

agencies working in the criminal justice system to disclose information for offender management purposes.

7. The statutory framework for collating and sharing covert intelligence is set out in the Regulation of Investigatory Powers Act 2000 (RIPA) and Investigatory Powers Act 2016 (IPA). Only RIPA was in force on 11 December 2015.
8. In 2015, the Prison Service shared covert intelligence with other agencies such as the police in accordance with the Strategic Partnership Agreement between NOMS and Law Enforcement Agencies (LEA) and the associated Statement of Common Principles for Sharing Prison Intelligence. These had been in place since March 2012 and were intended to promote collaborative and consistent working arrangements in respect of prison intelligence.
9. HMPPS has a long established process for this work. In essence all requests for covert operational activity in prisons (such as covert surveillance) must obtain approval from both a Governor in the prison that it is being planned and a senior HMPPS manager in the Security Order and Counter-Terrorism Directorate who has experience in managing covert tactics. The latter is there to provide assurance that all risks from the activity have been identified and mitigated, in effect acting as a “double lock” on all authorisations.
10. This process is part of the HMPPS Investigatory Powers policy framework and operations manual. The most recent iteration of this was published in June 2021) which replaces previous policies published in 2012. Due to its complexity and changes in law and practice the policy is under constant review and covers HMPPS’ use of covert tactics granted under RIPA and IPA.
11. HMPPS is currently developing specific content for the framework that better codifies how law enforcement should work with HMPPS to authorise the use of covert tactics in prisons, probation and other settings that fall under HMPPS responsibility. This includes escorts.
12. In 2016 HMPPS established the National Intelligence Unit (NIU) which is based within the Security Order and Counter-Terrorism Directorate in HMPPS HQ. The justification for this unit was to increase the capacity and capability of the agency to collect, analyse and share intelligence on offenders in custody and the community.
13. Following further investment in the last five years the unit now contains around 250 staff and has three key missions:
  - i) Conduct intelligence operations against priority threats (such as serious organised crime, corruption and terrorism) in order to disrupt their activities;
  - ii) Provide specialist intelligence collection services to the agency such as digital media, digital forensics and financial investigations;

- iii) Manage the agency's legal, policy and training responsibilities for intelligence work.
14. A core part of the delivery of the NIU was the creation of a Sensitive Intelligence Unit (previously known as a Confidential Unit) This unit enables HMPPS to receive, handle and take action on the most sensitive intelligence collected by partners in law enforcement and national security. The unit forms part of the wider Law Enforcement Sensitive Intelligence Network and works to the same operating model and standards as those in policing and other agencies. The precise activities of the unit cannot be fully disclosed but the unit receives hundreds of sensitive intelligence reports per month from a variety of agencies, including the Metropolitan Police, and when possible shares this with operational staff in prison to disrupt criminal activity.
15. More widely the introduction of the National Intelligence Unit also created five Regional Intelligence Units across England and Wales. Part of these units includes a Proactive Intelligence Team that specialises in the authorisation and deployment of covert tactics and works with and advises prison Governors on how best to use these capabilities, including in conjunction with law enforcement agencies.

#### Recommendations

16. At section 6.6 and repeated at 9.11 of the NOMS report it recommended that:

“The existing protocol for the management of covert operations in prisons does not allow for any such activity which takes place outside prisons eg. On a prisoner escort vehicle of an escort of a prisoner to hospital. The protocol needs to be extended to enable covert operations to be applied to prisoners regardless of their location.”

The work to develop the Investigatory Powers policy Framework mentioned in Paragraph 11 above will incorporate covert activity in non-custodial settings and this will include prisoners being escorted outside prisons.

17. Recommendations 9.1 - 9.4 of the NOMS report state as follows:

##### 9.1

“All police covert operations which involve NOMS in any way must be formally approved by NOMS staff in advance. This should be signed off at Governing Governor level within establishments and by NOMS HQ.

##### 9.2

“The existing information sharing protocols between the Police and NOMS must be used to discuss and agree covert operations whenever possible”

##### 9.3

“In the event that security concerns preclude the use of existing information sharing protocols between police and prison staff the issue should be escalated to senior levels for discussion and agreement on the action to be taken”.