Inspections under Part I Chapter II of the Regulation of Investigatory Powers Act (RIPA) by the Interception of Communications Commissioner's Office (IOCCO)

Name of Public Authority	Financial Conduct Authority (FCA)
Date of Inspection	7th – 9th October 2013
Inspectors	

Background to the Inspection: The Interception of Communications Commissioner's Office (IOCCO) is charged with undertaking inspections on behalf of the Interception of Communications Commissioner, Sir Anthony May. IOCCO undertake a revolving programme of inspection visits to all relevant public authorities who are authorised to acquire communications data under Part I Chapter II of the Regulation of Investigatory Powers Act (RIPA), and produce a written report of the findings for the Interception of Communications Commissioner.

The primary objective of the inspection is to ensure that the system in place for acquiring communications data is sufficient for the purposes of the Act and that all relevant records have been kept; ensure that all acquisition of communications data has been carried out lawfully and in accordance with the Human Rights Act (HRA), Part I Chapter II of RIPA and its associated Code of Practice (CoP); and, provide independent oversight to the process and check that the data which has been acquired is necessary and proportionate to the conduct being authorised.

Statistics:

Number of applications which have been made during the previous 12 month period, and, if applicable, since the previous inspection.	**69 (599)**
Number of Authorisations granted under each section of the Act during the previous 12 month period, and, if applicable since the previous inspection.	**S21 4(a) – 9 (82)** **S21 4(b) – 4 (27)** **S21 4(c) – 6 (104)**
Number of Notices issued under each section of the Act during the previous 12 month period, and, if applicable since the previous inspection.	**S21 4(a) – 150 (515)** **S21 4(b) – 77 (211)** **S21 4(c) – 553 (1119)**
Number of applications which have been rejected by a Designated Person during the previous 12 month period, and, if applicable since the previous inspection.	**13 (66)**

Staffing:

Senior Responsible Officer (SRO)	**Daniel Thornton** (Head of Legal Department)
SPoC Manager	Communications Data Investigator, Full time AO
Accredited Officers (AOs) (indicate if full time AO, part time AO etc)	Communications Data Investigator, Full time AO

Previous Recommendations:

The FCA emerged well from their previous inspection conducted in April 2012 when only two recommendations were made to fine tune parts of the systems and processes. One of the recommendations had been fully achieved. The other recommendation concerning the issuing of Section 22(4) Notices requires revisiting and this will be discussed later in the report.

Summary of Inspection Findings:

Overall the FCA emerged well from this inspection. The Inspectors were satisfied that the public authority is acquiring communications data for a correct statutory purpose and for investigations where they have a clear statutory duty and responsibility to conduct a criminal investigation. Overall the public authority has a good level of compliance with the Act and CoP.

A good standard of application is being produced across the board. The Inspectors were satisfied that the requests justified the principles of necessity and proportionality.

Overall the Accredited Officers (AOs) in the Single Point of Contact (SPoC) are performing their guardian and gatekeeper duties effectively and are ensuring that the FCA acts in an informed and lawful manner when it is acquiring communications data. However, the SPoC is not promoting efficiency and two recommendations have been made in this respect. First, applicants should make greater use of the streamlining procedure outlined in Paragraphs 3.31 and 3.32 of the CoP as this will reduce bureaucracy and speed up the collection of the data. Second, applicants should be advised that they can request subscriber data and service use / traffic data on the same application. These recommendations will significantly reduce the number of applications and speed up the process.

The Inspectors could not be satisfied in all cases that the Designated Persons (DPs) were discharging their statutory duties responsibly and this is an area of the process which requires improvement. First, a number of the DPs were not completing their written considerations to a particularly good standard and this was an area of inconsistency. Second, some of the DPs were taking an inordinate amount of time to approve the applications (in the worst case 19 days). This is causing unnecessary delays in the process and after such a period of time it must also be questionable if the necessity and proportionality considerations are still valid. For a number of reasons it is vitally important that applications are approved speedily, otherwise this may have an adverse impact upon the progress of the investigations. Once applications are approved the AOs are generally able to directly acquire the data using online CSP systems. It is therefore incredibly frustrating, for both the applicant and the SPoC, and inefficient that it is on occasions taking weeks to complete the application process when the data itself can be acquired very quickly. Recommendations have been made to bring about improvements in this

area of the process.

Unfortunately there have been some misunderstandings surrounding the procedures to follow when drafting and issuing of Section 22(4) Notices and also in relation to the renewal process. These misunderstandings have resulted in a small number of technical breaches of the Act occurring which also constitute recordable errors. Fortunately none of the above errors had any bearing on the actual justifications for acquiring the data, although it is nonetheless important that the data is always obtained fully in accordance with the law. The Inspectors are satisfied that the AOs now understand the correct procedures to follow and will appropriately advise DPs in future. This should prevent recurrence.

The inspection findings are outlined in more detail in the following sections of the report. A number of recommendations arise from the inspection and they are mainly designed to tighten parts of the systems and processes and assist the public authority to achieve the best possible level of compliance with Part I Chapter II of RIPA and its associated CoP. The recommendations are shown in the last column of the inspection tables. Please note that recommendations are shaded red, amber or green. IOCCO have adopted this practice to enable public authorities to prioritise the areas where remedial action is necessary. The red areas are of immediate concern as they mainly involve serious breaches and / or non-compliance with the Act or CoP which could leave the public authority vulnerable to challenge. The amber areas represent non-compliance to a lesser extent. However remedial action must still be taken in these areas as they could potentially lead to breaches. The green areas represent good practice or areas where the efficiency and effectiveness of the process could be improved.

Summary of Recommendations: Red - 0; Amber - 4; Green - 3.

Areas Inspected:

1. Application Process

Acquisition of communications data under the Act involves four roles within a relevant public authority; the Applicant, the Designated Person (DP), the Single Point of Contact (SPoC) and the Senior Responsible Officer (SRO). The Act provides for two alternative means for acquiring communications data, by way of an Authorisation under Section 22(3) or a Notice under Section 22(4).

Baseline	Achieved (Yes / No / Partly)	Description of Procedures & Action Required (if applicable)	Rec No.
Examination of Applications			
A number of applications will be randomly examined by the Inspection team to check that the correct process has been applied and that the data has been obtained lawfully, with the approval of a Designated Person (DP). Public authorities must restrict the use of their powers under Part I Chapter II to obtaining communications data for investigations where they have a clear statutory duty and responsibility to conduct a criminal investigation and they should never be used to investigate trivial offences.	**Yes**	**Approx Number of Applications examined:** 80. The Inspectors were satisfied that the communications data had been acquired for the correct statutory purpose i.e. Section 22(2)(b) 'for the prevention and detection of crime' and that the applications were submitted in relation to criminal offences which the public authority has a statutory duty to investigate.	

		In all cases the Inspectors were satisfied that the correct process had been applied and that the data had been obtained lawfully, with the approval of a Designated Person (DP). Overall the applications are completed to a good standard.	
Applicant			
The applicant should complete an application form, setting out for consideration by the designated person (DP), the necessity and proportionality of a specific requirement for acquiring communications data. (Para 3.3 CoP). Applications must include all of the requirements specified in Paragraphs 3.5 and 3.6 of the CoP. The Home Office and National Policing (NP) Data Communications Group (DCG) have produced a template application form.	**Yes**	**Application / System used:** Home Office and NP DCG application form template. The applications are completed electronically and submitted to the SPoC. They are then transmitted to the DP by email, together with any draft Section 22(4) Notices. The DP signs the applications and issues the Section 22(4) Notices electronically and returns them to the SPoC by email. A clear audit trail exists and the emails and email attachments are retained for this purpose. Some of the DPs were not entering the date / time of approval on the Notices and this is covered later in the report.	
Necessity: Applicants should outline a short explanation of the crime (or other purpose), the suspect, victim or witness and the phone or communications address and how all these three link together. A brief description of the investigation or operation may assist the DP to better understand the reason for the application. In a long term or complex investigation or operation it is important to set the application in context with the overall investigation or operation and set the scene and background. (See Home Office and ACPO DCG application guidance document).	**Yes**	The principle of necessity was well covered with applicants explaining the link between the crime, the suspect or victim and the communications address. The Inspectors had initial concerns in relation to the necessity of one application as firstly, the names of the financial institutions involved in an insider trading investigation were not named, and secondly it was unclear how the communications addresses had been attributed to the subjects of the investigation. This was discussed directly with the applicant who explained that this was her first application and she had deliberately omitted the names of the financial institutions owing to reasons of sensitivity. Only a few members of the FCA were aware of the investigation and this did not include the nominated DP. The applicant was able to outline the source of the intelligence which attributed the communications addresses to the subjects of the application. On the basis of the information subsequently provided by the	**1**

		applicant, the Inspectors were satisfied that the application was necessary and proportionate. **The Inspectors reiterated that applications for communications data must stand alone. A DP must be provided with all of the available information in order to properly assess the necessity and proportionality of the request and should not be presented with a sanitised application. There is some latitude in the CoP for DPs who are directly involved in investigations to approve applications for reasons of security and in such cases Para 3.11 of the CoP must be complied with.**	
Proportionality: Applicants should outline what is expected to be achieved from obtaining the data and how the level of intrusion is justified when taking into consideration the benefit the data will give to the investigation. The specific date/time periods requested should be justified i.e. how these are proportionate. An explanation as to how the data will be used, once acquired, and how this will benefit the investigation will assist the justification. (See Home Office and ACPO DCG application guidance document).	**Yes**	The applicants are following the guidance which ensures this principle is well addressed.	
Collateral Intrusion: Applicants should consider and, where appropriate, describe any meaningful collateral intrusion – the extent to which the privacy of any individual not under investigation may be infringed and why that intrusion is justified in the circumstance. Applicants should be aware that that there will only ever be minimal collateral intrusion in relation to subscriber data or that none will be identified at the time the application is made. (See Home Office and ACPO DCG application guidance document).	**Yes**	Collateral intrusion was dealt with well in the applications requesting service use and / or traffic data, with applicants outlining whether they are likely to obtain data which is outside the realm of their investigation and how they planned to manage it. Applicants also have a good understanding that collateral intrusion is minimal in relation to subscriber data.	
Were any examples provided in relation to how communications data has been used to good effect (i.e. what use has been made of the data acquired by the investigating officers? Did it lead to the identification of the offender? How was it of value to the investigation?)	**Yes**		

Single Point of Contact (SPoC)			
The SPoC should promote efficiency and good practice in ensuring only practical and lawful requirements for communications data are undertaken. The SPoC should provide a "guardian and gatekeeper" function ensuring that public authorities act in an informed and lawful manner. (Para 3.16 CoP).	**Yes**	The SPoC is providing an efficient service and ensuring that the data is acquired in a timely fashion. There is no backlog in the work and the applications are usually processed on the day of receipt. The Inspectors saw several examples of applicants requesting subscriber details as a precursor to service use or traffic data and in these cases the applicants were submitting two applications which is unnecessary and not in line with Paragraphs 2.28 and 2.29 of the CoP. **It is recommended that applicants should be advised that they can request subscriber and service use / traffic data on the same application. This will significantly reduce the number of applications and improve the efficiency of the process. The SPoC should manage the acquisition of the data incrementally.** There is also room to make more use of the streamlining procedure outlined in Para's 3.31 and 3.32 of the CoP and this will be discussed later in the report.	**2**
The SPoC should provide objective judgement and advice to both the applicant and the DP. (Para 3.16 CoP). The SPoC should engage proactively with applicants to develop strategies to obtain communications data and use it effectively in support of operations or investigations. (Para 3.17 CoP).	**Yes**	The Inspectors saw numerous instances where the SPoC had provided good advice to both applicants and DPs. The AOs in the SPoC are clearly frustrated that they are not approached at the outset of an investigation to assist investigation teams to develop strategies to obtain communications data. Their line manager supports this view and	

		has forwarded a written submission to senior managers to propose that investigation teams utlise the skills and knowledge of the AOs in the SPoC at an early stage. IOCCO support this submission and see this as a key part of the SPoC role.	
The SPoC should be in a position to fulfil the additional responsibilities outlined in Para 3.17 CoP. There should be a full audit trail of all actions taken by the SPoC.	**Yes**	SPoC logs are completed to an excellent standard and provide a good audit trail of the actions taken by the AOs from the start to the end of the process. Individual entries in the SPoC logs are cross referred to electronic files which contain the documents relating to the entries and the audit trail is easy to follow.	
The SPoC may be an individual who is also a DP. The SPoC may be an individual who is also an applicant. The same person should never be an applicant, a DP and a SPoC. Equally the same person should never be both the applicant and the DP. (Para 3.19 CoP).	**Yes**	Since the last inspection there have been no occasions where the AOs have also acted as applicants.	
Designated Persons (DPs)			
A DP shall not grant an authorisation or give notice unless they believe that obtaining the data in question by the conduct authorised is proportionate to what is sought to be achieved by obtaining the data. (Section 22(5) Act). A DP must consider the application and record his considerations at the time (or as soon as is reasonably practicable) in writing or electronically. (Para 3.7 CoP). The DP shall assess the necessity for any conduct to acquire or obtain data taking account of any advice provided by the SPoC. (Para 3.10 CoP).	**Partly**	**Approx no. of DPs:** 7 **Rank / Level of DPs:** Heads of Departments in Enforcement. **In accordance with Statutory Instrument No. 480/2010:** Yes The Inspectors could not be satisfied in all instances that the DPs had discharged their statutory duties responsibly. Overall the Inspectors concluded that the DPs are completing their written considerations to an inconsistent standard. Some of the considerations were completed to a poor standard, whereas other DPs had recorded good quality salient comments evidencing that they had given the applications due consideration. A recommendation is made in the next baseline in relation to the quality of the DPs considerations. In addition some of the DPs were not always approving the applications in a timely fashion (in a number of cases delays of 7-10 days were experienced and in the worst case 19 days). This was despite the fact that the AOs had chased the requests. For a number of reasons it is vitally important that	**3**

		applications are approved speedily, otherwise this may have an adverse impact upon the progress of the investigations. In addition, after such long periods of time it must also be questionable if the necessity and proportionality considerations are still valid. The SPoC also has access to the CSP online systems and consequently the AOs can directly and quickly acquire data using these systems. It is therefore incredibly frustrating, for both the applicant and the SPoC, and inefficient that it is sometimes taking weeks to complete the application process when the data itself can be acquired quickly. **The DPs should promptly consider applications to ensure that the applicants can meet their investigative objectives in a timely fashion. The SRO should reinforce this point to the DPs and the SPoC should continue to regularly chase any DPs where applications are outstanding.** The Inspectors examined a number of applications that were rejected by the DPs and concluded that the grounds for doing so were valid and fully outlined.	
IOCCO recommends that DPs should tailor their written considerations to the individual applications to provide evidence that they have been given due consideration.	**Partly**	Some of the DPs had followed this good practice guidance by tailoring their considerations to the individual applications. However some of the DPs were recording very short, generic phrases that were identical across a number of applications. One DP had a tendency to cut and paste sentences from the necessity and proportionality sections completed by the applicant and added very little in the way of his own considerations. In such cases it would be very difficult for the DP to demonstrate that they had properly considered the necessity and proportionality justifications if called upon to do so in Court or at a Tribunal. **It is recommended that the DPs should always follow the good practice guidance by tailoring their comments to the individual applications as this is**	**4**

		the best means of demonstrating that they have been properly considered.	
DPs must ensure that they grant authorisations or give notices only for purposes and only in respect of types of communications data that a DP of their office, rank or position in the relevant public authority may grant or give. (Para 3.9 CoP).	**Yes**	Compliant with this requirement.	
DPs should not be responsible for granting authorisations or giving notices in relation to investigations or operations in which they are directly involved, although it is recognised that this may sometimes be unavoidable, especially in the case of small organisations or where it is necessary to act urgently or for security reasons. Where a DP is directly involved in the investigation or operation their involvement and their justification for undertaking the role of DP must be explicit in their recorded considerations. (Para 3.11 CoP)	**Yes**	The SPoC nominates the DP and this ensures there is independence in the approvals process. As outlined earlier in the necessity section of this report, some difficulty was encountered in relation to one application in relation to a sensitive investigation. In this case, the nominated DP was not presented with the full facts of the investigation and the application omitted key information in the necessity section. There is some latitude in the CoP for DPs who are directly involved in investigations to approve applications for reasons of security and in such cases Para 3.11 of the CoP must be complied with.	
Content of Section 22(3) Authorisations and Section 22(4) Notices			
An authorisation must comply with all of the requirements outlined in Section 23(1) of the Act and Paragraphs 3.28, 3.43 & 3.44 of the CoP.	**Yes**	Home Office and NP DCG Assurance of an Authorisation template in use. Those examined were correctly completed with one exception where the incorrect date of approval was specified on the assurance. This constitutes a recordable error and was duly recorded by the SPoC during the inspection (URN FCA 174-2 refers).	
A notice must comply with all of the requirements outlined in Section 23(2) of the Act and Paragraphs 3.37, 3.43 & 3.44 of the CoP.	**Partly**	Home Office and NP DCG template is in use. A number of errors were found in relation to the completion of the Section 22(4) Notices and these are covered in the next two baselines.	
The 'giving of a notice' means at the point at which a DP determines that a notice should be given to a CSP (Para 3.35 CoP). A notice should emanate from the DP and be endorsed in a clear and auditable manner.	**Partly**	The AOs prepare and forward the draft Notice/s to the DPs. There were two issues identified with this part of the process. First, on two occasions when a communications address was ported to another CSP, the AO raised and served a new Notice on the new CSP without it being	**5**

		formally issued by the DP. As a result there was no evidence in these cases that the Notices had actually been formally issued by the DP. **It is the statutory responsibility of the DP to issue Notices and this responsibility cannot be delegated. The SPoC must ensure that in future all Notices are formally issued by the DP.** Any Section 22(4) Notices which did not emanate from the DP constitute recordable errors. These 2 errors were duly recorded during the inspection (URNs FCA 171-6 and FCA 178-1 refer). In addition not all of the DPs were adding the date / time of issue onto the draft Notices. The AOs were instead frequently entering these details before serving the Notice/s on the CSPs and unfortunately on occasions the AOs had recorded the incorrect date. These instances constitute recordable errors and were duly recorded by the SPoC during the inspection (URNs FCA153 -1, FCA155-1 and FCA 156-1 refer). **It is recommended that the DPs are given clear instructions to endorse the Notices in a clear and auditable manner. The date of issue on the Notice must correspond to the date of approval on the application.**	
SPoCs should be mindful when drafting authorisations and notices to ensure the description of the required data corresponds with the way in which the CSP processes, retains and retrieves its data for lawful. A notice must not place a CSP under a duty to do anything which is not reasonably practicable for the CSP to do. (Section 22(7) Act, Para's 3.29 & 3.38 CoP)	**Yes**		
Duration, Renewal & Cancellation of Section 22(3) Authorisations and Section 22(4) Notices			
Relevant to all authorisations and notices is the date upon which authorisation is granted or notice given. From that date, when the authorisation or notice becomes valid, it has a validity of a maximum of one month (see footnote 57 CoP). This means the conduct authorised should have been commenced or the notice served within that month. (Para 3.42 CoP).	**Yes**		
Any valid authorisation or notice may be renewed at any time before the end of	**No**	The Inspectors identified that there had been a misunderstanding in	**6**

the period of one month applying to that authorisation or notice, for a period of up to one month by the grant of a further authorisation or the giving of a further notice. A renewed authorisation or notice takes effect upon the expiry of the authorisation or notice it is renewing. (Sections 23(5), 23(6) & 23(7) Act, Para 3.46 CoP).		relation to the renewal process and a number of Section 22(3) Authorisations and Section 22(4) Notices had been renewed after they had expired which is not permissible. These instances constitute recordable errors which were duly recorded by the SPoC during the inspection (URNs FCA141-4, FCA148-1, FCA152-1, FSA 71-79, FSA2 428, FSA2 432 refer). It is important to make the point that these errors had no bearing on the actual justifications for acquiring the data and that the DP had approved the data to be acquired. Nevertheless it is important for the FCA to act fully in accordance with the law. **The SPoC must put a process in place to ensure that Authorisations and Notices are only renewed under Section 23(5) of the Act before they expire. This can be done quite simply by sending the DP an email confirming that the data is still required. The email should contain a brief explanation why it has not been possible to retrieve the data within the first month. The original application must be attached to the email and the DP can approve the conduct via return email. Alternatively, if the original Authorisation or Notice has already expired, a new Section 22(3) Authorisation or Section 22(4) Notice must be raised and this can also be approved by email in the same way. It is advisable for this duty to fall on the original DP who gave the approval. All of the emails must of course be retained as part of the audit trail.**	
Renewal may be appropriate where there is a continuing requirement to acquire or obtain data that will or may be generated in the future, The reasoning for seeking renewal should be set out in an addendum to the application. Where a DP is granting a further authorisation or giving a further notice they should have considered why it is necessary and proportionate to continue with the acquisition of the data and record the date, and when appropriate, the time of the renewal. (Para 3.47 & 3.48 CoP).	**Yes**		
Where a DP is satisfied that it is no longer necessary or proportionate to acquire	**Yes**	There have been no requirements to cancel a Notice or	

the communications data he shall cancel the notice or withdraw the authorisation. (Section 23(8) Act, Para's 3.49, 3.50, 3.52 & 3.53 CoP). Reporting of a cancellation to a CSP may be undertaken on a DPs behalf by the SPoC, but in such cases the DP must confirm the decision in writing or in a manner that produces a record of the notice or authorisation having been cancelled or withdrawn by the DP.		Authorisation since the last inspection.	
A cancellation notice must include the details outlined in Paragraph 3.51 of the CoP. A withdrawal of an authorisation must include the details outlined in Paragraph 3.54 of the CoP.	**Yes**	A suitable template is available if required.	
National Priority Grading System (NPGS)			
Where relevant, the Data Communications Group (DCG) NPGS should be applied to requests for communications data correctly and fairly. (See Footnote 40 of the CoP). The emphasis within Grade 1 and Grade 2 is that the urgent provision of the specific communications data will have an immediate and positive impact on the investigation.	**Yes**	All applications are processed as Grade 3.	
Streamlining Procedures			
The streamlining procedure outlined in Paragraph 3.30 of the CoP should be used to reduce unnecessary bureaucracy and speed up the collection of the data when acquiring subscriber data under Section 21(4)(c). This procedure assists with number porting issues and enables the AOs to be more proactive when acquiring subscriber information by widening the data capture. In these instances it may be pertinent to acquire the data in stages. Furthermore, it is often good practice to check with the applicant before the data capture is widened because the direction of the investigation may have changed since the application was submitted or the user of the phone or communications address may have been identified through some other means.	**Yes**	Some use is being made of this procedure to widen the data capture. The process is used effectively to deal with number porting.	
The streamlining procedure outlined in Paragraphs 3.31 and 3.32 of the CoP which enable a DP to pre-authorise future subscriber checks at the same time as he or she is approving an application for service use or traffic data under Sections 21(4)(a) or (b) of RIPA, should be used to reduce unnecessary bureaucracy and speed up the collection of the data.	**No**	In the previous 12 months only one application requested consequential subscriber checks but a schedule was not subsequently submitted. A large number of applications have been submitted for service use and traffic data and in many instances the applicant was	**7**

		looking for specific contact between suspects. Subsequent subscriber checks were therefore unnecessary. However, there were a number of occasions where the approval of consequential subscriber checks would have reduced bureaucracy and sped up the collection of the data. **The AOs should appropriately advise applicants in relation to the streamlining procedure outlined in Para's 3.31 and 3.32 of the CoP and ensure that it is more widely adopted.**	
The applicant must outline why it is necessary and proportionate to either widen the data capture under Section 21(4)(c), or obtain the consequential 'future' subscribers in their application. In the latter case they should outline what analytical work they intend to conduct on the service use / traffic data to identify the relevant numbers. It is important that the SPoC gives appropriate advice to the DP and that the DP fully understands what he or she is approving in the application form.	**Yes**	Applicants are justifying why it is necessary to widen the data capture. An additional question has been added to the application form for the applicant to justify the acquisition of consequential subscriber checks.	
The AOs should spot check the schedules to assure the integrity of the process, i.e. to check that the communications addresses derive from the original service use / traffic data requests and that secure open source checks have been conducted. This should provide a good safety net. Furthermore if an AO finds evidence that applicants or analysts are not following the correct procedures then this should be brought to the attention of the SRO.	**N/A**	**Schedules checked by Inspectors:** No – none have been submitted since the last inspection.	

2. Training

It is important for all persons involved in the process to receive training and guidance to ensure that communications data is acquired lawfully in accordance with the Act and CoP and used effectively in support of investigations.

Baseline	**Achieved (Yes / No / Partly)**	**Description of Procedures & Action Required (if applicable)**	**Rec No.**
The SPoC is either an accredited officer (AO) or group of AOs trained to facilitate lawful acquisition of communications data. All AOs must complete a course of training and have been issued a SPoC PIN number. (Para 3.15 CoP). When an AO leaves the SPoC their PIN number should be removed from the list of approved AOs.	**Yes**	**PIN list checked:** Yes - correct.	

DPs must have current working knowledge of human rights principles, specifically those of necessity and proportionality, and how they apply to the acquisition of communications data under Chapter II of Part I RIPA and its associated CoP. (Para 3.8 CoP).	**Partly**	All new DPs receive one to one training by the SPoC. This inspection has highlighted a number of issues with the DP part of the process and further training / guidance is required.	
SPoCs should make efforts to ensure applicants are appropriately trained in the acquisition of communications data.	**Yes**	Training is provided by the SPoC to a range of FCA staff. This includes RIPA training days for new investigation staff with an input on the acquisition of communications data. One to one training is provided on an ad hoc basis if required.	

3. Keeping of Records

There are clear rules which must be followed in relation to the keeping of records and these procedures include the recording and reporting of errors. See Chapter 6 of the CoP for further information.

Baseline	**Achieved (Yes / No / Partly)**	**Description of Procedures & Action Required (if applicable)**	**Rec No.**
Records to be kept			
Applications, authorisations, copies of notices, and records of the withdrawal of authorisations and the cancellation of notices, must be retained by the public authority in written or electronic form, and physically attached or cross-referenced where they are associated with each other. The public authority should also keep a record of the date, and where appropriate the time, when each notice or authorisation is given or granted, renewed or cancelled. (Para 6.1 CoP).	**Yes**	Documents are managed and stored electronically.	
Records kept by the public authority must be held centrally by the SPoC or in accordance with arrangements previously agreed with the Commissioner. There records must be available for inspection by the Commissioner (Para's 6.1 & 6.2 CoP).	**Yes**	All of the records are maintained by the SPoC. Excellent standard of record keeping.	
Errors			
Where communications data is acquired or disclosed wrongly a report must be made to the Senior Responsible Officer (SRO) and then to the Commissioner ("reportable error") using the Error Reporting Form within no more than five working days of the error being discovered. (Para's 6.13 & 6.17 CoP). The error report must contain all of the details	**Yes**	**No. errors 'reported' in previous 6 months:** 2. **Nature of errors (i.e. applicant, SPoC, CSP etc):** Applicant (2) Incorrect communications address requested.	

outlined in Para 6.18 of the CoP.			
In cases where an error has occurred but is identified by the public authority or the CSP without data being acquired or disclosed wrongly, a record will be maintained by the public authority of such occurrences ("recordable error"). These records must be available for inspection by the Commissioner (Para 6.14 CoP). The records must include the details outlined in Para 6.20 of the CoP.	**Yes**	**No. errors 'recorded' in previous 6 months:** 20 (plus 11 additional recordable errors identified during the inspection). **Nature of errors (i.e. applicant, SPoC, CSP etc):** Applicant – (20) (relating to 3 applications) Incorrect transposition of a communications address but no data obtained. The following errors were all found during the inspection. The URNs are outlined earlier in the report and the errors have been duly recorded by the SPoC. **SPoC (11)** - Incorrect date of DP approval was entered on Notice / Authorisation (x4), Notice not formally issued by a DP (x2), Authorisation or Notice was renewed after expiry (x5).	
Where material is disclosed by a CSP in error which has no connection or relevance to any investigation or operation undertaken by the public authority receiving it, the material and any copy of it should be destroyed as soon as the report to the Commissioner has been made. (Para 6.21 CoP).	**Yes**	The Inspectors checked the records in relation to the reportable errors detailed above and confirmed that the data had been destroyed.	
Excess Data			
Where authorised conduct by a public authority results in the acquisition of excess data, or its disclosure by a CSP in order to comply with the requirement of a notice, all the data acquired or disclosed should be retained by the public authority. If having reviewed the excess data it is intended to make use of it in the course of the investigation an applicant must set out the reason(s) for needing to use that material in an addendum to the original application. The DP will then consider the reason(s) and consider whether it is necessary and proportionate for the excess data to be used in the investigation or operation. (Para's 6.23 to 6.25 CoP).	**Yes**	No excess data acquired but SPoC aware of procedures to follow.	

Freedom of Information Act (FOIA)

IOCCO is not a "public authority" for the purpose of the FOIA. It is therefore outside the reach of the Act, but it is appreciated that public authorities are not and that they may receive requests for disclosure of our reports. In the first instance the SRO should follow the procedure which is outlined in Paragraph 8.5 of the CoP (Part I Chapter II of RIPA). No disclosure should take place until IOCCO have been fully consulted as it is very important

that requests under the FOIA are dealt with in a consistent manner.

Conclusion & Requirement for Action:

IOCCO are extremely grateful for the excellent assistance and cooperation received during this inspection. The recommendations from this inspection are appended to the report in a schedule. It would be appreciated if you would ensure that the Senior Responsible Officer (SRO) oversees the implementation of the recommendations and ensures the schedule is completed and returned electronically to [redacted] by 28th January 2014.

Sir Anthony May, Interception of Communications Commissioner has decided to commence annual inspections in police forces as a result of a recommendation made by the Joint Committee on the Draft Communications Data Bill. IOCCO will commence annual inspections in January 2014.

Annex A
Recommendations for FCA as a result of the inspection conducted on 7-9 October 2013

No	Recommendation	Achieved (Yes / No / Partly)	Description / Comments
1.	Page 4 The Inspectors reiterated that applications for communications data must stand alone. A DP must be provided with all of the available information in order to properly assess the necessity and proportionality of the request and should not be presented with a sanitised application. There is some latitude in the CoP for DPs who are directly involved in investigations to approve applications for reasons of security and in such cases Para 3.11 of the CoP must be complied with.		
2.	Page 6 It is recommended that applicants should be advised that they can request subscriber and service use / traffic data on the same application. This will significantly reduce the number of applications and improve the efficiency of the process. The SPoC should manage the acquisition of the data incrementally.		
3.	Page 7 The DPs should promptly consider applications to ensure that the applicants can meet their investigative objectives in a timely fashion. The SRO should reinforce this point to the DPs and the SPoC should continue to regularly chase any DPs where applications are outstanding.		
4.	Page 8 It is recommended that the DPs should always follow the good practice guidance by tailoring their comments to the		

	individual applications as this is the best means of demonstrating that they have been properly considered.		
5.	Page 9 It is the statutory responsibility of the DP to issue Notices and this responsibility cannot be delegated. The SPoC must ensure that in future all Notices are formally issued by the DP. It is recommended that the DPs are given clear instructions to endorse the Notices in a clear and auditable manner. The date of issue on the Notice must correspond to the date of approval on the application.		
6.	Page 10 The SPoC must put a process in place to ensure that Authorisations and Notices are only renewed under Section 23(5) of the Act before they expire. This can be done quite simply by sending the DP an email confirming that the data is still required. The email should contain a brief explanation why it has not been possible to retrieve the data within the first month. The original application must be attached to the email and the DP can approve the conduct via return email. Alternatively, if the original Authorisation or Notice has already expired, a new Section 22(3) Authorisation or Section 22(4) Notice must be raised and this can also be approved by email in the same way. It is advisable for this duty to fall on the original DP who gave the approval. All of the emails must of course be retained as part of the audit trail.		
7.	Page 12 The AOs should appropriately advise applicants in relation to the streamlining procedure outlined in Para's 3.31 and 3.32 of the CoP and ensure that it is more widely adopted.		