

IN THE INVESTIGATORY POWERS TRIBUNAL

4 July 2012

Before:

Mr Justice Burton

Mr Charles Flint QC

Hon Christopher Gardner QC

BETWEEN:

DAVID JAMES VAUGHAN

Complainant

and

SOUTH OXFORDSHIRE DISTRICT COUNCIL

Respondent

Mr David Vaughan (Litigant in Person)

Mr Ethu Crorie (instructed by the Head of Legal and Democratic Services of South Oxfordshire District Council) for the **Respondent**

Mr Jonathan Glasson (instructed by the Treasury Solicitor) **Advocate to the Tribunal**

DECISION

1. The main issue in this case is whether inspections of a property carried out by the Respondent, to ascertain whether council tax exemptions or discounts have been properly claimed, constituted directed or intrusive surveillance within the meaning of s26 of the Regulation of Investigatory Powers Act 2000 (“RIPA”).
2. On 20th February 2012 Mr. Vaughan made a complaint to the Tribunal under s65(2)(b) against South Oxford District Council about surveillance carried out at a property at 70 Greys Road, Henley, in respect of which Mr. Vaughan claims a 25% discount from council tax as the sole occupant of a property which he contends is his sole or main residence.
3. Under s67(5) the Tribunal is not to consider a complaint if it is made more than one year after the conduct complained of takes place, unless the Tribunal is satisfied that it is equitable to do so. In this complaint some of the inspections about which Mr. Vaughan complains took place more than one year before 20th February 2011. The substance of the complaint is about a continuing course of conduct in making a number of inspections over the period when Mr. Vaughan was claiming the council tax discount, and on any basis he is entitled to complain about the inspections which occurred after 20th February 2011. This case raises an important point of principle as to whether the council’s inspections constitute surveillance governed by RIPA, and the most intrusive inspection took place on 2nd October 2009 when the inspector climbed a ladder at the rear of the property and took photographs of the interior. In order to ensure that the point of principle is properly dealt with and all issues determined, and because it might be unfair to the complainant to exclude some evidence relevant to the purpose and manner of the inspections, we decided that it would be equitable to allow Mr. Vaughan to make his complaint by reference to all the inspections which took place between 7th August 2009 and 31st January 2012.

Facts

4. The Tribunal decided to hold a hearing, which by agreement between both parties was held in open court. Mr Vaughan addressed the Tribunal on his own behalf concisely and persuasively. As he was not legally represented, and the Tribunal considered that the legal issues might be of some importance, Mr Glasson of Counsel was instructed as amicus curiae. Mr Crorie of Counsel represented the Council.
5. The tribunal heard evidence from Alan Allcock, an inspector, who carries out property inspections on behalf of the Council. We also received a witness statement from Trevor Gaffney, the revenues manager for the Council. Mr. Vaughan submitted a statement of facts which set out the inspections which had taken place at his property, derived almost entirely from notes made by Mr. Allcock. Save for one point referred to below the facts are not in dispute.
6. Prior to October 2006 the property had been tenanted. On 29th May 2007 Mr. Vaughan informed the council that the property required major works to make it habitable, and a council inspection conducted on 31st August 2007 confirmed that the property was indeed unoccupied and uninhabitable. On that basis Mr. Vaughan received temporary exemptions from council tax until 21st April 2008. Between May 2008 and July 2009 Mr. Vaughan claimed that, apart from two periods of six weeks when he had taken up temporary residence, the property was unoccupied. On 12th July 2009 Mr. Vaughan informed the Council that he had moved a bed and furniture into the property which would become his main home. On that basis he contends that he is entitled to a 25% discount from council tax as he is the sole occupant of a property which is his sole or main residence. On the other hand the Council has consistently taken the view that at least from July 2009 the property is a long-term empty property on which full council tax is chargeable. Mr. Vaughan has made two unsuccessful appeals to the Valuation Tribunal against the Council's decision not to allow a sole occupancy discount to the council tax chargeable.

7. The Council is under a duty to take reasonable steps to ascertain whether an exemption or discount claimed in respect of council tax has been properly claimed. Mr. Allcock carries out inspections of empty properties on a three monthly rolling review basis. The purpose of his inspections is to ascertain whether the property is uninhabitable or uninhabited. He is concerned only to assess the state of the premises, not the activities or status of any occupants. He will visit up to 40 properties in a day, normally with no appointment. His standard practice is to knock on the door or ring the bell to make himself known to any occupant and to identify himself as a property inspector from the local council. If the property appears empty he will generally leave a card to notify any occupant or the owner of the fact that an inspector has called to check the status of the property for council tax purposes. If the property is occupied he will report that fact to the council. If the property appears unoccupied then he will then carry out an external inspection. He may speak to neighbours, making clear that he is a council inspector and will produce an identity card if asked. He makes no attempt to conceal his inspection of a property.
8. Mr. Allcock conducted all the inspections of the property at 70 Greys Road between 25th August 2009 and 31st January 2012. Over that period he made approximately 17 visits to the property. Two prior unannounced visits in August 2009 had been made by Mr. Palmer, the previous inspector.
9. The purpose of the inspections was to ascertain whether the property remained uninhabitable and empty. Mr. Allcock's visits followed his standard practice, although Mr. Vaughan says that a calling card was only left at the property on one occasion. Mr. Allcock's visits were unannounced, save for the visit on 6th December 2011 prior to which he had telephoned Mr. Vaughan and was given access to inspect the inside of the house. On his routine visits Mr. Allcock inspected the outside of the property, sometimes looking through the windows and sometimes inspecting the rubbish bins, for the purpose of seeing whether the property appeared to be occupied. On only one of

these unannounced visits, on 3rd July 2011, did he happen to meet Mr. Vaughan outside the property. On a number of occasions Mr. Allcock spoke to neighbours and on one occasion he spoke to a postman.

10. The dispute as to whether Mr. Allcock left a card at the property on more than one occasion is not material. Mr. Allcock accepted that he might not leave a card if he thought a property was unoccupied. There is no evidence to support any suggestion that Mr. Allcock intended to visit the property when Mr. Vaughan was not present, and there were no steps taken to conceal from Mr. Vaughan or his neighbours that a council tax inspector had called.
11. The most intrusive inspection took place on 2nd October 2009. On that day Mr. Allcock went to the rear of the property, climbed a ladder to some scaffolding and took a number of photographs of the interior through the windows. The purpose of taking those photographs was to obtain some good evidence of the state of the property which Mr. Allcock believed to be uninhabitable due to serious disrepair. On the same day he spoke to a neighbour who gave information that the property was unoccupied.
12. On this evidence the findings of the Tribunal are:
 - (1) the purpose of the property inspections was to observe the state of the property to form a view whether the property remained uninhabitable and unoccupied, or whether it was inhabited by Mr. Vaughan as his sole or main residence;
 - (2) all the actions of the inspector at the property were directed to the proper purpose of gaining information about the state of the property and whether it was or was not occupied;
 - (3) the manner in which the inspections were carried out did not involve the monitoring or observing of Mr. Vaughan or any other persons at the property;

- (4) the inspections were carried out openly, in daylight, and without any attempt to conceal the activity of the inspector from any persons who might be on the premises, or any neighbours or passers by.

Issues

13. In order to decide whether the inspections carried out for the council fell within s26 it is first necessary to consider whether the activity constituted surveillance and second whether it was covert. Only if the activities constituted covert surveillance would it be necessary to decide whether such covert surveillance amounted either to directed surveillance under s26(2) or intrusive surveillance under s26(3).
14. Mr. Vaughan complains about the conduct of the Council in speaking to neighbours and the postman, and in contacting the water company which supplied water to the premises. We are satisfied that on no basis could such conduct constitute surveillance within s48, to which we refer below, so the issue is confined to whether the steps which Mr. Allcock took in inspecting the property constituted covert surveillance.
15. The relevant sections of RIPA are as follows:

“26.— Conduct to which Part II applies.

(1) This Part applies to the following conduct—

(a) directed surveillance;

(b) intrusive surveillance; and

(c) the conduct and use of covert human intelligence sources.

(2) Subject to subsection (6), surveillance is directed for the purposes of this Part if it is covert but not intrusive and is undertaken—

(a) for the purposes of a specific investigation or a specific operation;

(b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and

(c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Part to be sought for the carrying out of the surveillance.

(3) Subject to subsections (4) to (6), surveillance is intrusive for the purposes of this Part if, and only if, it is covert surveillance that—

(a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and

(b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

(9) For the purposes of this section—

(a) surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place;

48.— Interpretation of Part II.

(2) Subject to subsection (3), in this Part “surveillance” includes—

(a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;

(b) recording anything monitored, observed or listened to in the course of surveillance; and

(c) surveillance by or with the assistance of a surveillance device.”

Surveillance within the meaning of s48(2)

16. The definition contained in s48(2) is inclusive, not exhaustive, but it is clear from the context of the act that surveillance must be directed at persons. It is only if persons are the subject of surveillance that it is necessary to control the exercise of surveillance powers, and only if persons are affected by surveillance that any issue of interference with rights of privacy arises. This is supported by s26(9) which refers to persons who are the subject of surveillance. It should be noted that s48(2) provides that the monitoring or observation is of activities of persons, that is their movements, conversations, communications or other activities. So conduct which consisted solely of the observation or inspection of the property of a person, for example the inspection of an abandoned vehicle, would not in itself constitute surveillance.

17. Although s48(2) states that surveillance “includes” the monitoring and recording of the activities of persons, it is very difficult to envisage that there could be any surveillance which does not include some of such defined conduct. The way in which s48(2) is drafted means that conduct which has as its purpose such monitoring or observation would be surveillance within the meaning of the act, even if no actual monitoring of any persons took place. For example the observation of a deserted property, for the purpose of monitoring the activities of any persons who visited, would be surveillance. S48(2) might also encompass incidental acts, in addition to recording which is specifically covered at subsection 2(b), if such acts were done in furtherance of the purpose of observing or monitoring the activities of persons.
18. Thus in this context the word surveillance means acts of monitoring or observing the activities of persons. To ascertain whether there has been surveillance it is relevant to consider the purpose of the monitoring or observation, and the manner in which it is carried out.
19. There was in this case no surveillance within the meaning of s26. The purpose of the inspections was to ascertain whether the property was unoccupied or not. Mr. Vaughan was not the subject, or intended subject, of any monitoring or observation. There was no intention to monitor or observe the activities of any occupant of the house, and in fact as he found the property to be unoccupied the inspector engaged in no such observation or monitoring. The observations of the inspector, including the taking of photographs, were observations of the state of the property.
20. Mr. Glasson, acting as amicus, has drawn our attention to the decision in **Gibbon v. Rugby District Council** [IPT/06/31] in which it was held that there had been intrusive surveillance where planning inspectors entered the driveway of a private property. In that case there had previously been granted an authorisation of directed surveillance and it appears that the respondent conceded that the conduct in issue did constitute surveillance. There is only a short note available of that decision and we do not consider that it calls into question the conclusion reached on the facts of this case.

Covert within the meaning of s26(9)

21. Under s26(9) surveillance is covert only if it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place. On this issue the focus is on the manner in which the observation or monitoring is carried out.
22. This issue is resolved by the findings of fact we have made as set out at paragraph 12 above. All the evidence indicates that Mr. Allcock did not conduct his property inspections in a manner calculated to ensure that any occupant of the property was unaware of his visit. The visits were in daylight and he entered the property along the front path from the road. He generally knocked on the door and his conduct in speaking to neighbours and the postman contradicts any suggestion of concealment.

Conclusion

23. For those reasons the Tribunal concludes that there was no covert surveillance conducted by the Council. It is therefore not necessary to consider whether, if we had decided that there was covert surveillance, it would have constituted intrusive or directed surveillance under s26. As we have decided the main issue against Mr. Vaughan no question of remedy or compensation under s67(7) arises.
24. Accordingly the complaint made by Mr. Vaughan against the Council under s65(2) of RIPA is dismissed.