Case No: IPT/11/129/CH; IPT/11/133/CH & IPT/12/72/CH

INVESTIGATORY POWERS TRIBUNAL

Rolls Building
Fetter Lane, EC4A 1NL

Date: 13/07/2012

Before :

MR JUSTICE BURTON
MR CHARLES FLINT QC
MR ROBERT SEABROOK QC

- -

Between :

BA
RA
CT

Claimants

- and -

CHIEF CONSTABLE OF CLEVELAND POLICE

Respondent

- -
- -

CA (representative for the **Claimants**)
MR MATTHEW HOLDCROFT (instructed by the **Head of Legal Services, Cleveland Police**) for the **Respondent**
MR JONATHAN GLASSON (instructed by Treasury Solicitors) **Advocate to the Tribunal**

Hearing dates: 5 July 2012

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Mr Justice Burton :

1. There have been three Claimants before the Tribunal, at a hearing which, by agreement of the parties, was held in public, the First Claimant, the Second Claimant, her daughter, and the Third Claimant, her daughter's boyfriend, CT. The claim against the Respondent, the Cleveland Police, arose out of the placing by the Cleveland Police of a covert silent video recorder in the sitting room of a flat owned by a seriously disabled patient, for whom the first two Claimants were carers, and to which the Third Claimant made occasional visits, including overnight stays. The evidence obtained from the recording led to the conviction, upon her plea of guilty, of the First Claimant for theft. She and her fellow Claimants complain before this Tribunal that the placing of the recorder in the sitting room was unlawful and infringed their Article 8 rights.

2. All three Claimants were represented by the First Claimant's husband (being the Second Claimant's father), CA, who was permitted to act as a McKenzie Friend, and did so with economy and courtesy. The Respondent was represented by Matthew Holdcroft of Counsel. Since the arguments were likely to raise questions of law and the Claimants had indicated that they did not intend to be legally represented, the Tribunal was assisted by Mr Jonathan Glasson of Counsel as amicus curiae. There was originally one other Claimant, one of the other carers, who did not pursue her application. The Third Claimant did not bring his application within time in accordance with s67(5) of the Regulation of Investigatory Powers Act 2000 ("RIPA"), but the Tribunal exercised its discretion to allow him to do so out of time, on terms that his case was to be run on the same basis as that of the other two Claimants and, particularly as neither he nor either of the other two Claimants were intending to give oral evidence, on the basis of the same agreed factual basis as applied to the other two Claimants.

3. That factual basis was as follows:

    i) The patient, who was only mobile by the use of a personal motorised chair, owned the flat, which consisted of her bedroom, where she spent most of her time, a second bedroom which the carer on duty would occupy and sleep in overnight, a bathroom opposite those two bedrooms, and a sitting room and kitchen. The sitting room was available to the patient, and it is apparent from the photographs before the Tribunal that her belongings were kept there, including television, computer, music equipment, CDs and DVDs and books, and would be available for the use of the carers.

    ii) There was a team of 8 carers, but only one would be on duty at any one time, particularly at night, when one of them would sleep over in the second bedroom.

    iii) The patient discovered that items belonging to her were going missing and believed that one or more of the carers was responsible, although she was unable to identify which of them. They all had unrestricted access to her flat, and the patient supervised their access save for when she was in bed, which was of course for much of the time, particularly at night. In late January 2010 her social worker reported the matter to the Respondent, and PC Collingwood

was appointed as investigating officer, and attended the scene in February 2010.

iv) PC Collingwood has made a statement to the Tribunal, which was not challenged. He explained that he considered a number of different investigative strategies, including the arrest of all 8 carers, which he rejected as being disproportionate. In May 2010 he consulted with Supt Ravenscroft, of the Covert Authorities Bureau, seeking advice in relation to the investigation and use of covert techniques. Supt Ravenscroft has also supplied a statement which has not been challenged.

v) Supt Ravenscroft was the Force Authorising Officer for RIPA, and plainly had considerable experience and knowledge of RIPA procedures and requirements. She made, as we accept, a contemporaneous note of her discussions with PC Collingwood and her thought processes and conclusions.

4. At this stage it is necessary to set out the statutory framework in respect of covert surveillance. S26 of RIPA relates to both directed surveillance and intrusive surveillance. It was and is clear that what was proposed by way of the installation of a surveillance device in the flat was intrusive surveillance, namely (by reference to s26(3) of RIPA) being

> "*covert surveillance that*
>
> *(a) is carried out in relation to anything taking place on any residential premises … and*
>
> *(b) … is carried out by means of a surveillance device.*"

5. Covert surveillance is further defined by s26(9) of RIPA, but there is no issue that what occurred was covert surveillance, and in those circumstances the alternative provisions relating to directed surveillance, also in s26, do not apply. If it had been directed surveillance, then s28 of RIPA would apply, which provides:

> "*2. A person shall not grant an authorisation for the carrying out of directed surveillance unless he believes –*
>
> *(a) that the authorisation is necessary on grounds falling within subsection (3); and*
>
> *(b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.*"

6. Subsection (3) sets out a number of grounds for the grant of such authorisation, which include where "*it is necessary … (b) for the purpose of preventing or detecting crime or of preventing disorder*".

7. In relation to intrusive surveillance, the relevant section is s32:

> "*(1) Subject to the following provisions of this Part, the Secretary of State and each of the senior authorising officers*

> [defined in subsection (6)] *shall have power to grant authorisations for the carrying out of intrusive surveillance.*
>
> *(2) Neither the Secretary of State nor any senior authorising officer shall grant an authorisation for the carrying out of intrusive surveillance unless he believes –*
>
> *(a) that the authorisation is necessary on grounds falling within subsection (3);*
>
> *(b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.*"

8. S32(3) provides many fewer grounds than are set out in s28(3): the relevant ground for our purposes is:

> "*(b) for the purpose of preventing or detecting serious crime.*"

9. Supt Ravenscroft recounted what occurred as follows in her witness statement:

> "*5. As a result of my previous experience as the Force Authorising Officer for RIPA I was able to inform* [PC Collingwood] *that as he had the consent of the owner to the installation of a surveillance device on her premises he would not require a Property Interference authorisation.*
>
> *6. However the issue of a RIPA authority was more complex. I considered that it was likely that the privacy of another person lawfully on the premises may be invaded as any visitor who is not made aware of the deployment of the camera would be subject to covert surveillance. I determined that such an action may be such as to interfere with the visitor's Article 8 rights under the European Convention on Human Rights as enacted within UK law.*
>
> *7. I informed DC Collingwood that the surveillance authority required would be an intrusive surveillance authority because it was due to be carried out in relation to activity taking place on residential premises: s.26(3)(a) of the Regulation of Investigatory Powers Act (RIPA). However, in order for an intrusive surveillance authority to be considered, the crime being investigated needed to meet the definition of "serious" crime as defined by RIPA. Having listened to the circumstances, it was my opinion that the offences being investigated did not meet this criterion. I recognised there was a possible argument to say that a series of thefts from the home address of a particularly vulnerable person by person(s) in a position of trust may potentially justify qualification to this category. On this occasion, I took the decision that it did not and explained that as a result intrusive surveillance could not be authorised.*

> *8. I explained to DC Collingwood that whilst the surveillance could not be authorised as intrusive, it could not be directed surveillance either by the very fact that it would be 'intrusive'. Therefore a directed surveillance authority was not available for consideration.*
>
> *9. I explained to the officer and his supervisor Insp. Robson that the particular conduct could not be authorised under RIPA but that this did not necessarily mean that the actions proposed could not lawfully be undertaken, even though it would be without the protection that an authorisation under RIPA would afford. The Act itself states that any such deployment outside RIPA does not necessarily mean that it is unlawful.*"

10. This is a reference to s80 of RIPA, which reads as follows:

> "*80. Nothing in any of the provisions of this Act by virtue of which conduct of any description is or may be authorised by any warrant, authorisation or notice, or by virtue of which information may be obtained in any manner, shall be construed –*
>
> *(a) as making it unlawful to engage in any conduct of that description which is not otherwise unlawful under this Act and would not be unlawful apart from this Act;*
>
> *(b) as otherwise requiring –*
>
> > *(i) the issue, grant or giving of such a warrant, authorisation or notice;*
> >
> > *(ii) the taking of any step for or towards obtaining the authority of such a warrant, authorisation or notice,*
>
> *before any such conduct of that description is engaged in.*"

11. Supt Ravenscroft continued as follows:

> "*10. I explained that I could still consider their request even in light of the above as Human Rights legislation allowed certain articles to be 'breached' in certain circumstances. In doing so, I would not only apply the criteria for the justification of such a breach but I would also look to ensure that the authorisation of any such deployment was completed in line with the principles of RIPA in accordance with the guidance provided by the Chief Surveillance Commissioner in December 2008.*"

12. This was a reference to the "*Office of Surveillance Commissioners* ["OSC"] *Procedures and Guidance*", which, in its most recent edition, reads as follows under the heading "*Repeat burglary victims and vulnerable pensioners*":

> "*227. While the consent of the owner to the installation of a surveillance device on his premises avoids the need for a property interference authorisation, the authorising officer should consider whether it is likely that the privacy of another person lawfully on the premises may be invaded. Any visitor who is not made aware of it is subject to covert surveillance. This is a technical breach of visitors' Article 8 rights, although in such circumstances any complaint may be regarded as unlikely.*
>
> *228. The surveillance is intrusive because it is carried out in relation to things taking place on residential premises s26(3)(a). But if the crime apprehended is not "serious", intrusive surveillance cannot be authorised; cf s32(3)(b). On the other hand, the surveillance is not directed, because it is intrusive; s26(2).*
>
> *229. The fact that particular conduct may not be authorised under RIPA … does not necessarily mean that the actions proposed cannot lawfully be undertaken, even though without the protection that an authorisation under the Act would afford.*"

13. Supt Ravenscroft continues:

> "*11. Having been fully briefed by DC Collingwood regarding the circumstances, I instructed him to arrange to speak to the technical support unit (TSU) regarding a feasibility assessment and to report back to me prior to taking any action.*
>
> *12. In the interim period I discussed the proposed action with DS Gary French, manager of the Covert Authorities Unit in order to check that my understanding of the legislation was correct and that the guidance from the OSC had not changed. DS French indicated that to his knowledge my understanding was correct.*
>
> *13. A further meeting followed in May 2010 with PC Collingwood, during which all of the above was discussed again and he updated me with the findings from the TSU feasability assessment. PC Collingwood indicated that Keith Malcolm as head of the Technical Support Unit (TSU) wished to meet with me to discuss the proposed action as he was aware that the activity was not being conducted under a RIPA authority and he wished to discuss my rationale for my decision. I agreed to do so and a date was arranged.*
>
> *14. On 18th June 2010, I met with Keith Malcolm from the TSU to discuss the deployment of a camera. It was discussed that the camera could be placed in an extractor fan as this would provide the necessary coverage of the living space and would*

be least likely to be discovered by any of the carers. I gave authority for the deployment of the camera and explained to Mr Malcolm why this was being done without a RIPA authority and my rationale for doing so. In addition I set parameters regarding the deployment in order to ensure that the camera did not intrude on the bathroom or bedroom, to ensure the privacy of [the patient] and her carers regarding biological needs and sleeping arrangements and to minimise the level of interference with their right to respect for a private and family life (Article 8). In addition to these considerations, the information provided regarding the thefts indicated that the majority were taking place within the living room area.

15. In authorising such activity to take place, my considerations were as follows:

16. I believed that it was necessary to use covert surveillance in the proposed operation (Operation Lecture), as offences of theft had occurred and it was therefore necessary to detect and/or prevent further crimes from occurring in accordance with ss.28(3)(b) and 29(3)(b) of RIPA.

17. I believed the activity to be proportionate to what it sought to achieve. [The patient] *in this case was a particularly vulnerable young woman who had a significant disability and was reliant on the care provided by others in her own home to allow her to maintain some level of independence. This care was provided by a number of people, all of whom had, at different times, unsupervised access to* [the patient] *and her property. All of the individual carers were acting in a position of the utmost trust and one of more of them was abusing this trust.*

18. Consideration had been given to challenging all of her carers and potentially arresting all of them as suspects and carrying out searches of their property, thereby involving an even more significant disruption to their right to respect for their private and family lives. I did not deem this to be a more proportionate response to the one proposed, nor would it, in my view, necessarily have achieved the overall objective of identifying the carer responsible for the theft, preventing this from happening again and bringing the offender to justice.

19. In addition I considered that the person responsible may also be in a position of trust with other vulnerable people and that [the patient] *may not be the only 'victim'. Acting in a more overt way would simply have alerted the thief to our awareness of the circumstances and would have allowed them to alter their behaviour temporarily, thereby evading justice and allowing a situation to continue that may have put others at*

> *risk. The problem was exacerbated by the fact that there was more than one carer.*
>
> *20. I believe that the placing of a covert camera within the premises was the only way of securing the necessary evidence without putting* [the patient] *at risk of additional harm. I placed parameters around the deployment of the camera to minimise the level of intrusion within the premise. These include the positioning and coverage provided by the camera and the fact that it was visual recording only as this would restrict the level of intrusion in that it would not be recording what may be more personal conversations.*
>
> *21. Protecting vulnerable people from harm is a Force priority and never more so than when in their own homes.*
>
> *22. I did consider that there would be collateral intrusion issues regarding this deployment in that it would also capture other visitors to* [the patient's] *home in addition to those carers carrying out their role to the best of their ability. I believed this to be unavoidable but gave instructions regarding the material obtained, the access to the material and the need to ensure compliance with CPIA and MOPI. I also ensured that this 'authorisation' was subject to regular reviews.*
>
> *23. In addition to the above considerations regarding RIPA, I also considered the implications of the Human Rights Act (HRA) and any potential breach of Article 8 in particular*."

14. Article 8 reads as follows:

> "*Right to respect for private and family life.*
>
> *1. Everyone has the right to respect for his private … life …*
>
> 2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of the health or morals, or for the protection of the rights and freedoms of others.*"

15. Supt Ravenscroft states, in paragraph 24: "*I am aware that the HRA allows for a breach of this Article in the following circumstances*" and she quotes Article 8.2, set out above. She then continues:

> "*25. I believed the breach of the article 8 rights of the carers in this case to be justified, necessary for the prevention of crime and for the protection of the rights and freedoms of* [the patient] *and possibly other unknown 'victims'.*

> *26.* [The patient] *was actually in her own home and the carers were at their place of work. I believed that* [her] *rights and freedoms took priority over the Article 8 rights of her carers. In addition, I considered that in this case, the carer who was responsible for stealing from her was not in effect on the premise legally as, had* [the patient] *known who was responsible for the theft, she would not have given them permission to be on the premises and they would therefore have not lawfully been on the premises. This would have further diminished any claim they may have had with regards to any expectations about their article 8 rights.*"

16. The CCTV equipment, which Supt Ravenscroft had permitted, was installed on 29 June 2010 with the patient's consent. It was located behind the extractor fan in the sitting room, of which it had a view. It did not cover the bathroom or bedroom areas. On 4 July a particular DVD case belong to the patient was found missing. On 16 July the footage was removed from the device (the device itself remained in situ for three weeks) and it showed the First Claimant perusing the patient's personal documents and then taking the DVD case, subsequently found to be missing, and peeling the patient's identity label off it.

17. Supt Ravenscroft concluded as follows:

> "*27. On my return from leave on 21st July 2010 I was informed by PC Collingwood that a theft had taken place and that this theft had been captured by the covert camera and the suspect had been identified. We had a further discussion as to whether the camera should remain in place in light of the above. I made the decision to allow the camera to remain for a further 4 week period in order to establish whether the culprit was working in isolation or in conjunction with another member of staff providing care to* [the patient]. *I believed this to be justified, necessary and proportionate for the reasons stated above.*
>
> *28. On 23rd August I held a review meeting with PC Collingwood and his supervisor. It was confirmed that there had been no further incidences of theft and I therefore instructed that the surveillance must cease and that at a suitable opportunity the camera should be removed. I gave further instructions regarding the safeguarding of the material obtained in line with MOPI guidance and CPIA rules.*"

18. Her statement is compiled from the contemporaneous note (a running Microsoft Word document) to which we referred in paragraph 3(v) above.

19. CA pointed out in oral argument that, in the Report subsequently prepared in September 2011 by a Casework Manager at the Independent Police Complaints Commission (IPCC), recording his decision dismissing CA's appeal on his wife's behalf in respect of various matters relating to her arrest, the Casework Manager recorded, as part of what he understood to have been the Respondent's submissions, what is said to have been a quotation from RIPA, but is in fact a quotation or

summation either of or from the OSC Guidance, referred to in paragraph 12 above, or from a document called "Back on the Beat"; and CA thus suggests that in some way either the Respondent was putting forward an inconsistent case or was seeking to mislead the IPCC. However:

i) It is quite apparent that the case the Respondent is putting forward was in fact the same as it is putting forward now (and as indeed was recorded in Supt Ravenscroft's running note), because, in the very next paragraph, after the mistaken quotation, the Casework Manager records:

> "*The IPCC, having consulted with Cleveland Police, have established the following: the surveillance was classed as intrusive behaviour but as the crime was not serious it did not fall within RIPA. As it didn't fall under RIPA the decision to go ahead was taken locally based on guidelines from 2010 issued by the Office of The Surveillance Commissioner. These guidelines provided for the surveillance to go ahead because the victim was classed as vulnerable. The surveillance was considered to be proportionate and justified in the circumstances.*"

ii) We are, in any event, entirely satisfied that the running note is accurate and contemporaneous and we accept the unchallenged statement of Supt Ravenscroft.

20. In late October/early November 2010, a search warrant was obtained for the First Claimant's home address, which was effected, and the First Claimant arrested on 30 November 2010, when a number of items were recovered during the search, including the missing DVDs.

21. The Claimants contend that the CCTV was unlawfully obtained and constituted an interference with their Article 8 rights. We have been greatly assisted by the legal submissions by Mr Holdcroft in response and by Mr Glasson as amicus. Our conclusions are as follows.

22. S26 makes it plain that Part II of RIPA applies (inter alia) to "*the following conduct … directed surveillance* [and] *intrusive surveillance*". By s27:

> "*1. Conduct to which this Part applies shall be lawful for all purposes if –*
>
> *(a) an authorisation under this Part confers an entitlement to engage in that conduct on the person whose conduct it is;*
>
> *(b) his conduct is in accordance with the authorisation.*"

23. Our jurisdiction is not simply to assess whether there has been such an authorisation, but also, pursuant to s65(4) (b) and (5)(d), extends to "*any complaint by a person who is aggrieved by any conduct* [to which Part II applies] *which he believes … to have taken place in challengeable circumstances*." Challengeable circumstances are defined in s65(7)(b), namely if:

> "*(a) it takes place with the authority, or purported authority of* [an authorisation under Part II of this Act]*;*
>
> *(b) the circumstances are such that (whether or not there is such authority) it would not have been appropriate for the conduct to take place without it, or at least without proper consideration having been given to whether such authority should have been sought.*"

24. The circumstances referred to in s65(7)(b) are exactly what is said to have occurred in this case, by reference to the evidence of Supt Ravenscroft, which we have accepted, namely that she gave what the Respondent submits to be proper consideration as to whether such authority should be sought; and we have jurisdiction to consider those circumstances.

25. Although pursuant to s32(1) the Secretary of State and various officers as per s32(6) (in the case of the Respondent the Chief Constable) each had power to grant authorisation for the carrying out of intrusive surveillance, no one could grant an authorisation in this case for intrusive surveillance, because it was not for the purpose of preventing or detecting serious crime. That means that, if the conduct was to proceed without such authorisation, it would not have the benefit of the protection of s27. But does it mean that if the conduct proceeds, with the permission of the owner of the premises and without trespass or unlawful interference with telecommunications, it is unlawful, because no such authorisation was sought or given?

26. In **C** the Police and Secretary of State for the Home Department (14 November 2006) IPT/03/32/H, this Tribunal said, at paragraph 62, as follows:

> "*62. First, some general observations. Although RIPA provides a framework for obtaining internal authorisations of directed surveillance (and other forms of surveillance), there is no general prohibition in RIPA against conducting directed surveillance without RIPA authorisation. RIPA does not require prior authorisation to be obtained by a public authority in order to carry out surveillance. Lack of authorisation under RIPA does not necessarily mean that the carrying out of directed surveillance is unlawful.*"

27. In addition, we refer to s80 of RIPA, which we have set out in paragraph 10 above, and which Supt Ravenscroft had well in mind. On the one hand there is a power under s32 for the grant of an authorisation if it falls within s32(2), but no prohibition upon conduct which proceeds without such authorisation and thus does not have its protection. On the other hand s80 makes it plain that nothing in RIPA (e.g. by way of the availability of authorisation) makes unlawful what is not made unlawful by the Act (e.g. conduct such as interception falling within s1 of RIPA) and would not be unlawful apart from the Act (e.g. not a trespass). We see no reason to depart from paragraph 62 of **C**.

28. Our view is confirmed by the Explanatory Notes to Part II of RIPA, which read as follows:

> "*This Part of the Act creates a system of authorisations for various types of surveillance and the conduct and use of covert human intelligence sources. In common with other Parts of the Act, the provisions themselves do not impose a requirement on public authorities to seek or obtain an authorisation where, under the Act, one is available (see section 80). Nevertheless, the consequences of not obtaining an authorisation under this Part may be, where there is an interference by a public authority with Article 8 rights and there is no other source of authority, that the action is unlawful by virtue of section 6 of the Human Rights Act 1998*."

29. We are satisfied that, although the conduct was not protected by s27, there was no breach of s32(2); and indeed s65(7) makes it clear that there can be conduct not covered by an authorisation which still falls to be tested by this Tribunal. That subsection makes it plain that there will or may be cases in which the Tribunal may find it appropriate for the conduct to take place without an authorisation, although it will be expected that "*at least*" there will have been "*proper consideration*" as to whether such authorisation should be sought. In this case there was such proper consideration, and the conduct proceeded. The reasoning is set out by Supt Ravenscroft in her statement, which we have recited above, and Mr Holdcroft indeed supplements that by submitting that "*the Respondent was acting exactly as the public would have expected it to act*". We agree.

30. It seems to us clear that, just as in this case, the proper course if a Police force is considering whether to institute intrusive surveillance for the purpose of the detection of crime which does not fall within the definition of serious crime - and if there is no legislative amendment so as to give a respondent the protection of s27 - it will behove a Police force to follow a course similar to that adopted here by Supt Ravenscroft; i.e. a procedure as close as possible to that which would be adopted if an authorisation could be obtained from a Chief Constable or other relevant authorising officer. It may be, in any event, that the Guidance of the OSC should be amended so as to make it clear that the conduct in question, unprotected by an authorisation, may still be scrutinised by this Tribunal, as it has been: and it may not be appropriate to describe any relevant Article 8 breach as '*technical*'.

31. We are satisfied however, in consequence, that the conduct of the Respondent in placing and operating the CCTV equipment in the living room of the patient's flat, with the owner's permission, was not unlawful. We have considered **Liberty and Others v UK** ECtHR 58243/00 (1 July 2008) at 59-63, **Kennedy v UK** [28639/05 **(**18 May 2010) at paras 151-170 and **Uzun v Germany** 35623/05 (2 September 2010) at paras 60-66. We are satisfied that, for the purposes of Article 8.2, set out in paragraph 14 above, any interference by the Respondent was "*in accordance with the law*".

Article 8

32. We must however decide whether:

    i) there was an interference by the Respondent with the exercise by the Claimants of their Article 8 rights; and

ii) whether any such interference was "*necessary in a democratic society … for the prevention of crime*".

33. The Claimants rely on a number of factors set out below in support of the argument that there was an interference with the right to privacy. However not all of these matters were agreed by the Respondent (or, in the absence of the Claimants, evidenced by the Claimants themselves) and much if not all of which CA accepted in argument would not, or not necessarily, have been known to the Respondent in choosing, as it did, the least intrusive position for the CCTV in the flat with a view of the sitting room, but with no view of either of the bedrooms or the bathroom (or the kitchen). The factors relied on are:

i) The temperature in the flat was kept high because of the patient's condition, and the carers or some of them accordingly at times would be scantily dressed, at least at night e.g. walking through the living room to the kitchen (although they would not have needed to have done so in order to reach the bathroom).

ii) The carers might – the First or Second Claimants for example – on occasions have spent the night not in the allocated bedroom but in the sitting room, particularly, so far as the Second Claimant was concerned, if the Third Claimant were present.

iii) The living room was in any event the place where the carers spent much or most of their days.

34. The Respondent submits:

i) The sitting room was a communal area, in which the patient was perfectly entitled and expected to be (and where she kept her belongings).

ii) The living room was effectively a work place, and much like the office in **Peev v Bulgaria** [2007] ECHR 64209/01, where although there was an expectation of privacy, in relation to an office on government premises, it was with respect to the desks or filing cabinets in that office where employees stored their personal papers and effects; but there was none such in this case, where the carers' effects would be kept not in the sitting room but in the carers' bedroom.

iii) The First Claimant could have had no expectation of privacy in respect of her activities in the living room relating to purloining of the patient's belongings, and that, in any event, the Respondent had no expectation as to there being any privacy for the carers in the communal living area, as opposed to their bedroom.

35. We observe that Supt Ravenscroft herself noted, in her contemporaneous running account, that she considered that there would be collateral intrusion issues to the carers, but that the positioning of the camera and the recording being visual only were intended to restrict the level of intrusion. We are prepared to assume, as thus did Supt Ravenscroft (although she noted that the carers were "*at a place of work*") that there would be some interference with their privacy. However, we are satisfied that such interference was outweighed and justified, and that the conduct of the Respondent

was necessary and proportionate. Mr Holdcroft submitted as follows (at paragraph 21 of his Outline Submissions):

> "*The surveillance was the necessary part of a legitimate investigation into thefts from a vulnerable person, and the Respondent was under a duty to investigate the offences. There was no other proportionate investigative means available to the Respondent, and the Respondent submits that the installation of the device fell within the scope of its operational discretion*".

36. We agree.

37. Accordingly, although we extend time for the Third Claimant's claim, we dismiss the claims of all three Claimants. There was no unlawful act by the Respondent, and no actionable interference with the Claimant's Article 8 rights. The issue of remedy does not accordingly arise.