

IN THE INVESTIGATORY POWERS TRIBUNAL

(The Vice President Burton J, Sheriff Principal McInnes, Robert Seabrook QC)

2 December 2009

DETERMINATION IN THE MATTER OF APPLICATIONS No IPT/07/02/CH and IPT/07/18/CH

This is our decision.

Save as appears below, having carefully considered the matters complained of, the Tribunal has made no determination in the Complainants' favour.

The exceptions are as follows:

1. Both the above Complainants have complained as to the use of the telephone billings lawfully obtained (as the Tribunal has concluded) pursuant to s22 of the Regulation of Investigatory Powers Act 2000. We conclude that disclosure, in the circumstances of disciplinary proceedings brought against the Complainants and their fellow officers in the Priority Crime Team, was not conduct taking place in challengeable circumstances within s65(4)(b), (5) and (7) of the Regulation of Investigatory Powers Act 2000. Accordingly, the Tribunal has no jurisdiction to entertain such complaints.
2. The complaint by the Complainant (in IPT/07/18/CH) in respect of directed surveillance by the use of the public CCTV at Reading Crown Court on 7 August 2006.

The Tribunal is satisfied that such surveillance was undertaken pursuant to an authorisation granted under S28(2) and(3)(b) of the Regulation of Investigatory Powers Act 2000. The Tribunal accepts that this authorisation was granted by the relevant officer in circumstances of some perceived

urgency. There was, however, a material mistaken belief on the part of both the officer seeking and the officer granting this authorisation, in that neither of them knew that in June 2006 the Crown Prosecution Service had taken the decision not to prosecute the Complainant or his fellow officers in respect of the matters under consideration. This was in our judgment a material mistake, capable of invalidating the authorisation (see **E & R v Secretary of State for the Home Department** [2004] QB 1044 at paragraphs 61-67). There may be circumstances in which the degree of urgency is such that a material mistake will not invalidate an authorisation, but we do not consider this to be such a case.

It was not submitted by the Respondent that the authority would have been sought or granted if the officers in question had known of the Crown Prosecution Service's decision.

There was accordingly an interference with the complainant's privacy contrary to Article 8, not justifiable in law. The extent of such interference was simply that for a short period (the precise duration is not known to us) the public CCTV, in any event operating outside Reading Crown Court, was directed at the Complainant. We will consider submissions in writing from both the Complainant and the Respondent as to the appropriate remedy in relation to our finding.