



The Limitations and Challenges of Oversight in an Era of International Data Sharing

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How does IOCCO oversee public authorities?

- **Revolving Programme of Inspections. In 2014 we conducted...**
 - 26 interception inspections
 - 90 communications data inspections
 - and made over 400 recommendations to ensure compliance or improve systems and procedures
- **Inspection Objectives: To ensure that....**
 - All interception and acquisition of communications data has been undertaken lawfully in accordance with the RIPA and Codes;
 - Conduct was necessary and proportionate;
 - Systems in place are sufficient and that all records have been retained;
 - All errors / breaches are reported, investigated and measures put in place to prevent recurrence – approx 1000 errors per year.

See our March 2015 Report for further details – statistics, inspection findings, error investigations.

What tasks do IOCCO undertake during an inspection?

- Scrutinise applications – necessity, proportionality and collateral intrusion justifications;
- Examine approvals – review considerations given by the Secretary of State or Designated Person when approving an application;
- Examine role of the SPoC and SRO – guardian and gatekeeper role, standards being achieved, integrity of the process;
- Random and Query based sampling – on workflow systems to identify trends / patterns / most intrusive requests / key parts of process;
- Auditing data from Communication Service Providers (CSPs) – cross check public authorities applications;
- Conduct thematic audits concentrating on specific areas of the process, for example, professional standards departments, force control room acquisition, proportionality of requests relating to a particular crime type etc;
- Downstream consideration of proportionality and intrusion: Assess how the data was used / analysed, whether it met the objective, what intrusion resulted, was the actual intrusion proportionate to the aim, did any errors result from the request etc.

See more on these areas in our [March 2015 Report](#)

Recent IOCCO Inquiries

- **Communications data to determine journalistic sources** - see findings in IOCCO's inquiry report ([published February 2015](#)) - which lead to the law being changed in March 2015 to require **judicial approval** for such requests.
- **Serious error investigations** – 17 in 2014.
 - 9 errors were caused by human mistakes and 8 by technical system faults (for example with CSPs secure systems)
 - 10 of the 17 errors related to requests for internet data, primarily about resolving internet protocol (IP) addresses to individuals.
 - Number of errors has not increased significantly in past 10 years – but the consequences and scale is more significant due to the changes in technology.
 - [See our July 2015 report for more detail](#)



IOCCO's Powers

It is the duty of every person to comply with any request made by the Commissioner and to disclose or provide to the Commissioner all such documents and information as he may require to carry out his functions (section 58(1) RIPA).

Does this power transcend international borders??

A lot of debate re the extra territorial jurisdiction (ETJ) of RIPA

Scenario - Limitations of oversight in an international era...

What happens when a UK public authority shares its intercepted material or data with another country?

Scenario - Limitations of oversight in an international era...

What happens when a CSP based in another country (i.e. the US) makes a mistake when disclosing communications data to a public authority in the UK?

Investigatory Powers (IP) Bill...

What IOCCO will be looking for.....

- LEGISLATIVE CLARITY
- ACCOUNTABILITY
- TRANSPARENCY

IP Bill – More specifically - Some areas for review?



Interception:

- No error definitions / reporting provisions
- 3 month review on serious crime warrants unworkable
- s16 – review / formalise the internal authentication process applied to select intercept material
- s19 secrecy provisions make transparency challenging – further statistical breakdowns
- Definition of content - more clarity to determine what constitutes content within the online environment

Communications data:

- Subscriber data definition potentially now wide
- No oversight of acquisition of data using other powers (such as SSFA)
- No prior independent approval – DRI judgement (Court of Appeal – DRIPA)
- No oversight by IOCCO of retention, storage and destruction of communications data

IPT


- Can only accept complaints from person aggrieved - we cannot refer cases when in reality we will be the ones identifying them
- Highly unlikely the aggrieved would find out about interception due to s19 secrecy provisions – right to effective remedy
- Wilful or reckless not defined

DRIPA

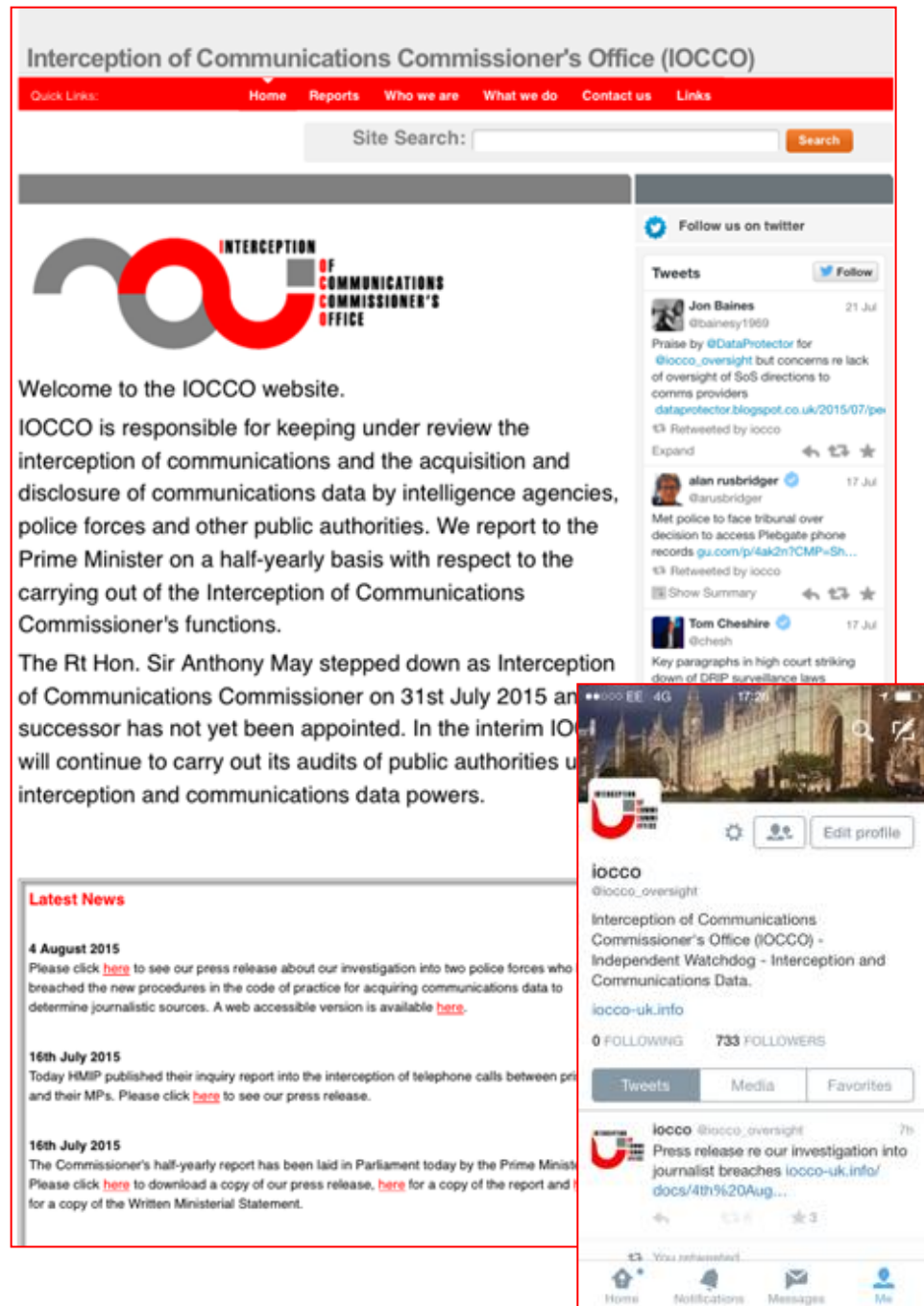
- no independent oversight of necessity and proportionality data retention notices

See our evidence submission to David Anderson QC's review (December 2014)

What are we doing to improve transparency?

- Inspection report to each public authority setting out the inspection findings and recommendations after their inspection
- **Half-yearly reports** to the Prime Minister which are laid in Parliament
- Website & Twitter  - latest news / re-tweet items of interest
(Including transparency statistics, inspection findings, inspection recommendations, outcomes of inquiries, error investigations)
- Evidence to parliamentary select committees, Intelligence Security Committee, various reviews of powers and Government consultations
- Speeches, roundtables, panel discussions at Government, civil society and industry events.

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The image shows a screenshot of the IOCCO website and its Twitter profile. The website header includes navigation links: Quick Links, Home, Reports, Who we are, What we do, Contact us, and Links. A search bar is present with the text "Site Search:" and a "Search" button. The main content area features the IOCCO logo, which consists of a stylized red and grey 'IO' followed by the text "INTERCEPTION OF COMMUNICATIONS COMMISSIONER'S OFFICE". Below the logo, the text reads: "Welcome to the IOCCO website. IOCCO is responsible for keeping under review the interception of communications and the acquisition and disclosure of communications data by intelligence agencies, police forces and other public authorities. We report to the Prime Minister on a half-yearly basis with respect to the carrying out of the Interception of Communications Commissioner's functions. The Rt Hon. Sir Anthony May stepped down as Interception of Communications Commissioner on 31st July 2015 and a successor has not yet been appointed. In the interim IOCCO will continue to carry out its audits of public authorities using interception and communications data powers."

The "Latest News" section on the website lists three items:

- 4 August 2015**: Please click [here](#) to see our press release about our investigation into two police forces who breached the new procedures in the code of practice for acquiring communications data to determine journalistic sources. A web accessible version is available [here](#).
- 16th July 2015**: Today HMIP published their inquiry report into the interception of telephone calls between prisoners and their MPs. Please click [here](#) to see our press release.
- 16th July 2015**: The Commissioner's half-yearly report has been laid in Parliament today by the Prime Minister. Please click [here](#) to download a copy of our press release, [here](#) for a copy of the report and [here](#) for a copy of the Written Ministerial Statement.

The Twitter profile for @iocco_oversight is also shown, featuring a profile picture of a building at night. The bio reads: "iocco @iocco_oversight Interception of Communications Commissioner's Office (IOCCO) - Independent Watchdog - Interception and Communications Data. iocco-uk.info". It shows 0 following and 733 followers. A tweet from 7h ago is visible, with the text: "Press release re our investigation into journalist breaches iocco-uk.info/docs/4th%20Aug...".

How can you help to ensure the legislation and oversight is fit for purpose?

- Engage with and contribute to the various debates and consultations
- Ensure the debate is informed and evidence based
- Public authorities need to think about how they can better inform Parliament and the public:
 - why they need their powers
 - how they make use of their powers
 - justify why they might need new powers



Thanks for listening!

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