

IN THE INVESTIGATORY POWERS TRIBUNAL

Date: 25 August 2008

Before:

LORD JUSTICE MUMMERY (President)
and
SIR RICHARD GASKELL

X v. LOCAL AUTHORITY

**Summary of a Ruling Given on a Human Rights Claim and
Complaint of Covert Surveillance**

Background

1. Following complaints of persistent dog fouling in an upper communal balcony to a block of council flats, a local authority installed a hidden video camera in the balcony area for a 28 day period in order to obtain evidence identifying the offender. No authorisation under the Regulation of Investigatory Powers Act 2000 ('RIPA') was sought. In the event, the camera was unsuccessful in identifying the person responsible for the dog fouling.
2. The Complainant, who at the relevant time lived in one of the flats on the balcony under surveillance, complained to his local authority that the video camera was pointing at his doorway. After attending council offices to review some of the images captured by the camera, he took legal proceedings against the local authority in the County Court, claiming that his Article 8 rights had been breached. This Court did not appear to have considered whether this was a matter which fell to be considered and determined by the Investigatory Powers Tribunal, and it made an order against the local authority for the payment of £3,000 damages together with interest and costs, which the local authority paid.

Complaint and Claim

3. In addition to proceedings in the County Court, the Complainant made a complaint and a human rights claim to the Tribunal in respect of the same surveillance activity. In response to Tribunal enquiries, the local authority asserted that, as the surveillance activity had occurred more than 12 months before the Complainant approached the Tribunal, the complaint was out of time. However, the Tribunal exercised its discretionary power to extend the time and admitted the complaint. The local authority contended before the Tribunal that RIPA did not apply to the surveillance that they had undertaken for a number of reasons. These included that the investigation of dog fouling

was a bona fide activity as a result of complaints by tenants and visitors to the block of flats, that it was a civil not a criminal matter and therefore outside the scope of RIPA, that other forms of monitoring were unlikely to be effective, and that the camera was not pointing directly at a particular person's property but generally to a communal area.

Outcome

4. The Tribunal considered that the positioning of the hidden camera indicated that the activity had constituted directed surveillance under RIPA but that no directed surveillance authorisation had been in place. In the absence of any other lawful authority for breach of privacy they upheld the complaint and ordered the local authority to destroy the video recordings of the unauthorised surveillance within 28 days.
5. The Tribunal made no order for compensation in view of the order for damages previously made against the council by the County Court.

Supplementary

6. The case did not set a precedent that directed surveillance against dog fouling is never proportionate – simply that in this case what was represented as general monitoring of a crime 'hotspot' amounted to directed surveillance within the meaning of RIPA as the camera was trained on the suspected offender's front door.