaken throughout the year are inspected. Police Scotland was last inspected in June 2023 and have further inspections in May 2024. The following comments from IPCO demonstrate Police Scotland's continuing high levels of compliance and provide assurance that our use of covert tactics is proportionate.

Some quotations from IPCO inspections from 2023 include:

"This should be seen as a positive inspection...the overall standard was good...All staff encountered during the inspection were found to be enthusiastic, candid...and eager to achieve high levels of compliance".

"Police Scotland continues to demonstrate a good level of legislative compliance...The professionalism of staff provides a reassuring indication of effort...staff show good diligence and pro-activity".

"Staff were found to be diligent, conscientious and strive to deliver a successful and legally compliant outcome...A good standard of compliance".

(ii) IPCO Prior Approval and 'Double Lock' Authorisation

Judicial Commissioners at IPCO must provide prior approval to Police Scotland for covert activity involving targeted equipment

interference (under IPA2016), intrusive surveillance and certain types of property interference.

3.3 Scottish Government Ministers

All warrants for any targeted interception activity must be scrutinised, approved, and signed off by a Scottish Government Minister before such covert activity can be undertaken by Police Scotland. No interception activity can be undertaken by Police Scotland without a signed warrant being in place.

3.4 His Majesty's Inspectorate of Constabulary in Scotland

HMICS provides independent scrutiny of both Police Scotland and the Scottish Police Authority (SPA). This includes pertinent reviews of covert policing matters, such as their report about the Strategic Review of Undercover Policing in Scotland (2018).

3.5 Police Investigations and Review Commissioner (PIRC)

Since 2013, PIRC has independently investigated incidents involving the police and independently reviewed the way the police handle complaints from the public.

3.6 Crown Office & Procurator Fiscal Service (COPFS)

The Crown Office and Procurator Fiscal Service (COPFS) is Scotland's prosecution service and death investigation authority. They play an important part in the justice system, working with others to make Scotland safe from crime, disorder, and danger and in some of the more serious cases, including those of a covert nature, may instruct and direct police investigations.

There is an obligation on the police to disclose relevant information to the COPFS, including covertly obtained information and evidence, who ensure that relevant obligations are fully and consistently applied as required by Article 6 of the ECHR.

4. INTERNAL COMPLIANCE AND OVERSIGHT

4.1 Internal governance around covert policing is provided through the key departments and roles within Police Scotland, each of which are significant in ensuring compliance with the various legislative Acts, Codes of Practice, Manuals of Guidance and Police Scotland Standard Operating Procedures.

4.2 SCD Covert Compliance and Capabilities Group

This group chaired by Assistant Chief Constable (ACC) Organised Crime, Counter Terrorism and Intelligence meets quarterly to provide oversight, governance and strategic direction of all relevant covert activities and operations. Where necessary, oversees the design and delivery of new practices and processes and identifies any emerging issues that may arise in the practical application of the law or guidance in covert disciplines.

Discusses and agrees major decisions on finance and investment, resource allocation and prioritisation of people, risk and assurance and provides a forum to share knowledge, expertise and experience and impart information regarding key governance issues to deliver:

- More effective partnership working.
- Improved organisational effectiveness.
- Increased efficiency and demonstration of best value.
- Improved outcomes for communities in Scotland.

4.3 Senior Responsible Officer (SRO)

The Senior Responsible Officer (Deputy Chief Constable, Crime) has the responsibility for the integrity of the process to authorise directed and intrusive surveillance and interference with property or wireless telegraphy; the compliance with RIP(S)A, Part III of the 1997 Act and the IP Act within this code; the engagement with the IPC and Inspectors when they conduct their inspections, and where necessary, overseeing the implementation of any post-inspection action plans recommended or approved by a Judicial Commissioner.

4.4 Senior Authorising Officer

The Senior Authorising Officer (The Chief Constable or in her absence a Designated Deputy) is the individual within the organisation who can authorize Intrusive Surveillance, Property Interference, Targeted Equipment Interference, RIPSAs (CHIS: Relevant Sources) Order 2013 - Long term authorisations and CHIS or Surveillance authorities where confidential information or matters subject to legal privilege may be acquired.

4.5 Senior Authorising Officer – Relevant Sources (Undercover Policing)

A Senior Authorising Officer at the rank of ACC has responsibility to consider and authorise all 'relevant source' (undercover) applications, reviews, and renewals. Such applications are normally authorised by ACC Organised Crime, Counter Terrorism, and Intelligence.

4.6 Force Authorising Officer

There are five Detective Superintendents within SCD Intelligence Support who undertake the Force Authorising Officer role in respect of authorising and scrutinising applications in respect of all covert policing techniques under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), the Regulation of Investigatory Powers Act 2000 (RIPA) and Part III of the Police Act 1997.

4.7 Operational Security Advisor (OpSy)

The OpSy is a key role and acts as an independent advisor with the strategic objective of reducing Police Scotland's operational risk in covert policing. They advise on the security, integrity and ethical conduct of all covert law enforcement techniques and covert tactics utilised. They implement and maintain consistency in standards of security and practice in accordance with legislation, national guidelines, and local policy. They report any operational security matters pertinent to covert policing into the Covert Compliance and Capabilities Group.

4.8 Central Authorities Bureau (CAB)

The CAB is responsible for providing operational officers with essential guidance and support, whilst also maintaining a central record of all covert authorities authorised under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), the Regulation of Investigatory Powers Act 2000 (RIPA) and Part III of the Police Act 1997; they are a conduit between Applicants, Gatekeepers and Authorising Officers ensuring legislative compliance in respect of applications for Surveillance, Property Interference, Covert Human Intelligence Source (CHIS) and the use of Undercover officers (UC).

4.9 Technical Collections

The Confidential Unit and Special Projects Unit form part of Technical Collections and provide a 24-hour capability to support operational policing functions, providing specialist intelligence support to serious and organised crime operations and major enquiries.

4.10 Communications Unit (CIU)

The Communications Investigation Unit (CIU) is the Single Point of Contact (SPoC) for Police Scotland to facilitate lawful acquisition of communications data and the effective co-operation of Communication Service Providers (CSP).

5. OFFICER AND STAFF WELLBEING

- 5.1 At the heart of Policing in Scotland is the wellbeing of all officers and staff and there are several processes in place to support those in covert roles.
- 5.2 Specialist Crime Division holds a quarterly Health and Safety meeting, with representation from Organised Crime and Counter Terrorism Unit. This meeting oversees compliance with policies, legislation, and any regulatory requirements in the addition to reviewing local Health and Safety arrangements across the department and capturing best practice and learning.
- 5.3 Officers across all covert disciplines undertake highly intensive and demanding training courses to ensure readiness and professional accreditation to perform the role. Deployments are subject to robust and continual risk assessment with briefing and debriefing a prerequisite element of operational activity. All risk assessments are digitally recorded and endorsed by an officer of the rank of Superintendent.
- 5.4 Support mechanisms are in place for all covert officers through line management structures and through Police Scotland's existing Employee Assistance Programme, Occupational Health services and Wellbeing Champions.
- 5.5 Scotland's Mental Health First Aid (SMHFA) training is currently being rolled out nationally to CHIS handlers. The course, developed by Public Health Scotland, equips handlers with information about mental health problems, removing stigma and fear to give them confidence in approaching a person in distress.

5.6 Qualified health professionals are available via a 24/7/365 helpline where officers can seek advice, support, and signposting on a range of topics including trauma/crisis support, mental health, work related issues and anxiety.

5.7 Certain roles within the covert policing arena also receive annual mandatory psychological assessment by a vetted clinical psychologist.

6. FINANCIAL IMPLICATIONS

6.1 There are no financial implications in this report.

7. PERSONNEL IMPLICATIONS

7.1 There are no personnel implications in this report.

8. LEGAL IMPLICATIONS

8.1 There are no legal implications in this report.

9. REPUTATIONAL IMPLICATIONS

9.1 There are no reputational implications in this report.

10. SOCIAL IMPLICATIONS

10.1 There are no social implications in this report.

11. COMMUNITY IMPACT

11.1 There are no community implications in this report.

12. EQUALITIES IMPLICATIONS

12.1 There are no equality implications in this report.

13. ENVIRONMENT IMPLICATIONS

13.1 There are no environmental implications in this report.

RECOMMENDATIONS

Members are invited to discuss the contents of this paper.