

**IN THE INVESTIGATORY POWERS TRIBUNAL**

Hearing date: 2 November 2006  
Judgment published: 29 November 2006

**Before:**

**MR JUSTICE BURTON (Vice President)**  
**MR PETER SCOTT QC**  
**MR ROBERT SEABROOK QC**

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**A & OTHERS**

**v.**

**THE METROPOLITAN POLICE SERVICE**

**Decision as approved by the Tribunal on a Human Rights Claim and  
Complaint of Covert Surveillance**

**Complaint and Claim**

1. A alleged that the Metropolitan Police Service (MPS), the Respondents, had intercepted certain telephone calls and had mounted covert surveillance which could have prejudiced action against the MPS.
2. In order to conduct the hearing in public, the Tribunal proceeded on the basis of assumed facts. Principal of these was that interception had been carried out against the Complainants' communications for the purpose of detecting crime, not wholly in connection with a disciplinary matter. The hearing focused on whether lawful activity could be established for that interception, either under sections 3(2) or section 4(2) of the Regulation of Investigatory Powers Act 2000 ('RIPA'). The former provided for consent of one of the parties to the interception, the latter provided for separate regulations governing interception for lawful business purposes. The parties accepted for the purposes of the hearing that if neither of these two provisions applied then the alleged interception was not 'in accordance with the law' as set out in Article 8(2) of the European Convention on Human Rights. The questions of carrying out interception under any other provision and whether the assumed interception was necessary and proportionate were not considered at the hearing.

**Interception under Telecommunications (Lawful Business Practice) Regulations 2000 made under section 4(2) of RIPA**

3. The Respondents conceded that they could not show that they had met the provisions of paragraph 3(2)(c) of the Lawful Business Practice Regulations, namely that they had 'made all reasonable efforts to inform every person who may use the telecommunications system that the communications transmitted

by means thereof may be intercepted'. In these circumstances the Tribunal did not express any further view.

### **Interception under one-sided consent provisions of section 3(2) of RIPA**

4. The Tribunal found that there was no authorisation in place which met the provisions of RIPA section 3(2).

### **Conclusion**

5. The Tribunal concluded that in the circumstances where neither interception under lawful business practice regulations nor with one party consent was available to the Respondents, any interception, if it occurred, would have been unlawful.

### **Supplementary**

6. The case was later stayed until 1 June 2007 pending formal employment mediation and was then withdrawn as part of the resolution of the mediation process.