9.2 Please note that there may be circumstances where a less obvious CHIS exists. Care must be taken to identify that this person is a CHIS, and thereafter follow the correct procedure. An example is a case where a member of the public has given information, albeit not tasked to do anything with it. Such a person may be a CHIS if the information that s/he has covertly passed to Brent has been obtained in the course of (or as a consequence of the existence of) a personal or other relationship or where a member of the public is independently maintaining a relationship (i.e. "self-tasking") in order to obtain evidence of criminal activity, and we as the public authority intends to make use of that material for our own investigative purposes. .

9.3 Although not specifically recruited to be a CHIS, such a person may become one. ~~This situation is referred to by the OSC Procedures & Guidance 2016 as the risk of "status drift."~~ Therefore, when an informant gives repeat information about a suspect or about a family, and it becomes apparent that the informant may be obtaining that information in the course of a family or neighbourhood relationship, it is a strong indication that the informant is in reality a CHIS - to whom a duty of care is owed - if the information is then used.

9.5 Trading Standards regularly undertake covert test purchasing, and task children to request a one-off sale. The Council ~~, in accordance with OSC Guidance,~~ takes the view that such conduct ~~does not~~is unlikely to constitute a CHIS, as the child does not form any relationship with the target in a one-off sale, but cultivating trust or covertly establishing a relationship may do so. ~~.~~ However, you must consider whether covert test purchasing, and or the use of recording equipment, requires a Directed Surveillance authorisation ~~.~~.

9.6 Please note all authorisations for a juvenile CHIS or where confidential information may be obtained MUST be approved by the Chief Executive as Head of Paid Service. The Council must ensure that an appropriate adult is present at any meetings with a CHIS under 16 years of age. The appropriate adult should normally be the parent or guardian of the CHIS. In addition, for vulnerable or juvenile sources, the Investigatory Powers Commissioner must be informed within seven working days of an authorisation; and juvenile authorisations must be reviewed at least monthly.

13. Proportionality – striking the balance

13.1 The general principle for pproportionality is that it must be assessed on the facts of each case. The AO must balance the seriousness of the intrusion into the private or family life of the subject of the operation, and any other person who may be affected, against what the proposed activity seeks to achieve in investigative and operational terms. Each action authorised should bring an expected benefit to the investigation or operation and must not be disproportionate or arbitrary. The seriousness of a suspected offence does not, by itself, make the proposed activity proportionate. No activity should be considered proportionate if the information sought could reasonably be obtained by other, less intrusive means. This involves considering a number of factors as highlighted by s4.7 of the Covert Surveillance and Property Interference Code of Practice, namely~~Code, :~~

Directed surveillance: four elements

- ~~the seriousness of the intrusion into the private or family life of the target - and any other person likely to be affected (collateral intrusion);~~
- a) balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or harm;
- b) explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- c) considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the information sought;
- d) evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented, or have been implemented unsuccessfully.

~~13.3 Officers must explain why the particular covert method, technique and tactic is an appropriate use of RIPA and a reasonable way of achieving the desired objective. In particular, officers must explain why the intended surveillance will cause the least possible intrusion, and what alternative options have been tried or considered and why~~

~~they were unsuccessful or not considered suitable (See Note 73 of the OSC 2016 Procedures & Guidance and paragraph 4.6-4.7 of the 2018 revised Codes).~~

CHIS: five elements

13.~~4~~ ~~3~~ When AO's are considering an application under section 29 of RIPA for the use or conduct of a CHIS, the Authorising Officer must address the following five elements identified in paragraph 3.6 of the Covert Human Intelligence Sources Code of Practice, namely:

(a) balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or harm;

(b) explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;

(c) whether the conduct to be authorised will have any implications for the private and family life of others, and an explanation of why, if relevant, it is nevertheless proportionate to proceed with the operation;

(d) evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented, or have been implemented unsuccessfully;

(e) considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the information sought~~The AO must take into account the risk of obtaining private information about persons who are not the subjects of the surveillance or property interference activity. Particular consideration should be given in cases where religious, medical, journalistic, or legally privileged material may be involved, or where communications between a member of parliament and another person on constituency business may be involved. An application should include an assessment of the risk of collateral intrusion and any details of any measures taken to limit this.~~

Intended and collateral intrusion

13.~~5~~ ~~4~~ For both directed surveillance and CHIS activity, the application must assess anticipated collateral intrusion and identify measures to avoid or minimise it. Where collateral intrusion is unavoidable, the AO must explain why it is proportionate. Activity deliberately directed at a person who is not suspected of involvement in the offence is intended intrusion, not collateral intrusion, and requires its own necessity and proportionality justification. Particular consideration must be given to confidential and personal information.

13.5 In brief, the AO needs to clearly articulate and provide sufficient information to support each applicable element. The AO must record their own reasoned assessment of necessity and proportionality, including the alternatives considered and the justification for any unavoidable intrusion. These assessments must be revisited during reviews and renewals and when circumstances change. For CHIS activity, the proportionality assessment does not replace the separate requirements for source-management arrangements, risk assessment, security and welfare.~~exactly why the proposed activity is proportionate to what is sought to be achieved and take into account the risk of obtaining private information about persons who are not subjects of the surveillance activity (collateral intrusion). The AO's considerations need to be fully documented.~~

14.5 Procedure once Judicial Approval Granted

14.5.1 If granted, the Authorisation/Renewal will be dated and timed. The 3 months (for DS) or 12 months (for a CHIS (four months for a juvenile source)) validity will run from this date and time.

18. Senior Responsible Officer (SRO)

18.1 Under the relevant Home Office Codes for surveillance, CHIS and Communications Data, the SRO is responsible for-

- the integrity of the process in place within the public authority for the management of CHIS and to acquire communications data.
- engagement with officers in the Office for Communications Data Authorisations (where relevant).
- compliance with Part II of the RIPA 2000 and Part 3 of IPA and with the relevant Codes oOf Practice
- oversight and prompt reporting (-as soon as reasonably practicable, and no later than ten working days (or as agreed with the Commissioner)) of errors in accordance with the Codes of Practice to the IPCO and the identification of both the cause(s) of errors, and the implementation of the processes to minimise repetition of errors; (-an example of such an error would be carrying out surveillance without proper authorisation);
- ensuring the overall quality of applications submitted to OCDA by the Council.
- engagement with the IPCO inspectors when they conduct their inspections; and
- where necessary, oversight of the implementation of post inspection action plans approved by the IPCO.

APPENDICES

APPENDIX 1: Senior Responsible Officer (SRO) Contact Details

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