



**Speaking notes for Justice and King's College London Roundtable
Mon 2nd November 2015**

Thank you for inviting me to speak today on this important topic. I've been asked to give our (IOCCO's) views on transparency and on reforming oversight.

I'm going to start with a quote on transparency which the Lord Chief Justice made recently – although he was not talking about surveillance powers he could so easily have been...

"Transparency and openness are crucial to instilling public confidence in the justice system. In so doing, the emphasis has to be on demonstrating the real-life impact, rather than relying on high-level constitutional principles".

Our role as overseers is to independently scrutinise public authorities' compliance on behalf of the population. But in order to instil public confidence it is crucial for us to provide assurance to the public that they are performing their functions in accordance with the law and, where they are not, for us to report on what went wrong and ensure that individuals affected are able to seek effective remedy.

To do this we need to continue to challenge and push the boundaries to achieve more openness and transparency. We have an important education role – to provide the public and Parliament with greater understanding about how these intrusive powers are used and the safeguards that are in place. But the public authorities also have an important role to fulfil here – they must step up and demonstrate clearly and coherently the real-life impact of these powers so that there can be meaningful debate and public consent going forward. In order for this to happen the public need to be informed fully about the potential privacy implications of the powers and how they are used by public authorities to combat terrorism, catch criminals and protect vulnerable members of the public and victims of crime.

On oversight reform – we set out a number of key suggestions to the various reviews as to how, amongst other things, the current oversight arrangements might be strengthened (for example – see our evidence submission¹ to David Anderson QC). If you will indulge me I'd like to present to you our "wish list" of the elements that we would like to see in the Investigatory Powers Bill (the "IP Bill") to strengthen the current oversight of surveillance powers.

¹ [http://www.iocco-uk.info/docs/2014-12-5\(2\)%20IOCCO%20Evidence%20for%20the%20Investigatory%20Powers%20Review.pdf](http://www.iocco-uk.info/docs/2014-12-5(2)%20IOCCO%20Evidence%20for%20the%20Investigatory%20Powers%20Review.pdf)

IOCCO “Wish List” for Oversight Provisions in the IP Bill

1. A single independent public facing oversight body – We support fully a single unified body with responsibilities for surveillance oversight. This will present an opportunity to streamline the oversight landscape, to put all of the oversight responsibilities on a statutory footing, to bridge some of the identified gaps and overlaps. The body must be independent, have an appropriate legal mandate and be public facing to promote greater public confidence.

2. Full access to technical systems – The current statute (RIPA) contains outdated language (a requirement to provide to the Commissioner with “all such documents and information”) and is in need of updating. The query based searches we have developed on the communications data side of our business enable us to at scale identify trends, patterns and compliance issues across large volumes of applications. We need to develop our technical audits on the interception side of the business, particularly where the collection of material / data is at scale.

3. Provision to launch inquiries & investigations and sufficient resource to conduct thematic inquiries – The oversight body should have a clear mandate to launch inquiries into matters of public interest or areas of concern. Detailed thematic investigations should take place in addition to ongoing reviews. It is difficult presently for us to produce detailed thematic reports without undermining our core review functions - both are key elements to ensuring robust oversight and one should not compromise the other.

4. Relaxation on secrecy provisions to aid transparency – We are constrained by the current statutory provisions in section 19 of RIPA forbidding disclosure (as are the public authorities and the communication service providers). The culture of secrecy must continue to be challenged and transparency should be encouraged where it leads to greater accountability without prejudicing national security or the ongoing prevention or detection of crime.

5. Full provision for reporting of errors / breaches and power to refer to Investigatory Powers Tribunal (IPT) – It is crucial to ensure that the error reporting provisions are clear and comprehensible and that individuals adversely affected are able to seek effective remedy. On the latter point a number of areas would benefit from review here including; the threshold of “wilful or reckless”, whether the Commissioner should be able to refer breaches directly to the IPT etc.

6. Expert resource to complement the Commissioner / inspectors – inc. technical, legal, privacy advocates, academics – Staff in the oversight body should be selected on the basis of expertise and experience. To complement the Commissioners’ expertise a breadth of skills are required – former law enforcement and intelligence agency officials, forensic experts, computer scientists, analysts, privacy advocates, lawyers and individuals with media / communications skills. This will ensure that the public authorities are robustly held to account and that all critical views are represented.

The inclusion of these elements into the oversight provisions would serve to modernise and strengthen the current statutory oversight arrangements.

Please see our reports and other publications for further information on the effectiveness of the current oversight arrangements, the safeguards to protect privacy, the case for amending or replacing legislation and the statistical and transparency requirements that should apply.

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2nd November 2015