

# Senior Responsible Officer (SRO)

## Circular 5



### Communications Data: Frequent Recommendations from 2015

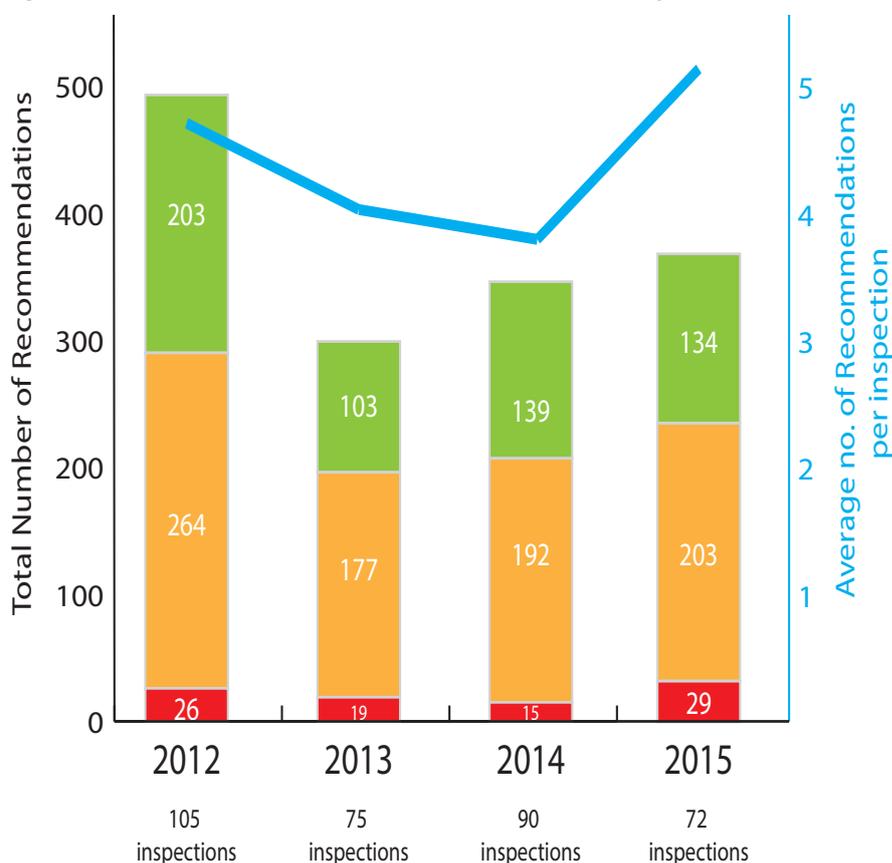
This circular contains the most frequent recommendations from our communications data inspections in 2015 and has been produced to assist SROs to prepare for inspections and to review regularly compliance within their own public authority. It is recommended that SROs should work with the Single Point of Contact (SPoC) to implement measures to check and monitor compliance periodically in these areas.

In 2015 we conducted **72 communications data inspections** and made **366 recommendations** to improve compliance or systems and procedures (**Fig.1**)

IOCCO recommendations are classified on a traffic light system. We have adopted this practice to enable public authorities to prioritise the areas where remedial action is necessary.

- **Red** - areas of immediate concern as they mainly involve very serious breaches and / or non-compliance with RIPA or the Code of Practice (CoP) which could leave the public authority vulnerable to challenge.
- **Amber** - non-compliance to a lesser extent. However remedial action must still be taken in these areas as they could potentially lead to serious breaches.
- **Green** - good practice or areas where the efficiency and effectiveness of the process could be improved.

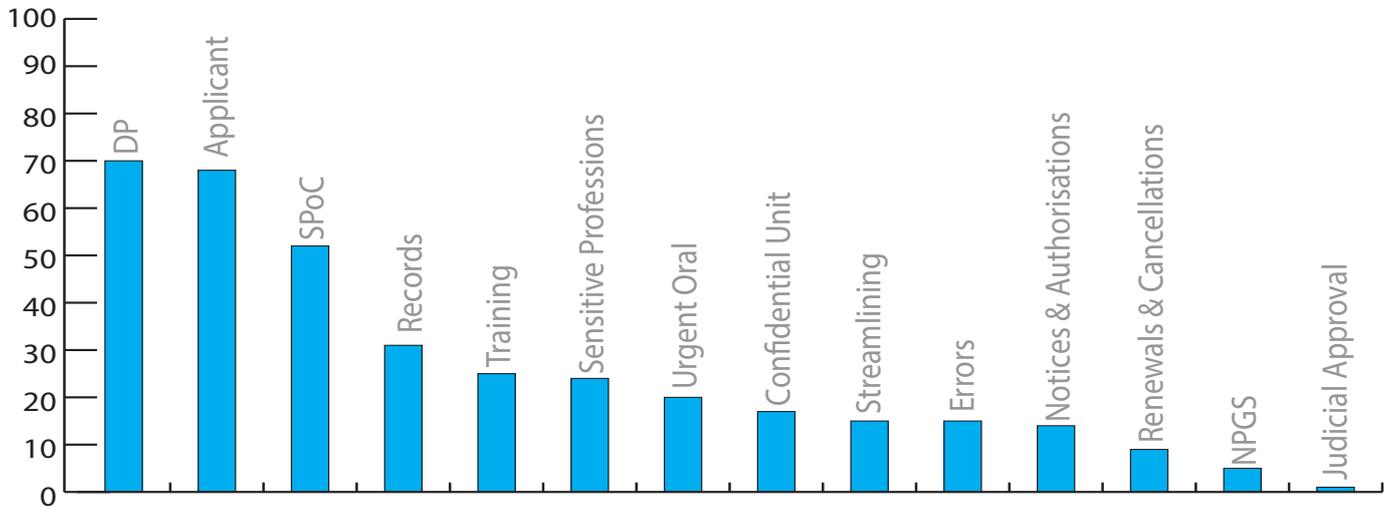
**Fig. 1** - Inspection recommendations totals & average 2012-2015



The proportion of red, amber and green recommendations (and therefore the seriousness) has remained largely consistent over the past 4 years, but the average number of recommendations per inspection (**Fig 1**. blue line) has risen to approx. 5 per public authority. This increase stems from compliance issues relating to a number of the revised provisions introduced by the March 2015 CoP.

**Fig.2** provides a breakdown of the 366 recommendations into the areas assessed during inspections. Unsurprisingly, most recommendations relate to the three main roles within the process to acquire communications data - applicant, Single Point of Contact (SPoC) and Designated Person (DP).

**Fig. 2 - 2015 Inspection recommendations by inspection area**



Over two thirds of the recommendations fall into 7 categories and a summary of the recommendations in each is provided.

### 1. Quality of Applications (52 recommendations)

Applications had insufficiently justified the necessity and/or proportionality for acquiring communications data, in particular -

- applicants did not make clear how a communications address was linked to an enquiry;
- statutory necessity purposes such as s.22(2)(d) public safety and s.22(2)(e) public health had been specified inappropriately;
- the relevance of the date / time periods sought had not been justified properly.

### 2. Record Keeping (44 recommendations)

The records maintained by public authorities did not in a number of cases meet the requirements in the revised CoP (Para's 6.5 & 6.6), specifically:

- applications under s.22(2)(b) were being incorrectly categorized by crime type - either the list of offences did not align properly to statutory offences or the Home Office's recorded crime list or, the list was being applied inconsistently by applicants.
- procedures in place for applications processed outside the main workflow system, e.g. specialist departments / urgent oral, had not been amended to meet the revised statistical requirements.

### 3. DP Independence (34 recommendations)

The IOCCO inspectors were not satisfied that the procedures in place would ensure independence as prescribed by the March 2015 CoP and / or they found examples where DPs had considered applications for investigations where they were not independent. This was particularly relevant to the consideration of applications by Superintendent level DPs in police forces, and plans to retain the ability of a DP from a specialist department / area to consider applications from within that department / area. Recommendations were given for SROs to implement strategies to ensure independence in line with our June 2015 SRO Circular<sup>1</sup>.

<sup>1</sup> <http://www.iocco-uk.info/docs/IOCCO%20Guidance%20on%20Independence%20of%20Designated%20Persons.pdf>

#### 4. DP Considerations (26 recommendations)

A number of DPs were identified as recording short and / or generic written considerations when approving applications. Good practice recommendations were given for DPs to tailor their comments to the individual applications to provide sufficient evidence that they have been scrutinized and duly considered.

#### 5. SPoC Efficiency and Effectiveness (51 recommendations)

A broad range of recommendations were made in this area. Some were concerned with ensuring the SPoC provides a robust guardian and gatekeeper function e.g. by being sufficiently resourced, or better advice to applicants to develop data collection strategies, or to DPs about the conduct they are being asked to authorise. Other recommendations were designed to improve efficiency e.g. more dynamic management of any application clarifications, amendments or refinements to reduce the number of re-submissions.

#### 6. Sensitive Professions (27 recommendations)

A number of recommendations have been made concerning systems, processes and training surrounding applications to determine journalistic sources. More widely the inspectors also identified examples of inadequate consideration by applicants, SPoCs and DPs of any unusual degree of interference with rights and freedoms when communications data was sought in relation to professions which handle privileged or otherwise confidential material.

#### 7. Errors (16 recommendations)

Following IOCCO's review of serious errors (see July 2015 IOCCO report) a greater number of recommendations have been made for public authorities to implement measures which reduce error instances, particularly where errors can have serious consequences e.g. Internet Protocol (IP) resolutions. The inspectors also found, as was the case in previous years, instances where erroneously acquired data of no relevance to an enquiry had not been destroyed after the error report was made to IOCCO as required by the CoP.