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Case No: IPT/15/84/88/CH

IN THE INVESTIGATORY POWERS TRIBUNAL

P.O. Box 33220
London
SW1H 9ZQ

Date: 20/07/2015

Before :

MR JUSTICE BURTON (PRESIDENT)

HH GEOFFREY RIVLIN QC

SIR RICHARD MCLAUGHLIN

Between :

**SATISH CHATWANI
JAWAHAR CHATWANI
BHASKER TAILOR
RAKESH TAILOR
RASHMI CHATWANI**

Complainants

- and -

NATIONAL CRIME AGENCY

Respondent

Alun Jones QC and Bart Casella (instructed by Neumans LLP) for the Complainants
Andrew Bird and David McNeill (instructed by NCA Legal) for the Respondent

Hearing dates: 10 and 14 July 2015

Approved Judgment

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Mr Justice Burton (President) :

1. This is the judgment of the Tribunal.
2. This has been the hearing of an application by the Complainants, members of the Chatwani and Tailor families, seeking a declaration that an authorisation for property interference and for the installation of covert listening devices at Kanta House in South Ruislip, the offices and headquarters of companies owned and/or controlled by the Complainants, was unlawfully obtained: the quashing of such authorisation, the destruction of the product of such devices: and damages or compensation. After an interlocutory hearing before the Tribunal on 18 June 2015, we made an Order as a result of which a, minimally redacted, copy of the Authorisation dated 26 January 2015 was produced and the Respondent agreed not until after the final hearing to listen to, or continue to listen to or read or continue to read or make any use of the product of the covert listening devices installed, which, as will appear, were only in place between 28 January and 5 February. This has been the final hearing of the application, and we have heard live evidence from six witnesses from the Respondent, cross-examined by Mr Alun Jones QC for the Complainants. We have also been invited to read the witness statements produced by the Complainants, some of which have been referred to in evidence.
3. The Complainants (and others) sought and obtained from the Divisional Court (Davis LJ, Hickinbottom J: judgment 11 May 2015 [2015] EWHC 1283 (Admin)) the quashing of a search warrant which was effected at Kanta House on 28 January the quashing of five further search warrants effected at the residential premises of the Complainants, and the return of the material obtained by the Respondent under those warrants, and destruction of work product derived from them.
4. As set out in the Divisional Court Judgment, on the basis of the evidence there set out, Mr Hickman, who was the lead officer of Operation Heterodon, a National Crime Agency (“NCA”) investigation into money laundering alleged to involve, among others, the Complainants, suspected that Davis & Dann Limited (“DDL”), whose headquarters were at Kanta House, were, as part of an “*organised crime group*” (OCG), significantly involved in money laundering activities, and in particular (at paragraph 22) that:

“ . . . various employees of DDL – including Batth and the first five Claimants – and Dhariwal were providing a money laundering service which included the placement, layering and integration of the proceeds of crime running into millions of pounds. Batth and Dhariwal were thought to operate cash couriers recruited to place the proceeds of crime into the bank accounts of a complex network of companies, many of which were listed as traders in commodity-based goods. The others were suspected of being instrumental in the integration of this criminal money into the legitimate money system through their businesses and property interests, either playing an active part in these activities or at least being aware of them.”
5. In relation to the grounds for the search warrant and for the arrest of the Claimants, the Divisional Court concluded as follows:

“116. Mr Jones [QC] [who then, as now, represented the Claimants/Complainants] emphasised that the Claimants were professionally qualified, well-established, successful businessmen with no previous convictions, and indeed a positively good character; their success as businessmen can explain any signs of wealth that may be apparent; and the tribunal proceedings exonerated them of any guilty knowledge with the VAT fraud in relation to the razor blades, which considered and exonerated their mode of commercial operations. That is all true: but successful money laundering requires men of good character to place criminal proceeds, and the statement of Mr Hickman (had it been deployed) evidences connections with known money launderers (such as Batth, Tarr and, through Batth, Sharma) and of money laundering transactions involving DDL (see paragraphs 10-23 above). That evidence is clearly sufficient to evoke a reasonable suspicion of money laundering on the part of each of the first five Claimants, either as active participants or on the basis of knowledge with regard to the company's transactions. Indeed, in my view the evidence relating to the moneys deriving from the school phishing scam (see paragraph 21 above) would, alone, give rise to such a reasonable suspicion. Where the warrant process failed was not that there were no reasonable grounds for suspicion, but that the basis of those grounds was not set out in the application to enable the magistrates to judge whether those suspicions were reasonable.

...

118. . . I consider the NCA did have reasonable grounds for believing that material at the various premises was likely to be relevant evidence in respect of those crimes. Both the business premises and the Claimants' homes were likely to have evidence in relation to the identified offences.”

6. However, the Divisional Court concluded that, for a number of reasons set out in the Judgment (as was conceded by the Respondents from the outset (see paragraph 2(ii) of the Judgment)) the search warrants, including that in relation to Kanta House, were unlawful. It is apparent from what the Divisional Court says, and from our own consideration of the Kanta House search warrant which was before us, that the material contained in it was exiguous: it was prepared by an officer who accepted that he was inexperienced in preparing such warrants and that the information set out in it was inadequate. The application for authorisation in this case was quite different. It was prepared by an experienced officer, Mr Batsford, who gave evidence and was cross-examined before us. Over a period of about 7 years he has prepared probably 40 or 50 such applications for authorisation. It was not prepared for an application to Magistrates, as in the case of a search warrant, but for the purposes of ss.93 to 97 of the Police Act 1997. It was, as will appear, a very full document and we must judge it, not by reference to the (conceded) unlawfulness of the search warrant considered by the Divisional Court, but on its own merits.

7. The relevant sections of the Police Act which provide for such authorisations are as follows:

“93. - Authorisations to interfere with property etc.

(1) Where subsection (2) applies, an authorising officer may authorise -

(a) the taking of such action, in respect of such property in the relevant area, as he may specify,

...

(1B) Subsection (1) applies where the authorising officer is a National Crime Agency officer, an officer of Revenue and Customs, an immigration officer or an officer of the Office of Fair Trading with the omission of –

(a) the words “in the relevant area”, in each place where they occur; . . .

(2) This subsection applies where the authorising officer believes -

(a) that it is necessary for the action specified to be taken for the purpose of preventing or detecting serious crime, and

(b) that the taking of the action is proportionate to what the action seeks to achieve.

...

(2B) The matters to be taken into account in considering whether the requirements of subsection (2) are satisfied in the case of any authorisation shall include whether what it is thought necessary to achieve by the authorised action could reasonably be achieved by other means.”

8. Those types of authorisation which require prior approval by a Surveillance Commissioner, being a person, as referred to in s.91 of the Act, who holds or has held High Judicial Office as there defined, are set out in s.97:

“97. - Authorisations requiring approval.

(1) An authorisation to which this section applies shall not take effect until –

(a) it has been approved in accordance with this section by a Commissioner appointed under section 91(1)(b), and

(b) the person who gave the authorisation has been notified under subsection (4).

(2) Subject to subsection (3), this section applies to an authorisation if, at the time it is given, the person who gives it believes -

(a) that any of the property specified in the authorisation -

(i) is used wholly or mainly as a dwelling or as a bedroom in a hotel, or

(ii) constitutes office premises, or

(b) that the action authorised by it is likely to result in any person acquiring knowledge of—

(i) matters subject to legal privilege,

(ii) confidential personal information, or

(iii) confidential journalistic material.

(3) This section does not apply to an authorisation where the person who gives it believes that the case is one of urgency.

(4) Where a Commissioner receives a notice under section 96 which specifies that this section applies to the authorisation, he shall as soon as is reasonably practicable -

(a) decide whether to approve the authorisation or refuse approval, and

(b) give written notice of his decision to the person who gave the authorisation.

(5) A Commissioner shall approve an authorisation if, and only if, he is satisfied that there are reasonable grounds for believing the matters specified in section 93(2).”

9. As Mr Andrew Bird for the Respondent points out in their skeleton:

*“17. Thus in relation both to authorisations and approvals, the two criteria are **necessity** and **proportionality**. An authorisation will be lawful if the relevant chief officer believes the interference to be necessary and proportionate. An approval*

will be lawful if the Commissioner concludes that there were reasonable grounds for believing the interference to be necessary and proportionate.

18. No other criteria are stipulated by Parliament. No general discretion is conferred upon the Commissioner: if, but only if, he is satisfied, he “shall” approve an authorisation. Conversely, if he is not satisfied, he shall not approve an authorisation.

19. The wording used in s.97(5) “shall approve ... if, and only if, he is satisfied ...” is the same as the wording for approvals by a Surveillance Commissioner of certain types of surveillance in s. 36(4) of RIPA 2000. It may be contrasted with the provisions for approval by the “relevant judicial authority” under s.32A(3) of RIPA 2000 which is in the terms of a more general discretion: “the relevant judicial authority may give approval ...”. Likewise a Judge or Magistrate when deciding whether to issue a search warrant has a broad general discretion.

20. The task for the Commissioner when carrying out his function under s.97(5) is therefore not to exercise an original broad discretion but to consider solely whether there are reasonable grounds for the belief that the proposed action is (a) necessary and (b) proportionate. The Code of Practice [“covert surveillance and property interference” made under s.71 of RIPA which, where relevant, “shall be taken into account” by the Tribunal by virtue of s.72 of RIPA] (at para 3.6) sets out 4 “elements of proportionality” which should be considered.

21. The approval of a Commissioner is required if EITHER s.67(2)(a) OR s.67(2)(b) applies. (a) relates to the premises and (b) to the likely result of the authorised action. In the instant case approval was required because the premises were office premises. . . ”

10. The application was prepared by Mr Batsford on 5 January 2015, indicating that it would be required by 27 January (the planned execution being 28 January). It was submitted by him for approval by his supervisor (Grade 3), Mr Warnock, and then on to a Senior Manager (Grade 2) Mr Risby, on 6 January 2015. They, and the relevant Grade 1 Officer Mr Quinn, had full knowledge of the proposed operation. From there the application went to the Central Authorities Unit, whose job was to check the application for its appropriateness, but without any more knowledge than was contained in the application itself, and to whom some updating information was supplied by Mr Batsford, e.g. as to the sentencing at Birmingham Crown Court on 15 January of various relevant persons said to be members of the alleged OCG; and Mr Fryer, the manager of that Unit gave evidence before us. The application was then put before Mr Pearce, the relevant Authorising Officer, who again gave evidence before us. The application in the form in which it went before Mr Pearce, including

the comments of Mr Warnock and Mr Risby, is attached as an Annexure to this Judgment. We set out below the material parts of the authorisation, as signed off by Mr Pearce on 26 January: the quotation is in italics, except that we have not italicised the three passages which were in his handwriting:

“Operation Name . . Heterodon

Authorisation

I have considered the application and on the basis of the information provided by the applicant, I am satisfied for the reasons which follow that the surveillance proposed is an appropriate use of the legislation and fulfils the requirement of section 93(2)(a)(b) of the Police Act 1997, namely ‘preventing or detecting serious crime’ and is necessary because:

Matters under investigation meet sentence criteria of serious crime. The evidence gained via this authority will support an intended prosecution.

I have considered this application and on the basis of the information provided by the applicant, I am satisfied that for the reasons which follow that the interference is proportionate to what is sought to be achieved:

There are no less intrusive means of acquiring the conversational evidence and intelligence that we seek in light of criminal behaviour of the subjects.

I acknowledge that there is likelihood that the proposed activity may lead to intrusion on the privacy of person(s) not subject to the action and should be authorised for the following reasons:

There is a slight risk of collateral intrusion but there is a focused mitigation plan in place.

Pursuant to Operation HETERODON I hereby grant authorisation for

Interference by way of entry and re entry onto the private parking area at Kanta House, Victoria Road, South Ruislip, Middlesex, HA4 0JQ, and entry and re-entry into Kanta House in order to facilitate:

- *CTR [Close Target Reconnaissance] of the said office and warehouse, and if feasible the deployment, maintenance, replacement and retrieval of covert audio and video equipment therein and thereon.*
- *Conduct covert searches of said office(s) and warehouses for the purpose of:*

- *forensic examinations, including the taking of forensic samples from and covert forensic markings of the said office(s) and warehouses and its contents;*
- *interrogating, obtaining and copying data in respect of the memories and SIM cards of mobile phones and any electronic devices and digital storage medial including interference with wireless telegraphy in order to facilitate the aforementioned;*
- *Examining, obtaining details and copying documents and any other items found therein; and*
- *The removal and subsequent return of any items in order to facilitate the above.*

All in relation to money laundering associated to the named subject(s) Harvinder Singh BATH (DOB 06/11/1975), Harjeet Kaur DHARIWAL (DOB 26/03/1975), Cliff TARR (DOB 03/09/1959), Satish Jamnadas CHATWANI (DOB 14/03/1953), Jawahar Jamnadas CHATWANI (DOB 21/07/1948), Rashmi Jamnadas CHATWANI (DOB 13/06/1954), Rakesh TAILOR (DOB 01/07/1963) and Bhasker TAILOR (DOB 27/08/1955).

I note the subject(s) Satish Jamnadas CHATWANI (DOB 14/03/1953), Jawahar Jamnadas CHATWANI (DOB 21/07/1948), Rashmi Jamnadas CHATWANI (DOB 13/06/1954), Rakesh TAILOR (DOB 01/07/1963), and Bhasker TAILOR (DOB 27/08/1955) have no previous convictions however I am satisfied that a propensity to commit serious crime has been demonstrated.

I hereby accept ownership of this authorisation for the period specified.

In cases of Prior Approval this authority will not take effect until I receive notification of the written prior approval from the Office of the Surveillance Commissioners.”

11. Because the authorisation fell within s.97(2)(a), in that Kanta House *constitutes office premises*, s.97 applied and approval was necessary by a Commissioner, who was in the event Sir Scott Baker, a former Judge of the Court of Appeal. He gave his approval also on 26 January 2015, with a limit of 3 months, although in the event the devices were removed earlier, on 5 February.
12. The search warrant and the authorisation were simultaneously effected. Officers entered the premises with the benefit of the search warrant, and searched for and removed items. Those of the Complainants who were present (not the Fifth Complainant who was out of the country at the time) were arrested and interviewed at the police station, and 8 separate listening devices were installed covertly in 5 different locations. The premises were securely protected by CCTV cameras. It

would not have been possible to effect covert entry without the powers given by the search warrant, so that the opportunity was taken at the time when they were lawfully entered to disable the CCTV, so that the devices could be installed in “*a sterile environment*” (paragraph 12(a) of the authorisation), so as to enable their installation without being observed.

13. The chronology was that the search warrant was obtained on 19 January and the authorisation obtained, as set out above, on 26 January, and both were executed on 28 January. The Fifth Complainant returned from abroad, and was arrested at the premises on 5 February, when the opportunity was taken of a search pursuant to s.32 of PACE (Police and Criminal Evidence Act 1984) to remove the equipment.
14. Mr Bird describes the Respondent’s case as follows in the Respondent’s skeleton:

“4. The key facts as they stood in January 2015 were as follows:

- (1) Operation Heterodon was and is a criminal investigation by NCA into suspected money-laundering by means which included placement and mixing of funds suspected to be the proceeds of crime into and with funds connected with the otherwise legitimate business of the Complainants.*
 - (2) The Complainants were also suspected of fraud in relation to excise duty.*
 - (3) 3 individuals (Rajnish Sharma, Amit Sharma and Jatinder Singh) were convicted of money-laundering in 2014. Telecommunications evidence demonstrated a relationship between Rajnish Sharma and BATTH and DHARIWAL*
 - (4) A further individual, TARR, was arrested on 20th November 2014 in possession of a substantial quantity of cash*
 - (5) TARR and BATTH appeared to work for the Complainants or their companies and were regular visitors to Kanta House*
 - (6) The Complainants’ company had paid the confiscation orders of BATTH and McAtevey*
 - (7) BATTH had a previous conviction for money-laundering in 2010 and was married to DHARIWAL*
- 5. NCA wished to obtain evidence as to the role of (and presence or absence of mens rea) of each of the Complainants and of BATTH and DHARIWAL*

6. *Up until this point the Complainants would not have been aware that they were under investigation. TARR had been arrested in Durham and was under surveillance.*

7. *NCA decided to move the investigation forward by, in particular:*

- (1) *going “overt” in the sense of arresting the Complainants and searching their premises*
- (2) *devising an strategy designed to provoke a “behavioural response” on the part of the Complainants after they were interviewed and released from custody*
- (3) *deploying covert monitoring equipment at Kanta House which it was hoped would capture conversations which would either reveal the innocence of any given individual, or which would provide evidence of mens rea.”*

15. It is common ground that in making their application the Respondent was under a duty of candour. The relevant authorities are referred to in paragraph 106 of the Judgment of the Divisional Court, basing itself upon authorities such as **Energy Financing Team Limited v The Director of the Serious Fraud Office** [2005] EWHC 1626 (Admin), **R (Rawlinson & Hunter Trustees) v Central Criminal Court** [2012] EWHC 2254 (Admin) (“Tchenguiz”) (“ and **R (Golfrate Property Management Limited) v Southwark Crown Court** [2014] EWHC 840 (Admin). The applicant for authorisation (just as an applicant for a warrant) has a duty to include in it the necessary material to enable the authorising officer (and where appropriate the Commissioner) to be satisfied that the statutory conditions are met, but must also make full and accurate disclosure to them, including disclosure of anything that might militate against the grant. So far as necessity and proportionality is concerned, the authorising officer must (pursuant to s.93(2)) believe that the action proposed is necessary (for the purpose of preventing or detecting serious crime) and proportionate: where the Commissioner is required to give approval he must, pursuant to s.97(5), be satisfied that there are reasonable grounds for such belief.

16. The grounds relied upon by the Complainants are as follows:

- i) There was in the application for authorisation inadequate or misleading description of the circumstances of the Complainants, and of the company DDL and of their dealings with HMRC. A number of matters are set out in paragraphs 41 to 44 of the Mr Jones’ skeleton, which are said to amount to exaggerations or misrepresentations, and it is not disclosed that the Complainants’ companies have been well established, successful and productive for decades and (save for a challenge by HMRC to DDL’s involvement in the importation of razor blades said to be infected by a VAT fraud, as to which DDLs appeal was allowed by the Upper Tribunal (Tax & Chancery Chamber) on 6 August 2013), the company and the group have an unblemished record with HMRC.

- ii) The fact that there were 30 employees working on the premises was not disclosed.
- iii) The fact that it was proposed to disable the CCTV was not disclosed (that this was part of the plan is apparent from guidance notes forming part of an Operation Order prepared in advance: “*be aware that CCTV may be in operation at premises being searched – take steps to disable CCTV recording*”).
- iv) The fact that it was proposed in the course of the operation to “*corral into one place*” those insistent on remaining (part of the same Operation Order) or “*round up any occupants*” (an email from Mr Hickman dated 9 October 2014), said to amount to false imprisonment, was not disclosed.
- v) The fact that there was to be the simultaneous execution of a search warrant on the premises was not revealed. Mr Jones put to Mr Hickman that the overwhelming impression created by the application was that there was going to be covert entry in anticipation of arrests in the future. He also made submissions as to the invalidity of the search warrant (as now conceded and found by the Divisional Court) and as to the fact that (as is clear from Appendix 9 to the Operation Order), more items were to be removed than could be justified as being covered by the search warrant: but since Mr Batsford did not see the search warrant, and the search warrant itself was not the subject of consideration at the time of the authorisation (and had previously been granted), it did not seem to us that that aspect of the case had a great deal of force.
- vi) Mr Jones’ primary submission was that there was no disclosure, in breach of the duty of candour, of the Respondent’s plan, namely the Plan described in paragraph 25 of the Divisional Court Judgment, and most succinctly described in a document prepared under Mr Hickman’s supervision in early January 2015, described as “*Operation Heterodon Interview Strategy*”, (“the Operation Heterodon Document”) which contained at Appendix 3 the following:

“The main objective around the planned arrests and interviews of the 7 subjects is not primarily at this stage to focus on the gathering of evidence from any accounts the suspects may provide. It is simply to provoke a behavioural reaction on their release from custody, which will ultimately allow for the capturing of unequivocal evidence, which will enhance any prosecution against these individuals . . . The disclosure plan is to ensure the suspects have some knowledge around why they have been arrested and sufficiently so as to prompt conversations between one another on release . . . The previous similar intervention of a subject connected to these individuals led to further key evidence of their criminal activities and the investigation is still ongoing. The scenario showed after the release of the suspect linked to these individuals [Mr Tarr], he was instantly in contact and

communicated with those subject to these arrests for sustained periods of time speaking in detail of the criminality taking place. It goes without saying that there is a strong likelihood that with the minimal facts given to these individuals . . . the same scenario of contact will take place.”

The Respondent’s Plan therefore was to execute the search warrant, arrest the Complainants, interview them, without revealing the totality of the case which the Respondent had against them, and then release them to return back to the premises which would by then have been fitted with the listening devices, “*provoking a behavioural reaction*”, namely prompting “*conversations between one another on release*”, and thus as Mr Hickman said in an email of 31 January 2015 “*it is apparent, and should be expected, that following the arrests on 28/01 legal topics will be at the forefront of conversations of those suspected of being involved in money laundering*”.

- vii) In tandem with this submission was Mr Jones’ case based upon the fact that, as appears from the application exhibited to this Judgment, two boxes were not ticked in relevant places, namely:
- a) Box 3: “*is there a likelihood of obtaining . . . matters subject to legal privilege*” and
 - b) Box 13: “*Please indicate if the activity is likely to result in the acquisition of one or more of the following categories of confidential information . . . matters subject to legal privilege*”.

In the event of course this is not relevant to whether approval was required to be sought from the Commissioner pursuant to s.97(2)(b)(i), because approval in any event was required to be sought pursuant to s.97(2)(a)(ii), by virtue of the fact that Kanta House *constituted office premises*. However Mr Jones submits that the duty of candour required that the box be ticked. Both Mr Hickman and Mr Batsford denied in evidence that they had a belief that there was a likelihood of obtaining information subject to legal and professional privilege. They both considered that since they were to be placing the covert listening devices in offices, the communications that would be caught would be those as between the alleged conspirators, and that if a solicitor’s advice was to be sought or obtained that would be at the solicitor’s offices. As it happens there was, it seems, a considerable quantity of communication subject to legal and professional privilege which was caught by the devices during the days when the devices were in place and in the event such communications have been fully protected by a combination of the operation of the Code of Practice, to which we refer below, and the Tribunal’s interlocutory Order of 18 June.

17. The case before us was summarised by Mr Bird in paragraph 2 of the Respondent’s skeleton argument as follows:

“The overall issue for the Tribunal is whether the deployment was unlawful. At the interim relief hearing on

18th June 2015 the Tribunal identified 4 key areas for examination:

- (1) *Was there a misleading of (or material non-disclosure to) the decision-makers in relation to the financial affairs of the Complainants?*
- (2) *Was there a misleading of (or material non-disclosure to) the decision-makers in relation to VAT affairs of the Complainants?*
- (3) *Was there a misleading of (or material non-disclosure to) the decision-makers in relation to the operational plan / interview strategy of NCA which was “to provoke a behavioural response” which would be captured by the bugging devices?*
- (4) *Was the deployment unlawful because there was a likelihood that material subject to LPP would be captured by the bugging devices?”*

18. We turn to deal first with those of the Complainants’ grounds which we have set out first in paragraph 16 above as (i) – (v), because they can be dealt with quite shortly.

19. We turn to the first case, the alleged inadequate or misleading description of the Complainants, their company and its and their affairs. In the Respondent’s Briefing to Custody Officers, Appendix 2 of the Operation Heterodon Document, the proposed details for the custody record of an individual Complainant were:

“The suspect has been linked to a number of [businesses]. It is believed that a number of financial transactions within the accounts of these businesses are associated to Fraud and the Criminal Proceeds of Crime. The value within these transactions is in excess of tens of millions of pounds.”

20. Mr Bird set out his case, in the Respondent’s skeleton, as follows:

“31. Code of Practice para 7.18 specifies that the application must include, inter alia:

- details of the offence suspected or committed;*
- how the authorisation criteria have been met;*

Because the only criteria to be met relate to necessity and proportionality, the application is necessarily directed to material relevant to these two matters. But of course proportionality in particular requires the applicant to set out the alleged scale of the alleged activity being investigated.

32. The Application included the following relevant facts:

- *That each of the Complainants was of good character (“CRO NT” on page 3 of 16 and repeated for the three Chatwani brothers on page 4 of 16 and page 9 of 16)*
- *“They [the Chatwani brothers] are immensely rich. The belief is that there is some legitimacy with their business interests, but they use these businesses to shield money laundering activities” (page 4 of 16)*
- *“The Tailor brothers are in a similar position to the Chatwanis they both hold managerial positions within Kanta Enterprises and benefit financially from these crimes” (page 4 of 16)*
- *[DDL] “declared annual turnovers in 2012 and 2013 of nearly GBP 40 million in each year” (page 5 of 16)*
- *A certain amount of legitimate trading does take place (page 12 of 16)*
- *“they hide their various enterprises behind apparently legitimate business” (page 16 of 16)*
- *Reference made to “the distance from any overt criminality that the Chatwani brothers maintain” (page 16 of 16)*

33. In fact, in a money-laundering case, the fact of a legitimate business into which criminal funds may be placed is not a contra-indication of criminal activity. An otherwise legitimate business with a high turnover is an ideal vehicle into which to place and thus seek to conceal criminal property.

34. The issues for the authorising officer and for the Commissioner from whom prior approval was sought were not whether the Complainants were likely to be guilty or innocent, but whether the proposed activity of NCA was necessary and proportionate.”

21. Mr Jones vigorously cross-examined Mr Batsford with regard to what he had included in the Authorisation based on the information that he had and/or with which he had been supplied, and he insisted that *“the wording that I used in this document was a fair and honestly held belief that that was the intelligence, our intelligence, against this crime group at that time”*. In re-examination he described as he saw it the difference between evidence and intelligence: *“evidence is something that’s tangible, that we know without doubt. Intelligence is . . . matters that we believe to be true in good faith that can be drawn from a number of sources [but not necessarily admissible].”* We have considered Mr Jones’ submissions, and what he put in cross-examination and what is said by the Respondent in paragraph 32 of their skeleton set out above. We are not persuaded that what was set out in the application for Authorisation was misleading or otherwise than based upon information which the

Respondent believed to be an honest and accurate summary of the reason why the Authorisation was being sought. As is so often said in the criminal courts, the fact that the subject of investigation has no previous convictions (which was fully disclosed) or any previous contrempts with HMRC, is, though relevant, not a basis for concluding that the grounds (which the Divisional Court concluded to be sufficiently arguable to found an arrest) were not apt to establish an honest and reasonable belief in the necessity and proportionality of the steps being sought.

22. The disabling of the CCTV was specifically addressed by the Divisional Court in paragraph 68 of their judgment, and Mr Bird is recorded as accepting that “*although the surveillance authorisation could have authorised such a step, there was no evidence before the court that that trespass was authorised by the Commissioner or in any other way.*” We are however not satisfied that an intention (if necessary) to disable the CCTV needed to be specifically mentioned. It is quite apparent from paragraph 12(a) of the application that “*the plan is simple, in that an operational decision is made to arrest and interview all of the named subjects about their involvement in crimes identified. The arrests will be made whilst the subjects are at Kanta House, leaving a sterile environment to work in, minimising operational compromise. Audio and video equipment will be installed at this stage.*” If, which was not known, there was internal CCTV, then that would plainly need to be disabled in order to provide a “*sterile environment*” and to “*minimise operational compromise*” and this in our judgment was a sufficient part of the covert operation for which authorisation was granted.
23. There was no specific disclosure to the Authorising Officer or to the Commissioner that there were 30 employees in the premises. However it is quite plain that Kanta House was office premises of a company or group with a very substantial turnover (“*£40 million in each year*”). In any event:
- i) there was specific provision within box 13 as to how to deal with confidential material if it were obtained:
 - ii) there was a specific paragraph in box 14 relating to collateral intrusion:
 - iii) such risk was recognised by Mr Pearce, the Authorising Officer, and addressed.

Personal conversations, not to speak of “*acts of intimacy*” (box 14(b)), were in our judgment properly considered to be unlikely.

24. In their Judgment, and in the context of the search warrants, the Divisional Court were concerned about “*corralling*” of staff, so that they would not witness the placement of the surveillance devices (paragraph 68). We are not at all sure that it is that which is being referred to in paragraph 100 of their Judgment, when reference is being made to the possibility of a claim for false imprisonment but rather to the issue canvassed in paragraph 99 as to whether the Complainants themselves were detained overlong. But in any event, on the evidence before us, we are not in any way satisfied that there was false imprisonment, or indeed that there were steps taken over and above the creation of the “*sterile environment*” which was expressly referred to in box 12(a) of the application.

25. Hickinbottom J at paragraph 129 was of the view that there should have been disclosure to the Magistrates, on the application for the search warrant, of the proposal to use the opportunity of the execution of the search warrant to plant the devices. It does not in any event follow that the Respondents were under a duty to disclose to the Authorising Officer or to the Commissioner that when planting the devices, for which it was obtaining authorisation, there was to be a simultaneous execution of the search warrant. Mr Jones submits, in paragraphs 34 and 48 of the Complainants' skeleton, that the "*Commissioner would not have authorised covert searches . . . Had he known that search warrants . . . permitted this; the authorisation would not have been "necessary". . . He might also have concluded . . . that the mere installation of recording devices would have been disproportionate*". We are not persuaded by this. Covert entry was permitted by the authorisation, but was in the event unnecessary on the first entry (although, as Mr Hickman and Mr Batsford pointed out, re-entry was also authorised), but the significant point is that what was being authorised, once the Respondents had gained entry, was the covert placement of listening devices (and if necessary the covert removal of items). As Mr Warnock pointed out in his comments:

"I am aware of the intended arrest phase . . . due to take place at the end of January 2015 and that this authority will be used in a focused and effective manner subsequently to achieve the stated objectives of achieving best evidence."

We do not conclude that the failure to disclose the simultaneous search warrant was of itself material. Although Mr Jones urged upon us that the provisions in box 9 were excessive, and that there is no room for a blue pencil test, we are not persuaded that they were not honestly and reasonably believed to be necessary.

26. We turn then to consider the two major submissions by Mr Jones, being, in the context of the Respondent's summary of the issues in paragraph 2 of their skeleton which we have set out in paragraph 17 above, items 3 and 4, and they are, as became ever clearer during the course of submissions, plainly interrelated.
27. We have referred, in paragraph 16(vi) above, to what the Divisional Court called "*the Plan*" and summarised in paragraph 25 of its Judgment, by reference to Appendix 3 of the Operation Heterodon Document. Mr Jones suggested to Mr Hickman that the interviews of the Complainants were "*sham*" interviews, but this is quite inconsistent with the "*Briefing to Arresting Officers*" which forms Appendix 1 of the Operation Heterodon document, "*designed to give arresting officers sufficient grounds to arrest the suspects in this case*", and in any event we do not accept it. However it is plain from Appendix 3 from the same document that: "*the main objective around the plan for arrests and interviews of the 7 subjects is not primarily at this stage to focus on the gathering of evidence from any accounts the suspects may provide*". It was the provoking of the "*behavioural reaction*", which would then be recorded on the hidden devices back at the office. Mr Batsford knew perfectly well when he drafted the application for the authorisation (and Mr Hickman makes clear that Mr Warnock, Mr Risby and Mr Quinn also knew) that "*the overall tactic*" was to "*execute a search warrant, to arrest those named on the search warrants to conduct searches and to conduct the interviews . . . with a view to those, when they have been released, generating conversations back at Kanta House*" (Day 1/139 of the transcript). Mr

Hickman described the Plan in evidence in the Divisional Court as “*lawfully audacious*”.

28. What was revealed as “*the operational plan*” – “*the plan is simple*” is that which is set out in box 12(a) of the application, quoted in paragraph 22 above. This discloses the decision to arrest and interview, to leave the sterile environment and to implant the covert devices unobserved. It does not disclose that the “*main objective around the planned arrests and interviews*” is to “*provoke the behavioural reaction*” of their “*conversations on release*”, which will then be recorded on the covert devices. The question for us is as to whether the non-disclosure of that aspect, that “*main objective*”, of the plan was a material non-disclosure.
29. It is in this context that we turn to the question of legal and professional privilege (“LPP”). There is a helpful summary by Mr Bird in the Respondent’s skeleton:

“23. LPP is protected in 4 ways by the statutory scheme:

- *Firstly, where the authorising officer believes that the action is likely to result in LPP material being acquired, prior approval is needed (s.97(2)(b)(i) supra)*
- *Secondly, where the surveillance is to take place at certain types of specified premises, approval is required not only for the property interference, but also for the directed surveillance – see the Regulation of Investigatory Powers (Extension of Authorisation Provisions: Legal Consultations) Order 2010 SI 461. Those premises include a solicitor’s office, police stations, prisons, court buildings etc. In such a case the directed surveillance is to be treated as intrusive surveillance, and so requires prior approval by a Commissioner.*
- *Thirdly, the 2014 Code of Practice (para 4.10ff) sets out particular requirements for cases where LPP material is likely to be acquired or is intended to be acquired. Paragraph 4.11 provides that where LPP material is likely to be acquired, the application must set out the steps to be taken to mitigate the risk and to ensure that any LPP material that is obtained is not used in any investigation or prosecution. Paragraph 4.12 provides that where LPP material is likely to be acquired or is intended to be acquired then the authorising officer and approving commissioner must be satisfied that there are exceptional and compelling circumstances that make the authorisation necessary.*
- *Finally the 2014 Code of Practice sets out procedures for what is to happen if LPP material is encountered in the course of surveillance. The Code of Practice*

makes clear that LPP material cannot be used in evidence.

24. Notably for this case, paragraph 4.23 includes the following requirement:

“Public authorities should ensure that knowledge of matters subject to legal privilege, whether or not it is acquired deliberately, is kept separate from law enforcement investigations or criminal prosecutions.”

25. *The 2010 Order was enacted by way of response to the criticisms of the Home Secretary by the House of Lords in C v Chief Constable of PSNI [2009] 1 A.C. 908 @ para [94]. But the particular protection given to legal consultations applied only to legal consultations taking place at the type of premises specified in the 2010 Order. Parliament did not see fit to require additional steps to be taken to cater for the possibility that legal consultations would take place elsewhere. A client therefore loses some elements of his statutory protection if he chooses to have a legal consultation outside the specified premises.*

26. *However the fact that LPP material may be encountered does not operate as an impediment to the grant of a directed surveillance authorisation, intrusive surveillance authorisation or property interference authorisation. In C v Chief Constable of PSNI [2009] 1 A.C. 908 it was held that Part II of RIPA could lawfully authorise surveillance of privileged conversations. As Lady Hale, speaking with the majority, observed @ para [69] the scheme of the Police Act 1997 “expressly contemplated that authorised bugging might result in the obtaining of privileged or other confidential information and provided extra safeguards where this was likely.” See also paras [25] and [35] per Lord Phillips, who dissented on the proposition that RIPA overrode the statutory right of a detained person to consult a solicitor in private.*

27. *In order to apply the principles in part 4 of the Code of Practice the CMU (Covert Monitoring Unit) has its own policy for dealing with confidential material (which includes LPP material) – see exhibit MJ/01 to the witness statement of Martin Jones. The purpose of this was and remains to isolate any LPP material from those charged with the investigation and potential prosecution.*

28. *It should be noted that the Code of Practice does not require LPP material to be deleted, and indeed stipulates that it should be made available to the Surveillance Commissioners.”*

30. The evidence of the Respondent's witnesses, as referred to in paragraph 16(vii) above, is that they did not believe that the communications which were to be captured on the covert listening devices would contain or attract LPP:
- i) Mr Hickman was clear (perhaps somewhat naively in the circumstances) that he never imagined that lawyers would go to Kanta House: in his experience people who have been arrested go to the lawyers' office. The listening devices in question did not record telephone conversations, so that they would only record one side of what was being said, such that even in the event of a telephone conversation in which one side would be recorded, it did not occur to him that this would amount to the giving or receiving of advice, as opposed to the fixing of an appointment. Mr Batsford, the author of the application, also explained that he did not tick the box because he did not believe that there was a likelihood of obtaining matters subject to LPP: he too thought that all discussions would take place in the lawyers' office. In answer to the Tribunal, he said that he did not think, in relation to any of the (50 to 70 over 7 years) applications that he had previously made, that he had ever ticked the box. Mr Pearce, the Authorising Officer, also gave evidence to the same effect as Mr Hickman and Mr Batsford.
 - ii) To return to Mr Hickman's email of 31 January referred to in paragraph 16(vi) above, he explained his reference to an expectation that "*legal topics will be at the forefront of conversations of those suspected*" by reference to what had been anticipated and indeed hoped for in Appendix 3 of the Operation Heterodon Document, namely that conversations would be prompted between the arrested parties as to why they had been arrested and with a view to prompting them, as there described, to "*speak in detail of the criminality taking place*".
31. Mr Jones submitted that we should reject the evidence of the Respondent's witnesses in this regard and find that they had no such honest belief, and that Mr Batsford had deliberately not ticked the box, notwithstanding knowing that there was a likelihood of capturing LPP on the covert devices. It is noteworthy however that (i) the Respondent was already going to have to seek approval of the Commissioner, so that a failure to tick the box would not have any result of avoiding seeking such approval by reference to s.97(2)(b); and (ii) there were and are already in place the provisions pursuant to the Code of Practice, so that any LPP material which was in the event captured would be (and in the event was) protected: and box 13 records, in relation to confidential information generally (including LPP) that "*no confidential material is likely to be obtained and none is sought. In the unlikely event any such material is obtained then . . .*" a procedure was laid down. It seems to us, having considered both the credibility of the witnesses and the likelihoods, that they genuinely did not consider that there would be LPP (or did not turn their mind to it) in the material that would be caught by the covert devices: and certainly so far as Mr Batsford is concerned nothing to cause him to deviate from his apparently regular approach of never having ticked the box. This is something which we have no doubt he will need carefully to consider in the future if he is to continue to make applications of this kind.
32. Mr Jones submits in the alternative that honest belief by the Respondent or in particular by the Authorising Officer is not sufficient, by reference to s.93(2) where,

as here, approval was sought from a Commissioner, who has to be satisfied that such honest belief was *reasonable* pursuant to s.97(3)(v). However the issue arises as to whether the Tribunal is here dealing with a belief as whether the action proposed is necessary or proportionate. The issue here relates to the different belief in s.97(2), namely a belief as to (s.97(2)(a)) whether the property constitutes office premises or (s.97(2)(b)) whether the action is likely to result in any person acquiring knowledge of matters subject to LPP etc. That belief must be an honest belief, not required to be reasonable, and if that belief is held, then approval by the Commissioner is necessary, and if it is not held, then it is not. The difficulty is that in the absence of such a belief the Commissioner would not have a role (unless by coincidence, as here, he has been made relevant by the existence of the *office premises* route). It would need to be contended that a Commissioner could not reasonably find that there was an honest belief in the necessity or proportionality of the action proposed to be taken if there was (contrary to the honest belief of the Authorising Officer) a risk of obtaining LPP.

33. There is however a more straightforward route for Mr Jones, which he also adopts. His submission is that, irrespective of the honest belief of the Respondent's witnesses as to the risk of capturing LPP, there was material non-disclosure of the nature of the Plan, in the respects set out above. He submits that had Mr Batsford included, as he should have done, in his description of the "*simple plan*", the fact that the "*main objective*", i.e. the intention, of the whole exercise on 28 January was to stimulate, provoke the kind of conversations which were intended to, and would inevitably, result from the search warrants, the arrests, the interviews and the release, it would have been starkly apparent, if not to Mr Batsford then to the Authorising Officer, and in any event to the Commissioner, that there was a risk of capturing LPP on the covert devices: either because lawyers would attend at the headquarters of DDL to discuss the position and advise all the Complainants, or at the least by virtue of telephone conversations in which, even if the answers of the lawyer were not audible, advice would be sought.
34. That would have led to the express operation of paragraph 4.12 of the Code of Practice, namely that "*where covert surveillance or property interference is likely . . . to result in the acquisition of knowledge of matters subject to legal privilege, an authorisation shall only be granted or approved if the Authorising Officer . . . or Surveillance Commissioner . . . is satisfied that there are exceptional and compelling circumstances that make the authorisation necessary*".
35. The provisions of paragraph 4.11 of the Code would also have been triggered:

"4.11 If the covert surveillance or property interference is not intended to result in the acquisition of knowledge of matters subject to legal privilege, but it is likely that such knowledge will nevertheless be acquired during the operation, the application should identify all steps which will be taken to mitigate the risk of acquiring it . If the risk cannot be removed entirely , the application should explain what steps will be taken to ensure that the knowledge of matters subject to legal privilege which is obtained is not used in law enforcement investigations or criminal proceedings."

36. Mr Bird helpfully drew our attention to the salient words of Sir John Thomas P, as he then was, in **Tchenguiz** (which he adopted as Lord Thomas LCJ in **Golfrate** at 89, namely:

“172. In civil cases, the courts have made very clear that a failure to comply with the duty of disclosure on an ex parte or without notice application will often result in the setting aside of the order: see for example Brink's Mat Ltd v Elcombe [1988] 1 WLR 1350, Fitzgerald v Williams [1996] QB 657. Although it was accepted there is a difference between a civil and a criminal case, it was submitted by RT, VT and the TFT and TDT companies that the test to be applied when considering whether to quash a warrant issued under s.2(4) of the CJA 1987 was whether the errors and non-disclosure might have made a difference to the grant of the warrant. Mr Eadie on behalf of the SFO submitted that the test was whether they would in fact have made a difference. We were referred to a number of decisions including, Jennings v CPS [2006] 1 WLR 182 at 52-8, R (Mercury Tax Group) v HMRC [2008] EWHC 2721 at paragraph 48, R (Wood) v North Avon Magistrates Court [2009] EWHC 3614 at paragraphs 34 and 37, R (Faisaltex) v Crown Court at Preston [2009] EWHC 1687 at paragraph 81, Burgin and Purcell v Commissioner of Police for the Metropolis [2011] EWHC 1835 at 66-71, Re Stanford (supra).

173. On the facts of this case, the difference is immaterial as we shall explain. It is therefore not necessary for us to reach a concluded view, but in a criminal case [our underlining] the authorities and consideration of public interest point, in our view, to the test being whether the errors and omissions would in fact have made a difference to the decision of the judge to grant the warrants.”

37. We are satisfied, despite Mr Jones' submissions to the contrary, that this is a criminal case, like the search warrant and restraint order cases to which Thomas P is making reference in **Tchenguiz**, and that the civil principle does not apply. Thus it is not the case that we only have to ask ourselves, as we would in relation to a challenge to an ex parte order on grounds of non-disclosure in a civil case, whether had the true position been revealed that would have been material for the ex parte judge to consider, i.e. that it might have made a difference. The question for us however - and Mr Bird accepts that the onus is upon him, where there has been non-disclosure, to satisfy us that, as Lord Thomas puts it “*the errors and omissions would [not] in fact have made a difference to the decision*” of the Authorising Officer and/or the Commissioner - is by reference to this much lesser test for him to surmount in order to save the authorisation and approval. The test is whether, had the matters been disclosed, they would in fact have made a difference. Whereas in a civil case the court may be intent on punishing a civil party which has made a material non-disclosure, in a criminal case matters of public interest arise.

38. We are satisfied that the Plan, lawfully audacious or otherwise, as described in paragraph 27 above, ought to have been disclosed in the application for the authorisation. We are also satisfied that, had it been so disclosed, it is inevitable that boxes 3 and 13 with regard to LLP would have been ticked, or that the Authorising Officer and/or the Commissioner would have concluded that it should be ticked, in that the risk of capturing LLP material on the covert devices at Kanta House after the events of 28 January would have been obvious. It is thus not simply a question of their disclosure of the Plan, but disclosure also of what we conclude to be the inevitable concomitant risk as to LLP.
39. In those circumstances there would have been two consequences:
- i) Paragraph 4.12 of the Code of Practice, from which we have cited in paragraph 34 above, would have applied, such that both the Authorising Officer and the Commissioner would need to have been satisfied that there were “*exceptional and compelling circumstances that make the authorisation necessary*”. Mr Bird submits, and with some force, that given that both the Authorising Officer and the Commissioner were satisfied in the circumstances that the placing of the covert devices was both necessary and proportionate, there is no reason to doubt that they would have given and approved the authorisation even had the higher test applied.
 - ii) However paragraph 4.11 of the Code, set out in paragraph 35 above, would also have applied.
40. As to the latter requirement we must consider whether, had the LLP box been ticked, as it should have been, the necessary *mitigating steps* were adequately set out. We have already referred, in paragraph 23 above, to the provisions that were made in the application by reference to what was described as the “*unlikely event*” of the obtaining of confidential material.
41. *Mitigating steps* do in any event exist, by reference to the written policy of the NCA for dealing with any LPP material encountered (described and exhibited by the Respondent’s witness Mr Jones), which was in the event put into effect once LPP was discovered. But we are satisfied that had the Plan and the risk of LPP material been disclosed, as it should have been, the probability is that the Authorising Officer, and in any event the Commissioner, would not have made or approved the authorisation in its present form, but would have required (by reference to paragraph 4.11 of the Code) that “*the application should explain what steps will be taken to ensure that any knowledge of matters subject to legal privilege which is obtained is not used in law enforcement investigations or criminal prosecutions*”, particularly as it seems that, of the 8 devices being placed, some were able to transmit and be listened to in real time.
42. Accordingly we are not satisfied that Lord Thomas’ test is met, and that, had the true position been revealed, the same authorisation would have been given. The authorisation that was given and approved must therefore be quashed.
43. We wish to emphasise for the future that, full as this application was (as compared with the search warrant), it was deficient in an important respect, namely in failing to record that there was indeed a likelihood of capture of LPP material given the nature of the Plan, which was itself not fully disclosed. Given the responsibility based upon

the Authorising Officer and the relevant Commissioner to consider such applications, those applying for such authorisations must take care, and greater care than was taken in this case, to comply with their duty of candour.

Remedy

44. We were invited by Mr Jones to take the same course as was taken by the Divisional Court in relation to the return or destruction of the product of the authorisation. We are satisfied that the facts before the Divisional Court were very different, and that the conclusions reached by the Divisional Court in relation to the (conceded) invalidity of the warrant justified an approach different from that which we conclude to be appropriate. Of course if no charges are brought against the Complainants, then within a reasonable time it would in any event be appropriate for there to be destruction or return of the product of the authorisation. But if charges are brought, we are satisfied, having considered the matter carefully and heard submissions, that a number of interests need to be considered apart from that of the Complainants. There may be the interests of other defendants, if such there be, who might wish to rely on the contents of the conversations, there will obviously be the interests of the prosecution (and hence the public) and there is always the public interest of avoiding any impact on a criminal trial which could lead to a suggestion of abuse of process or untriability.
45. Accordingly we conclude that, until a decision as to whether or not there are to be charges, the material should be retained as it is at present, subject to the same undertakings as have been provided as part of the interim order, and if a decision not to charge is made, then subject to any application to us (for which we give liberty to apply) the material should be destroyed or returned to the Complainants. If however charges are brought, then it is clear from our discussions with counsel that an appropriate procedure can be agreed by which any persons charged with offences whose trials might be affected by the contents of this material should be permitted to have access to it. The prosecution must of course fulfil its responsibilities under the Criminal Procedure and Investigations Act 1996, and make the parties aware of the existence of this material, but in the absence of agreement any decision as to access to the material, and its admissibility in evidence must be in the hands of the Crown Court.
46. The Complainants claim compensation or damages in the event of the quashing of the authorisation. No doubt mindful of the jurisprudence of this Tribunal, which emphasises the reliance we place upon the Strasbourg jurisprudence in relation to the quantification of compensation and the likelihood that declaratory relief will be sufficient, Mr Jones trod lightly in this regard. Mr Bird drew our attention to that jurisprudence, and to the fact that the interference was relatively short lived and was not at domestic premises, that no medical evidence or evidence of distress or inconvenience has been produced by the Complainants, and no special damage pleaded. He referred to **B v Department for Social Development** IPT/09/11/C in which this Tribunal considered the Strasbourg authorities and held that no compensation/damages should be awarded even where there was an order for destruction of the product. At paragraph 10 of the Judgment the Tribunal followed the guidance from the House of Lords in **R (Greenfield) v SSHD** [2005] 1 WLR 673 to the effect that damages for breach of Convention Rights were typically modest

because the primary consideration is “just satisfaction” by other means. In considering the Strasbourg cases the Tribunal observed at paragraph 13 that:

“No award was made for non-pecuniary loss in respect of a violation of Article 8 in the cases of Niemietz v Germany [1993] 16 EHRR 97 (11/2 hours search and removal of documents, including privilege documents), Cremieux v France [1993] 16 EHRR 357 (a lengthy search and seizure at the claimant’s house), Hewitson v UK [2007] 44 EHRR 30 (covert bugging in the applicant’s garage over five months) and Heglas v Czech Republic [2009] 48 EHRR 44 (sustained surveillance of the claimant’s mobile phone).”

47. The Tribunal considers that in this case too the finding in favour of the Complainants which we have made, fortified by our Order in respect of the retention of this material, is just satisfaction, and it is not appropriate to award any compensation.
48. Mr Jones sought costs, either as compensation or in the ordinary way. So far as the former is concerned he drew our attention to no authority and we are satisfied that legal costs are not a recognised head of damages. Mr Bird further pointed out that if costs were to be treated as compensation then that would mean that a respondent could never recover costs, and that concepts such as mitigation would arise. As for a claim of costs on the ordinary basis, we see no reason to differ from our previous conclusion in **W v Public Authority** IPT 09/134 that for reasons given at length in that judgment it was not appropriate to award costs in what is intended to be a “costs free” jurisdiction. Mr Bird also drew our attention to **R (Choudhary) v Bristol Crown Court** [2015] EWHC 723 (Admin), where the Divisional Court held at paragraph 35 that, in proceedings relating to a criminal matter in the Crown Court (following an unlawful search warrant), the Crown Court had no general or inherent jurisdiction to award costs, even though it was a superior court of record. This fortifies our previous view. We make no award of costs in the Complainants’ favour.

APPENDIX ATTACHED



- APPLICATION FOR PROPERTY INTERFERENCE
Part III Police Act 1997
- APPLICATION FOR INTRUSIVE SURVEILLANCE
Part II Regulation of Investigatory Powers Act 2000
- APPLICATION FOR PROPERTY INTERFERENCE
Part III Police Act 1997 & INTRUSIVE SURVEILLANCE
Part II Regulation of Investigatory Powers Act 2000

1. Applicant Details			
Name	Nick Batsford	Team / Branch	Operations Birmingham
Telephone No	Office [REDACTED] Mobile [REDACTED]	Region / Command	England and Wales operations

2. Operation Details			
Operation name or GT reference No	HETERODON	Date & time required	27.01.2015
Technical support and reference number?	<input checked="" type="checkbox"/> supported	DSA URN	546/H/WC/DS
For deployments due to take place in less than 24 hours the Authorities Unit must be notified by telephone			

3. Property Interference	
Is the interference taking place in or on any of the following places?	Dwelling <input type="checkbox"/> Hotel Bedroom <input checked="" type="checkbox"/> Office <input type="checkbox"/>
Is there a likelihood of obtaining:	Confidential journalistic material <input type="checkbox"/> Matters subject to legal privilege <input type="checkbox"/> Confidential personal information <input type="checkbox"/> Confidential constituency information <input type="checkbox"/>
Answering 'yes' to any of the above indicates that you are applying for property interference requiring prior approval	

4. Intrusive Surveillance	
Authorisation required:	Private vehicle <input type="checkbox"/> Residential premises <input type="checkbox"/>
Legal Consultation(s) taking place in the following premises:	
Any place in which persons who are serving sentences of imprisonment or detention, remanded in custody or committed in custody for trial or sentence may be detained	<input type="checkbox"/>
Any place in which persons may be detained under paragraph 16(1), (1A) or (2) of Schedule 2 or paragraph 2(2) or (3) of Schedule 3 to the Immigration Act 1971 or Section 36(1) of the UK Border Act 2007	<input type="checkbox"/>
Any place in which persons may be detained under Part VI of the Criminal Procedure (Scotland) Act 1995, the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Mental Health Act 2003	<input type="checkbox"/>

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Any police station	<input type="checkbox"/>
The place of business of any professional legal adviser	<input type="checkbox"/>
Any place used for the sittings and business of any court, tribunal, inquest or inquiry	<input type="checkbox"/>
All categories of intrusive surveillance require prior approval	

5. Provide brief details of the activity for which authorisation is sought
(include details of all activity required in the form of proposed authority wording)

Interference by way of entry and re entry onto the private parking area at **Kanta House, Victoria Road, South Ruislip, Middlessex, HA4 0JQ**, and entry and re-entry into **Kanta House** in order to facilitate:

- CTR of the said office and warehouse, and if feasible the deployment, maintenance, ~~replacement~~ and retrieval of covert **audio and video** equipment therein and thereon.
- Conduct covert searches of said office(s) and warehouses for the purpose of:
 - forensic examinations, including the taking of forensic samples from and covert forensic markings of the said office(s) and warehouses and its contents;
 - interrogating, obtaining and copying data in respect of the memories and SIM cards of mobile phones and any electronic devices and digital storage media including interference with wireless telegraphy in order to facilitate the aforementioned;
 - Examining, obtaining details and copying documents and any other items found therein; and
 - The removal and subsequent return of any items in order to facilitate the above.

All in relation to **money laundering** associated to the named subject(s) **Harvinder Singh BATTH (DOB 06/11/1975), Harjeet Kaur DHARIWAL (DOB 26/03/1975), Cliff TARR (DOB 03/09/1959), Satish Jamnadas CHATWANI (DOB 14/03/1953), Jawahar Jamnadas CHATWANI (DOB 21/07/1948) Rashmi Jamnadas CHATWANI (DOB 13/06/1954), Rakesh TAILOR (DOB 01/07/1963) and Bhasker TAILOR (DOB 27/08/1955)**

6. Subject(s) of surveillance against whom this application is directed, or persons whose property will be interfered with or trespassed upon

Name	Harvinder Singh BATTH	Name	Harjeet Kaur DHARIWAL
Address	Apartment 4, Baytrees, South Park View, Gerrards Cross, Buckinghamshire, SL98FG	Address	Apartment 4, Baytrees, South Park View, Gerrards Cross, Buckinghamshire, SL98FG
DOB	06/11/1975 <input checked="" type="checkbox"/>	DOB	26/03/1975 <input checked="" type="checkbox"/>
Gender	male	Gender	female
ID Code	IC4	ID Code	IC4
CRO		CRO	

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Name Address	Cliff TARR 27 Bassett Gardens, North Weald, Epping, Essex, CM16 6DB	Name Address	Satish Jamnadas CHATWANI Kanta Kutir, 31B Bedford Road, Northwood, Middlesex, HA62AY
DOB Gender ID Code CRO	03/09/1959 ✓ male IC1 [REDACTED]	DOB Gender ID Code CRO	14/03/1959 ✓ Male IC4 NT [REDACTED]
Name Address	Jawahar Jamnadas CHATWANI 58 Wolsey Road, Northwood, Middlesex, HA6 2EH	Name Address	Rashmi Jamnadas CHATWANI Cariad, Sarratt Lane Loudwater, Rickmansworth, Hertfordshire, WD34AS
DOB Gender ID Code CRO	21/07/1948 Male IC4 NT [REDACTED]	DOB Gender ID Code CRO	13/06/1954 Male ✓ IC4 NT [REDACTED]
Name Address	Rakesh TAILOR 42 Hillview Road, Pinner, Middlesex, HA5 4PA	Name Address	Bhasker TAILOR 157 Colin Crescent, London, NW9 6ET
DOB Gender ID Code CRO	01/07/1963 ✓ Male IC4 NT [REDACTED]	DOB Gender ID Code CRO	27/08/1955 Male IC4 NT [REDACTED]
I acknowledge that all relevant NCA intelligence systems have been updated with relevant information relating to this operation and each individual named above is recorded on KB as a subject of interest			<input checked="" type="radio"/> YES
If you have answered 'no' to the question above please provide a brief explanation			

7. Acknowledge that all necessary checks and risk assessment are completed			
National Compromise Database checked?	<input checked="" type="radio"/> Yes	Date:	21/10/14
Operational Risk Assessment completed	<input checked="" type="radio"/> Yes	Date:	21/10/14
Relevant information located?	<input checked="" type="radio"/> No	By whom:	Angela O'Connor
<i>Where applicant answers 'Yes' all relevant NCD reports must be submitted with application</i>			
		By whom:	Andy Gozzer

8. Intelligence Case
(a) Provide an overview of the operation, including the offences under investigation and explain how the serious crime criteria is met

Operation Heterodon is an investigation into an Organised Crime Group (OCG) involved in the large scale laundering of criminal proceeds worldwide. Parallel investigations are being conducted by Indian and Australian Law Enforcement Agencies in an attempt to apprehend and dismantle this OCG in its entirety.

The offences under investigation are:

Money laundering offences contrary to Sections 327/328/329 of the Proceeds of Crime Act 2002. Conspiracy offences relating to this criminal activity – Contrary to Section 1(1) of The Criminal Law Act 1977.

These are offences which meet the serious crime criteria as defined in both Section 81(3) (a)-(b) Regulation Investigatory Powers Act 2000 and Section 93(4) Police Act 1997 as offences for which a person having reached the age of 21 and having no previous convictions would expect to receive a custodial sentence of three or more years.

On 15/01/15 Rajnesh SHARMA, a member of this OCG, and his cash couriers Amit Kumar SHARMA and Jatinder SINGH were sentenced at Birmingham Crown Court. They have been sentenced as follows: Rajnesh SHARMA to 6 years 3 months, Amit SHARMA to 3 years 6 months and Jatinder SINGH to 21 months.

The above sentences are heavily discounted as the three defendant all entered guilty pleas at an early stage. The basis of plea was accepted by the defendants in that in excess of GBP 10 million was laundered over a period of 3 years.

DHARIWAL and Harvinder BATTH had both been previously arrested for money laundering offences. BATTH was convicted in 2010, sentenced to 9 years imprisonment and a confiscation order of half a million pounds. Nearly £400,000 against this order was paid by BATTH between June 2011 and July 2013, this is while BATTH and DHARIWAL maintained a luxurious lifestyle having houses in an exclusive part of North Birmingham and Rickmansworth, driving luxury vehicles and children having private educations, whilst having no substantial and overt legitimate form of income.

The UK criminal OCG hierarchy, this being the three CHATWANI brothers, supported by BATTH, DHARIWAL, two TAILOR brothers with TARR being a trusted lieutenant acting as a cash courier.

The three CHATWANI brothers have no criminal convictions. They are all immensely rich. The belief is that there is some legitimacy with their business interests, but they use these businesses to shield money laundering activities.

BATTH is clearly the 'front man' for this criminal activity, supported by DHARIWAL. BATTH runs to day to day logistics. It appears that the CHATWANI'S have an elevated position through their business and business contacts and now sit back, reap the financial benefits whilst BATTH (and others) take the risks. The TAILOR brothers are in a similar position to the CHATWANI'S they both hold managerial positions within Kanta Enterprises and benefit financially from these crimes. Intelligence suggests that the CHATWANI and TAILOR brothers do hold meetings with individuals linked to money laundering.

It is believed that this crime group have a warehouse in France where they import alcohol into the UK. This OCG generate the correct HMRC documentation to import a container. If this paperwork is not examined by customs, the container enters the UK, no duty is paid, the goods are delivered to complicit businesses where the goods are sold. The HMRC documentation is then transferred to another container waiting to come over. The chain is broken when these documents are eventually examined by HMRC. It may be that four or five

containers get into the UK, all avoiding paying any UK duty. New documentation will then be created where the process starts again.

Intelligence clearly indicates that Kanta House is the hub for this international money laundering operation.

The three CHATWANI brothers and Harvinder BATTH go to Kanta House on a daily basis, DHARIWAL still maintains links in the Midlands, DHARIWAL splits her time between the Midlands and London areas. Observations have shown Cliff TARR visiting Kanta House on a near daily basis and believed connected to his role as a cash courier for the OCG.

Although the CHATWANI'S hold multiple directorships one of the principle companies trading from Kanta House is DAVIS and DANN Ltd. The directors are the three CHATWANI brothers, with BATTH (In 2013) declaring a small income from that business as a salesman. The company describes itself as a wholesale distributor of Pharmaceuticals and household goods, declaring annual turnovers in 2012 and 2013 of nearly GBP 40 million in each year.

Financial enquiries into the business interests of this crime group have revealed a number of fraudulent transfers, totalling millions of pounds. The money has been effectively stolen from third party bank accounts then laundered through accounts under the control of this OCG. Some of the money has ultimately ended up in the DAVIS AND DANN accounts. A number of multi million pound frauds have been identified where Davis and Dann have an involvement. Enquiries are ongoing into this.

Intelligence has indicated the direct involvement of DAVIS and DANN Ltd being involved in making significant payments to OCG subjects to clear their Confiscation Orders. DAVIS and DANN were involved in making two payments towards the half million pound confiscation order of BATTH.

Intelligence has identified that this OCG are concerned that using DAVIS and DANN as a 'smoke screen' to hide their money laundering activity could cause their downfall if discovered

There is intelligence that Rashmi CHATWANI travelled to Dubai and Hong Kong, leaving London on 18/01/15 and is due back this week.

BATTH and DHARIWAL are currently living at an address at that intelligence shows that was purchased for GBP 735,000 on 08/08/2014 by JP Investments Ltd, a Jersey registered company. This property purchase is believed to have been facilitated by the CHATWANI'S on behalf of BATTH and DHARIWAL.

Telephone analysis from mobile phones attributed to BATTH and DHARIWAL over an extended period of time show frequent contact with persons suspected of being involved in money laundering activities.

Cliff TARR is believed to be a trusted lieutenant. TARR is believed to be a cash courier on behalf of the OCG.

A number of persons have been identified visiting Kanta House. A number have been positively identified. Subsequent enquiries have established that a large proportion have criminal convictions for money laundering, fraud and drugs. It is believed that this OCG use Kanta House office premises as a 'safe haven' to discuss and arrange criminality.

Intelligence suggests that Kanta House is used to store criminal cash before it is dissipated. TARR has been taking boxes and bags away from the premises and deliver them to

premises with money laundering intelligence.

TARR has met a man identified as Ravi SHARMA. SHARMA is a successful money launderer. TARR has had a clandestine meeting in a dimly lit side street where a considerable amount of cash was exchanged from TARR to SHARMA.

During November 2014 TARR was observed on several occasions at a Supermarket in Newcastle upon Tyne. It was believed he had gone there to collect cash.

On 20/11/14 TARR was stopped by Tyneside Police officers travelling away from the same supermarket where he was found in possession of a considerable amount of cash. He was arrested for money laundering, interviewed and later the same evening he was released on bail, (18/05/2015)

Intelligence indicates that on his release from police custody TARR was in immediate contact with BATTH and DHARIWAL. Further intelligence shows a 'frenzy' of meetings between the subjects, culminating in a suspicious late night visit to Kanta House, by BATTH, DHARIWAL, Rashmi CHATWANI and Bhasker TAILOR. Intelligence indicates the purpose of the late night visit to was to destroy incriminating evidence.

TARR is still believed to be part of this OCG as he continues to drive his 'Kanta Enterprises' BMW vehicle. Since his arrest TARR has kept a low profile.

(b) Outline the precise role of the subjects

Satish Jamnadas CHATWANI, Jawahar Jamnadas CHATWANI and Rashmi Jamnadas CHATWANI are brothers, they, together with Harvinder Singh BATTH Harjeet Kaur DHARIWAL Rakesh TAILOR and Bhasker TAILOR all have similar roles in that they are believed to use their expert knowledge, experience and financial wellbeing to use 'placement', 'layering' and 'integration' techniques as part of the money laundering service to crime groups. The funds are 'placed' into companies set up by their criminal associates for this specific purpose; 'layered' through transferring them around other companies / accounts; then 'integrated' into the financial system through investments and the purchase of assets.

Cliff TARR appears to be a trusted member of the OCG and features at observations conducted at Kanta House. TARR is used primarily to collect and deliver cash.

9. Necessity

I acknowledge that this surveillance/property interference activity is necessary for the purpose of Section 32(3)(b) RIPA 2000 or 92(3)(a) of the Police Act 1997, namely '*preventing or detecting serious crime*'

Explain what private information is likely to be obtained and why the proposed surveillance/property interference is necessary

PRIVATE INFORMATION LIKELY TO BE OBTAINED:

The deployment of Audio and video recording equipment is likely to obtain private information about the CHATWANI, DHARIWAL, BATTH, TAILOR and TARR families. It is also likely to obtain private information of persons visiting Kanta House who are not connected to criminal activity for example delivery drivers, sales representatives or maintenance engineers. The retrieval of data from electronic storage equipment and mobile phones is likely to obtain private information from those devices. The copying of documents within the premises can be more selective.

The Premises:

Kanta House in South Ruislip, Middlesex is a combined warehouse / office premises. There is a large warehouse/ storage area on the ground floor with office(s) on the first floor. Intelligence and reconnaissance have not been able to establish if the office space is 'open plan' or individual offices, however observations and intelligence clearly show ownership, control and useage is confined to the subjects of this investigation, (extensive enquiries have not identified any other person sub-letting any other area within Kanta House). Intelligence suggests that Kanta House is owned by the CHATWANI brothers.

NECESSITY:

It is necessary to trespass on the private parking area of Kanta House in order to facilitate entry into the property to deploy equipment / interrogate devices / copy documents.

It is necessary to conduct a close target reconnaissance (CTR) of Kanta House to ensure that:

- the proposed activity is feasible,
- any security features at the premises can be covertly breached,
- the proposed activity can take place ensuring the safety of the officers and other members of the public.
- Reduce the risk of operational compromise.

It is necessary to conduct covert searches of the premises including any safe/storage units in order to conduct forensic examinations, to interrogate electronic and digital devices and copy documents in order to obtain tangible evidence to support a criminal prosecution and obtain intelligence against this crime group. It may be necessary to remove these items in order that downloads and copying can be achieved. The return of these items is necessary to ensure that the activity remains covert.

It is necessary to deploy audio recording equipment to capture any criminal conversations between the CHATWANI brothers, TAILOR brothers, BATH, DHARIWAL and TARR and any of their criminal associates within Kanta House. The nature of this type of activity is secretive and done behind closed doors; this ensures that those involved do not come to the attention of law enforcement. The product obtained from audio recording equipment will identify:

- others involved, not yet identified,
- Evidence meetings between the subject and their criminal associates.
- Methods employed to conceal and transfer cash, to identify where it comes from, how it is transferred, and the general methods used.
- Premises to be used to store and distribute cash.
- Locations of any financial assets procured from this criminality.

And

- Seize criminal derived cash
- Share intelligence with overseas law enforcement agencies with the ultimate aim to dismantle the OCG in the UK and abroad.
- Obtain tangible evidence to secure a criminal prosecution.

It is necessary to deploy video recording equipment to:

- Attribute criminal audio recordings
- Identify others involved, not yet identified
- Identify any other methods of communication between members of this crime group
- Identify any secret storage places within the property, where incriminating evidence may be stored.

- Any other criminal activity.

The **overarching necessity** case is to maximise all evidential and intelligence gathering opportunities against this crime group. The amount of money being laundered is breathtaking this crime groups activities has a significant detrimental impact on many countries.

10. Details of Property Interference

If the precise details of the property are unknown at the time of application but are obtained later, the applicant must notify the Office of the Surveillance Commissioners via the Authorities Unit immediately

(a) Details of property to be interfered with for example vehicle make, model and registration number, private or residential address, specific location with relevant grid references. *Where relevant, applications for entry onto land will not be submitted unless accompanied by a clearly marked plan with printed, numbered grid co-ordinates, which must be referred to within the authority wording and box below.*

- Private land and warehouse / office premises at Kanta House, Victoria Road, South Ruislip, Middlesex, HA4 0JQ

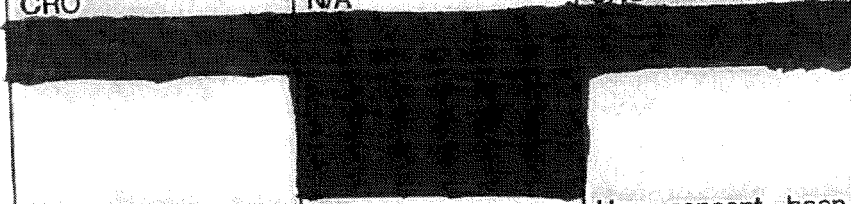
(b) Explain the connection between the property and the subject(s)

Kanta House is owned by the three CHATWANI brothers. Observations show that they all go to the premises on a near daily basis. Kanta House is BATTHS regular place of work, observations and other intelligence clearly shows that he goes there Monday to Friday usually within normal working hours. DHARIWAL is BATTHS wife and a co conspirator. DHARIWAL splits her time between a business interest she has in the Midlands and whilst in Gerrards Cross with her husband she regularly accompanies him to Kanta House. The TAILOR brothers both hold a number of senior appointments within the CHATWANI business empire, ranging from Company secretary to accountants. Cliff TARR is a trusted associate and frequently goes into Kanta House where he is believed to assist in many aspects of this criminal conspiracy.

(c) Details of property ownership

Provide details of the ownership of each category or item of property to be interfered within as identified in box 9(a)

Type of property	Business premises comprising of warehouse and office(s) and associated parking areas.	Type of property	N/A
Name of owner	Kanta Enterprises Ltd (Satish, Jawahar and Rashmi CHATWANI)	Name of owner	
Address of owner	25 Culver Grove Stanmore Middlesex HA72NJ	Address of owner	
DOB	DOB 14/03/1953 (Satish) DOB 21/07/1948 (Jawahar) DOB	DOB	

ID Code CRO	13/06/1954 (Rashmi) IC4 N/A	ID Code CRO
		
Has consent been obtained from the property owner? If yes, who has given consent?	No	Has consent been obtained from the property owner? If yes, who has given consent?

11. Proportionality

(a) Explain why the information sought cannot reasonably be obtained by less invasive means (include details of what other methods have been considered/tried)

The primary offence under investigation is money laundering, where law enforcement in the UK, India, Australia, are actively developing intelligence around this crime group and the adverse impact their activities have on their economy and communities. These subjects are well versed on law enforcement tactics. BATTH and DHARIWAL have both previously been arrested for money laundering where covert methods of investigations have been revealed, further law enforcement activity has recently taken place against cash couriers acting on behalf of this group this will no doubt have further raised their awareness of law enforcement activity where they change/ adopt methodology to avoid detection. The three CHATWANI brothers do not have any convictions. It is true to say that those who form the hierarchy of crime groups have a reduced chance of being arrested as they 'sit back' and employ others to execute their criminal activity. The assessment is that the CHATWANI brothers fall into this category.

Detailed media reporting and on law enforcement investigations into these types of crimes have made criminals heedful of case evidence preparation; These subjects are aware of this and adapt their methods of operating with a view to evading arrest and prosecution. Communication (verbal and electronic) between criminals is vital, even more so across international borders, where meetings are not easily organised due to the distances involved. These crimes involve the recording and exchange of considerable amounts of information. This is either written or stored electronically. ✓

A considerable amount of surveillance activity against these subjects has taken place where some meetings have been witnessed. They are aware that 'face to face' meetings in communal areas can form a significant part of a prosecution case therefore if a meeting can be held within a private premises they can speak freely without being overheard.

The investigation team have considered other options of obtaining this information prior to submitting this application; however the recording of criminal conversations in public places (where they may have meetings) is very difficult. Previous experiences of investigating this type of activity show that meetings are invariably conducted in noisy locations, or in a secluded place with 'hushed' speech. The result is invariably very poor quality inaudible recordings or recording is not feasible whilst remaining covert. Therefore where there is intelligence that criminal conversations are taking place between members of a high priority crime group within a business premises and where there is an opportunity to listen to and record these criminal conversations to maximise evidence gathering opportunities this is believed to be proportional and the most less invasive method of obtaining information.

(b) Balancing the degree of intrusion into the privacy of the subjects (listed in box 6) against the purpose of the surveillance, explain what is hoped to be achieved and why this is proportionate

It is acknowledged that the proposed activity is an engagement of the subjects article 8 right under the ECHR i.e. Right to respect private family life.

At this stage of the investigation the focus of intelligence and evidence gathering is directed on the unlawful criminal activities of The three CHATWANI brothers, The TAILOR brothers, Harvinder BATTH, Harjeet DHARIWAL and Cliff TARR. These seven persons form the core of a long standing crime group successfully laundering the proceeds of other criminal gangs nationally and internationally. The amount of money being laundered is believed to be many millions of pounds. Evidence gathered to date from arrests made in the UK and a number of our overseas law enforcement partners clearly demonstrate that the tentacles of this OCG are truly global. It further demonstrates the level of criminal conduct this crime group are involved with and the adverse impact these crimes have on society.

Balancing the intrusion into the privacy of The three CHATWANI brothers, The two TAILOR brothers, Harvinder BATTH, Harjeet DHARIWAL and Cliff TARR against what this activity seeks to achieve, that is the collation of intelligence and evidence leading to the arrest, dismantlement and successful prosecution of the members of this OCG, then these tactics are deemed to be wholly proportionate and justified.

(c) Detail any sensitivities in the local community which may impact on the proposed activity

There are no known sensitivities in the local community which may impact on the proposed activity.

(d) If intrusive surveillance is to take place within bedrooms or bathrooms explain why this is necessary and proportionate and how it will be managed

There is no intrusive surveillance taking place in bedrooms or bathrooms.

12. Operational Plan

(a) Explain how the proposed activity will be carried out

The plan is simple in that an operational decision is made to arrest and interview all of the named subjects about their involvement in crimes identified. The arrests will be made whilst the subjects are at Kanta House leaving a sterile environment to work in, minimising operational compromise. Audio and video equipment will be installed at this stage as well as conducting searches/document and digital storage media examinations.

All staff deployed will be appropriately trained and will be supervised in accordance with NCA policy.

All officers will be briefed and debriefed prior to and at the conclusion of all deployments, with particular reference to collateral intrusion and article 8 ECHR.

All staff deployed will be in possession of their Personal Protective Equipment (PPE)

Any / all Technical equipment utilised to obtain the information sought, will be operated by appropriately trained and authorised officers they will be responsible for obtaining relevant data. All officers deployed will be present during the operational briefing.

The necessary technical equipment and trained officer(s) are available to deploy, The deployment will be supported by a conventional surveillance team ensuring the security of the equipment and any other NCA assets.

Technical equipment is available and will be installed by appropriately trained staff. ✓
A manager for the Covert Monitoring Post (CMP) has been appointed and will be assisted by trained staff. ✓

It may be necessary to interfere with power supply to fixtures / fittings to power the covertly deployed devices, if an in-built battery pack is not feasible. ✓

A policy will be drafted regarding the monitoring and recording of equipment. ✓

An interpreter will be identified to assist in the monitoring post in the event that conversations are in a foreign language.

(b) Identify the plan for retrieving any equipment used

The recovery of equipment will be managed by the Senior Investigating Officer and retrieved in controlled conditions. This will take place either on arrest of the subjects or under a pre planned deployment.

Should intelligence be received indicating a potential compromise a dynamic risk assessment will be conducted and a revised plan implemented dependant on the circumstances.

13. Confidential Information * see footnote

Please indicate if the activity is likely to result in the acquisition of one or more of the following categories of confidential information	Matters subject to legal privilege	<input type="checkbox"/>
	Confidential journalistic material	<input type="checkbox"/>
	Confidential personal information	<input type="checkbox"/>
	Confidential constituency information	<input type="checkbox"/>
	Information derived from a legal consultation taking place in a specified location	<input type="checkbox"/>

If confidential information is obtained, explain how it will be managed

No confidential material is likely to be obtained and none is sought. In the unlikely event any such material is obtained then it will be recorded and stored in accordance with the Criminal Procedures and Investigation Act 1996. This material will be immediately brought to the attention of the Senior Investigating Officer, the Senior Authorising Officer and the CPS Lawyer concerned with the investigation.

14. Collateral Intrusion

(a) All surveillance activity is likely to result in collateral intrusion. Please explain why this intrusion is justified in this case

If the proposed activity is authorised there is likelihood that there may be a degree of collateral intrusion. The deployment of audio equipment is likely to capture conversations between the subjects or their criminal associates that may not be about crime. It may be that

* Please note that directed surveillance of legal consultations taking place in the following premises are subject to intrusive surveillance prior approval: any place in which persons who are serving sentences of imprisonment or detention, remanded in custody or committed in custody for trial or sentence may be detained; any place in which persons may be detained under paragraph 16(1), (1A) or (2) of Schedule 2 or paragraph 2(2) or (3) of Schedule 3 to the Immigration Act 1971 or Section 36(1) of the UK Border Act 2007; any place in which persons may be detained under Part VI of the Criminal Procedure (Scotland) Act 1995, the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Mental Health Act 2003; any police station; the place of business of any professional legal adviser; any place used for the sittings and business of any court, tribunal, inquest or inquiry.

the conversations are in a foreign language, the interpreter in the monitoring post, will assist in identifying these occasions. There may be occasions where visitors to the property are bona fide friends or business associates not involved in crime.

Conversation between the subjects may have varied content, some aspects may relate to general issues which may lead to significant conversation about criminal activity. The recording of this type of conversation is justifiable and proportionate as it is difficult to identify when the criminal aspects of the conversations will take place.

The deployment of video equipment within the premises will capture movements of any persons within the property and assist with voice attribution and identification of others criminal associates.

All activity will be tightly focused on the criminal activities of the subjects and their criminal associate's. Intrusion is justified by the fact that the **CHATWANI brothers, The TAILOR brothers, Harvinder BATTH, Harjeet DHARIWAL and Cliff TARR** are involved in serious organised crime.

(b) What steps will be taken to minimise collateral intrusion

Only trained operatives are to be deployed to achieve the activities set out in this application. A full and detailed briefing of all staff focusing on the objectives of the operation, the identities of key individuals and their role within the OCG will take place prior to any surveillance activity.

All staff will be instructed as to how to deal correctly with issues of collateral intrusion. A full debrief will follow operational deployments to identify areas of future development, and issues of collateral intrusion.

A Covert Monitoring Post (CMP) will be established and staffed by an experienced team leader and appropriately trained staff. In this office environment, it will be very difficult to know when criminal conversations will take place. Observations at Kanta House does show that they have deliveries which may be Alcohol and other unknown goods. Therefore it is believed that a certain amount of legitimate trading does take place, it will be very difficult to identify when criminal conversations will take place therefore audio recording will continue whilst DHARIWAL, BATTH, or the CHATWANI / TAILOR brothers are present. If part of a conversation is thought to be lawful then no further enquiries will take place into the content of the conversation. A very experienced financial investigation team is allocated to this investigation with many years of fraud / missing trader investigation experience. Conversations believed to be criminal will be reviewed by this team.

Activity will be reviewed on a regular basis in consultation with the CMP manger to ensure that it remains justified and proportionate. A separate CMP policy will be put in place to ensure the correct handling of material, identify instances of collateral intrusion and comply with NCA policy and CPIA.

In the event of an act of intimacy taking place within the premises the live monitoring of audio will cease immediately. However, audio recording will continue and the CMP manager will be informed. Dip sampling as required by NCA policy will establish when such activity has concluded. The product will be reviewed to establish whether there is any criminal content and this decision will be supported by a policy log entry. Any product which contains material of an intimate nature will be clearly marked as such and will be securely stored and recorded in accordance with NCA policy.

It is emphasized that this investigation will be tightly focused on the criminality of the named subjects and those that assist them.

During the course of briefings and de briefings all officers involved with the investigation will be encouraged to report any matters of collateral intrusion.

15. Risk (Associated to this Authority Only)

15 (a) Personal Risks

LOW

(explain rationale for classification below)

- Is there a risk of personal injury? Are there any physical risks faced by operatives involved in the investigation?
- Consider the psychological pressures that may be experienced by officers placed in vulnerable situations. Are your operatives sufficiently competent to carry out the task in terms of knowledge, training and experience?
- Are there any risks to the safety of the subject or any other individuals who may assist us or be subjected to collateral intrusion?
- Are there any dangers associated with the use of technical equipment, for example, will a tracking beacon adversely affect the electronics on a particular make of vehicle?

A primary consideration when engaging in this activity are the risk of personal injury to members of the public going about their normal day to day business, the officers engaged in the investigation, the subjects and their criminal associates.

The risks are minimised by only using properly trained officers, who, by calling on previous experiences and making informed decisions decide on a suitable and safe times to deploy the equipment. The heightened areas of risk are usually around deployment and retrieval of the equipment, however in this case technicians will be able to work in a sterile environment, in daylight, having no time constraints.

A full technical feasibility study will be made dynamically by appropriately trained officers. The equipment used will only be equipment authorised by the NCA. This will have been rigorously tested. Furthermore the deployment of this equipment will not cause any adverse risk to other members of the public going about their day to day business.

The risks to members of the public and officers involved; subjects and associates are assessed as low.

In order to minimise physiological pressures:

- All officers deployed to be appropriately trained and supervised in accordance with NCA policy.
- Prior to any deployment all officers will be given a full operational briefing paying particular attention to the operational objectives, and any sensitivity that may be reported for the local area. All officers will be informed that a DSA has been authorised. The DSA and Part 3 authority will be available for examination. At the conclusion of a deployment there will be a debrief of surveillance activity. Officers will be encouraged to report any instances where they feel that a gross invasion of privacy has occurred.
- Photographs of the subjects will be distributed to surveillance officers and monitoring staff prior to any deployment and will be available for dissemination to officers while operationally deployed if and when required.

- Officers will be encouraged to immediately report any concerns they have about their safety or vulnerability when deployed and appropriate action will be taken immediately to resolve this issue. Consideration will be made in European Working time directives and NCA policy in respect of this will be complied with.

There are no known risks to the safety of the subject or any individuals who may assist us. Any instances of collateral intrusion will be reported the SIO and ground commander.

15 (b) Operational Risks

<p>LOW (explain rationale for classification below)</p>	<ul style="list-style-type: none">Is there a risk of disproportionate damage to our professional reputation if the investigation is exposed, equipment compromised or a prosecution collapses? Is there a high level of media or legal interest in the case?Can we manage the protection of our techniques? What would be the consequences of discovery?What is the likelihood of disclosure of sensitive techniques in evidence and what would be the broad consequences?
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Careful consideration is always given to the disproportionate damage to the professional reputation of the NCA if the investigation is exposed, equipment compromised or prosecution collapsing.

There is an expectation by law abiding members of the public that serious crime be vigorously and fairly investigated. There is always a chance of operational compromise due to many unforeseen circumstances, however this is minimised by professional briefings and de briefings and utilising only fully trained staff.

If the investigation were to be compromised or equipment compromised this would not have an adverse impact on the professional reputation of the NCA, however operational/equipment compromise may heighten the awareness of the subject that an investigation was in place.

The NCA will undertake a professional investigation in conjunction with the Crown Prosecution Service. The adverse impact on the reputation of the NCA is considered low if the prosecution collapses. Any media or legal issues will be managed by NCA press officer and legal issues by the Crown prosecution service.

Covert techniques will be managed by deploying appropriately trained officers. Deployment of any technical equipment will only be undertaken following comprehensive feasibility examinations with appropriately trained technical officers. All aspects of covert investigations have to be documented and as such these documents have to be considered for disclosure. In these circumstances the provisions of CPIA provide a level of protection against disclosure of sensitive techniques.

The likelihood of disclosure of sensitive techniques is low. The broad consequences would depend on what had been compromised, however in broad terms a disclosure may heighten the awareness of the subject and associates of a covert operation, and they may alter their methods of operation, however criminals that operate at this level will rarely cease their crimes, they may stop for a short while and amend their methods in which case the investigation team will have to re assess their techniques. In this case Harvinder BATTI and DHARIWAL have both been arrested for serious crime, BATTI served a substantial custodial sentence and substantial confiscation order imposed. Obviously BATTI and

DHARIWAL believe they are 'above the law', the financial benefits of committing crime outweigh and fears of arrest and prosecution.

15 (c) Risk Management Plan

Having identified the risks, what action will be taken to remove them? If risks are unavoidable, detail steps taken to reduce them.

There will always be an element of risk around covert investigations. The risks have been carefully considered and documented above. The actions taken to primarily remove and reduce the risks will be made by only using appropriately trained experienced staff who will conduct thorough briefings and de briefings. At this stage of the investigation all risks are assessed as being very low. The risk assessments will be regularly reviewed during the course of the investigation. A key feature ensuring that risks are minimised is the early identification of any matter which may cause harm or injury. Even though this assessment has been made at the initial stage, it is accepted that circumstances may change. All officers involved will be encouraged and reminded that they have an active part to play and to report anything that may alter this assessment. The SIO, during the course of the investigation, will appoint experienced, trained disclosure and exhibit officers. The SIO will liaise with technical officers and Crown Prosecution Service.

16. Applicant details

Name	Nick Batsford	Grade	5	Date	05.01.15
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17. Supervisor comments and details

Supervisors comments (G3 or above)

I have read this application and have a full understanding of its content. I am content that the intelligence case is an accurate representation of the activities and events that have taken place.

The offences under investigation are serious and complex. It has clearly been shown within this application that the named subjects are all linked and actively involved in the laundering of criminal profits both in the UK and internationally. A thorough investigation has revealed that Kanta House is central to the investigation and I believe the outlined objectives are entirely proportionate in what is sought to be achieved. It is necessary to utilise this authority in order that they can be achieved.

I am aware of the intended arrest phase is due to take place at the end of January 2015 and that this authority will be used in a focused and effective manner subsequently to achieve the stated objectives of achieving best evidence.

Operation HETERODON is a priority for the Birmingham branch both in terms of resources and financial costs.

Name	Adam Warnock	Grade	TG3	Date	06/01/2015
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18. Senior managers comments and details

(required in all prior approval and intrusive surveillance applications)

Senior Managers Comments

I have read this application and I am aware of the intelligence case and the wider investigation plan that supports its submission.

URN	581/J/WC/P3-PA
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Operation Heterodon investigates an OCG engaged in money laundering who appear to be operating at the highest level with access to significant resources both financially and human in support of their activities. With access to these assets, members of this group appear capable of adapting their methodologies in response to any threat of detection from law enforcement and indeed they employ considerable levels of sophistication to hide their various enterprises behind apparently legitimate business.

I am satisfied that the level of sophistication and the distance from any overt criminality that the CHATWANI brothers maintain, combined with the sheer scale of the economic threat to victims that this group represents, necessitates that covert activity of this nature is necessary and a proportionate response in order to achieve the investigations objectives and secure quality evidence. Given the physical protection that Kanta House affords this group, this evidence cannot be secured through other less invasive means.

I am further satisfied that the plan to manage instances of collateral intrusion through the application of a CMP policy is sufficiently robust and will be subject to review.

I fully support this application for authority.

Name	Paul Risby	Grade	TG2	Date	06/01/2015
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METADATA	
Policy Owner:	DD Specialist Capabilities
Author / Responsible Person:	Manager, Authorities Unit
Version Control	
Version & Date Issued:	V1 - 08/10/2014 (was IC04)
	V2 - 10/10/2014