

THE INVESTIGATOR BULLETIN



EDITION 7 • OCTOBER 2026

Surveillance • Victims • Decision Making • Professional Practice

Welcome to Edition 7 — our October edition. In this issue we explore key areas of investigative practice including legal classification of surveillance from a recent IPT ruling, where the Victims Code applies to investigators and using a defensible decision making framework. This edition is written to support your knowledge and understanding as part of our ongoing commitment to CPD.

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SURVEILLANCE

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DECISION MAKING

The Joint Decision Model

A decision structure for every investigator, not just commanders

Is the Back Garden "Residential Premises"? The IPT Decides

On 27 July 2026 the Investigatory Powers Tribunal handed down its open judgment in ***LMN and XYZ v Chief Constable of Avon and Somerset Constabulary* [2026] UKIPTrib 5 (IPT/21/199/C & IPT/21/203/C)**. The Tribunal — Lady Carmichael (President), Judge Rupert Jones and Francesca Del Mese — made no determination in favour of either complainant. Two findings need to be considered by Applicants, Authorising Officers and Gatekeepers:

Directed, Not Intrusive

The camera and microphone were on the neighbour's property and did not consistently provide information of the same quality and detail as devices actually present on LMN's premises (paras 30–34).

Back Garden = Residential Premises

LMN's private back garden — not shared, and with no public access — was residential premises (para 48).

The Facts

The background was a long-running dispute between neighbours, each making allegations against the other. A PC applied for a directed surveillance authorisation (DSA) on 27 February 2021, resubmitted it on 3 March, and a Detective Superintendent approved it on 9 March 2021. On 6 April 2021 a covert camera was placed on a fence in the neighbour's (CDE's) garden, looking towards LMN's garden, and a microphone was placed under CDE's kitchen window. LMN's first-floor bathroom window was directly above CDE's garage and garden. XYZ is LMN's sister, who visited her home.

The devices were not remotely controlled by the police. They recorded to a hard drive in CDE's house. CDE could not access the recordings. She was told to report incidents and switch the equipment off so the recording was not overwritten, and a PCSO then attended to download it. The DSA was renewed on 28 May 2021, and cancellation was applied for on 22 July 2021. Recordings led to four charges: battery for spraying CDE with water over the fence (convicted); criminal damage for removing a fence panel (acquitted); and two harassment charges on which the prosecution offered no evidence.

The Law — RIPA 2000 & What the Tribunal Decided



The Law — RIPA 2000

s.26(3): Surveillance is intrusive "if, and only if, it is covert surveillance that— (a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and (b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device."

s.26(5): Surveillance by a device that is not present on the premises "is not intrusive unless the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle."

s.48(1): "Residential premises" means "so much of any premises as is for the time being occupied or used by any person, however temporarily, for residential purposes or otherwise as living accommodation". Common areas are excluded (s.48(7)(b)). "Premises" includes "any other place whatever, whether or not occupied as land" (s.48(8)).

Regulation of Investigatory Powers Act 2000, ss.26, 48 — [legislation.gov.uk](#).

What the Tribunal Decided

- 1

Each device is assessed separately.

The force at times treated the camera and microphone as a single device. The Tribunal said: "That is not the correct approach. The two devices were separate." (para 18).
- 2

Not intrusive — the s.26(5) test.

The camera "captured only the airspace above the solid part of the boundary fence". Neither device consistently provided information of the same quality and detail as a device on LMN's premises (paras 30, 33). "It follows that the surveillance in this case was not intrusive surveillance." (para 34).
- 3

The AO's intention, on its own, does not decide the question.

The Tribunal rejected the idea that intention "looked at in isolation, can be decisive" (para 38).

"In deciding whether to authorise directed surveillance, the officer must have regard to what the equipment is expected to pick up, given its location. ... The authorising officer must be properly informed as to the capability of the device employed to be involved in the proposed surveillance."

— *Paragraph 38*
- 4

The back garden was residential premises.

The Code is silent on back gardens. The question is "a fact sensitive question in every case" (para 45). "LMN's back garden was part of the residential premises. It was used as a private garden attached to a home used for residential purposes. It was not an area shared with any other properties, and the public did not have access to it." (para 48).
- 5

The surveillance was proportionate — but "close to the line".

The Tribunal found the surveillance necessary and proportionate (para 113) but warned the suspected offending was "towards the lower end of the scale" and "this case may be close to the line at which an interference with Article 8 rights by way of directed surveillance might become disproportionate" (para 114).
- 6

Switching off.

There was no evidence that recording continued after 22 July 2021. The force accepted that the PC did not see for himself or check that the camera had been switched off (para 125).

What This Means for Your Role

Role-specific points to take from the judgment.

Role	Points to take from the judgment
Applicant	Set out where each device will sit and what each one can see and hear, device by device (para 18). The AO has to be " <i>properly informed as to the capability of the device</i> " (para 38) — that information comes from you.
Authorising Officer	Consider " <i>what the equipment is expected to pick up, given its location</i> " (para 38), not only what you intend it to capture. Record your reasoning on s.26(5) for each device.
Gatekeeper / RIPA Coordinator	Where a device may capture a private rear garden that is not shared and has no public access, expect it to be treated as residential premises (para 48) — while remembering the Tribunal said the question is fact-sensitive (para 45). Check the s.26(5) assessment is on the form before it reaches the AO.
Local authority teams	Local authorities cannot authorise intrusive surveillance. If a device would consistently provide in-premises quality, it is outside what a local authority can authorise.

One further practice point. The force accepted that no officer checked the camera had actually been switched off at cancellation (para 125). The complaint on that issue failed for lack of evidence, but a documented check would have closed the question.



BDG Training

This decision is directly relevant to our Applicant, Authorising Officer and Gatekeeper courses. To discuss training for your team, contact info@bdgtrainingconsultancy.co.uk

The Victims' Code — Who Is Bound, and Why You Should Comply Anyway

The Code of Practice for Victims of Crime in England and Wales (the Victims' Code) sets out the services, and a minimum standard for those services, that must be provided to victims of crime by organisations referred to as service providers.

The Headlines

Statutory Basis

The Code is issued under section 32 of the Domestic Violence, Crime and Victims Act 2004. The current Code came into operation on **1 April 2021** (SI 2020/1314).

A Legal Duty for Service Providers

Since **29 January 2025**, section 5 of the Victims and Prisoners Act 2024 has required persons providing services under the Code to provide them in accordance with it, unless they have good reasons not to. Organisations must have a process for victims to complain about an alleged failure.

Liability

A failure does not of itself make a person liable to legal proceedings, but the Code is admissible in evidence and a court may take a failure into account (VPA 2024 s.5).

Who Is a Victim

The Code defines a victim as *"a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence"*, and includes a close relative of a person whose death was directly caused by a criminal offence.

The Twelve Rights & Enhanced Rights

The Twelve Rights

Right	Victims are entitled...
1	To be able to understand and to be understood
2	To have the details of the crime recorded without unjustified delay
3	To be provided with information when reporting the crime
4	To be referred to services that support victims and have services and support tailored to their needs
5	To be provided with information about compensation
6	To be provided with information about the investigation and prosecution
7	To make a Victim Personal Statement
8	To be given information about the trial, trial process and their role as a witness
9	To be given information about the outcome of the case and any appeals
10	To be paid expenses and have property returned
11	To be given information about the offender following a conviction
12	To make a complaint about their Rights not being met

Enhanced Rights

Three groups are entitled to enhanced rights:

Victims of the Most Serious Crime

A close relative bereaved by a criminal offence, a victim of domestic abuse, hate crime, terrorism, sexual offences, human trafficking, modern slavery, attempted murder, kidnap, false imprisonment, arson with intent to endanger life and wounding or causing grievous bodily harm with intent.

Persistently Targeted Victims

Those targeted repeatedly as a direct victim of crime over a period of time, particularly if deliberately targeted or if a victim of a campaign of harassment or stalking.

Vulnerable or Intimidated Victims

Vulnerable: under 18 at the time of the offence, or the quality of their evidence is likely to be affected because they have a mental disorder, a physical disability or a physical disorder.

Intimidated: the service provider considers the quality of their evidence will be affected by fear or distress about testifying in court.

Who Is Bound

The Code names a wide range of organisations that must provide services under it, including: Police and Crime Commissioners; police forces in England and Wales; the British Transport Police; the Ministry of Defence Police; Witness Care Units; the Crown Prosecution Service; HM Courts and Tribunals Service; HM Prison and Probation Service; the Parole Board; the Criminal Cases Review Commission; the Criminal Injuries Compensation Authority; the UK Supreme Court; and Youth Offending Teams. Other bodies — including the Environment Agency, HSE, HMRC, the ICO, the Gambling Commission, the FCA, the NCA and the Serious Fraud Office — are also covered where they accept formal responsibility for conducting a criminal investigation or making a decision to prosecute.

The Code itself says: "The Rights in this Code only apply where other service providers (such as those listed above) accept formal responsibility for conducting a criminal investigation or making a decision to prosecute. However, not all functions undertaken by other service providers are identical to those carried out by the police and the Crown Prosecution Service. Where functions are equivalent to a service provider under this Code (for example the other service provider is investigating or prosecuting an alleged offence), they must deliver the same Rights without unjustified delay, regardless of whether the other service provider is listed above."

Source: Ministry of Justice, Code of Practice for Victims of Crime in England and Wales



BDG Position — Does the Code Apply to You?

If you investigate or prosecute criminal offences, assume it does. The Code says that any organisation investigating or prosecuting an alleged offence must deliver the same Rights, whether or not it is named in the Code. That includes local authority and regulatory investigators who take formal responsibility for a criminal investigation or a decision to prosecute.

If your role touches victims but you are not investigating or prosecuting, BDG's view is that best practice is still to follow the Code.

Either way, if your case goes to court it passes through organisations that are named in the Code, such as HM Courts and Tribunals Service. Victims will judge the whole process against the Code, and your contact with them is part of that.

If you are unsure where your team sits, check your organisation's enforcement or prosecution policy, or ask your legal adviser.

BDG Practitioner Commentary — The Rights in Day-to-Day Work

Whether you are bound or following the Code as best practice, compliance is delivered by individual members of staff. Examples of where the rights fall:

- **First contact — Rights 1, 2 and 3:** record the details without unjustified delay, make sure the victim understands and is understood, and give the information required at the point of reporting.
- **Investigators and case officers — Rights 4, 6 and 7:** referral to support services, keeping the victim informed about the investigation and prosecution, and the Victim Personal Statement.
- **Property and exhibits — Right 10:** return of property.
- **Supervisors:** identify early whether the victim is entitled to enhanced rights.
- **Everyone — Right 12:** know your organisation's complaints process and tell victims about it.

On the Horizon — A New Victims' Code

The Ministry of Justice consulted on a new Victims' Code from 5 February to 30 April 2026. At the time of writing (28 September 2026) we have not found that a new Code has been laid or brought into force. Until it is, the current Code applies.

The Joint Decision Model — A Framework for Defensible Decisions

The Joint Decision Model (JDM) was adapted from the **National Decision Model (NDM)** and set out in the Joint Doctrine of JESIP (the Joint Emergency Services Interoperability Principles) for multi-agency working. Its five-stage structure is equally valuable for investigators, providing a consistent, auditable framework for making and recording decisions that can withstand scrutiny.



Why Defensible Decisions Matter

Every investigative decision — whether to deploy a device, open an intelligence log, or treat someone as a victim — may later be examined by a court, a tribunal, or an inspector. A decision recorded through the JDM framework demonstrates that the investigator: gathered the available information; assessed the risks; considered the relevant law and policy; weighed the options; and acted proportionately. That record is your defence. It is also the foundation of a good pocket notebook entry or decision log.

The Five Stages

At the centre of the model is the primary aim: "Working together saving lives reducing harm". JESIP says all joint decisions "should be made with reference to the overarching or primary aim of any response to an emergency – to save lives and reduce harm."



JESIP, The Joint Decision Model (JDM)

Police readers will recognise the same five stages in the College of Policing's National Decision Model, which places the Code of Ethics at its centre (College of Policing, APP — National Decision Model, updated 24 January 2024 and is the primary decision making framework used across Policing).

Using the JDM to Record Defensible Decisions

The five stages of the JDM give any investigator a ready-made structure, not just for making a decision, but for recording it in a way that is transparent, proportionate and defensible. Whether the record is a pocket notebook entry, a decision log, a surveillance application or a case file note, the same headings apply.

What to Record at Each Stage

		
Gather Information & Intelligence	Assess Threats, Risks & Working Strategy	Consider Powers, Policies & Procedures
Record: what you knew at the time, where the information came from, and what gaps remained. Note any information shared with or received from partner agencies.	Record: the harm you identified, who was at risk, how serious and how likely, and the working strategy you adopted in response.	Record: the legal power or authority you relied on, any relevant policy or code of practice, and why you were satisfied the threshold was met.
		
Identify Options & Contingencies	Take Action & Review	
Record: the options you considered, why you chose the one you did, and what you would do if circumstances changed. This is the heart of proportionality.	Record: what you did, when, and the outcome. Set a review date and record what triggered any change of approach.	

Pocket Notebook Tip

You do not need to write "JDM" in your notebook. What matters is that your entry answers the five questions: What did I know? What was the risk? What power did I use? What were my options? What did I do and why? An entry that answers those questions is a defensible entry.

FICTIONAL SCENARIO — The Fly-Tipping Camera

This scenario is fictional. It is not based on any real authority, officer or case.

JDM Stage	Applied to the Scenario
1. Gather information and intelligence	Repeated fly-tipping at the end of a cul-de-sac. The council, the housing provider and the local police team each hold part of the picture. A resident offers her upstairs window for a camera.
2. Assess threats and risks and develop a working strategy	Repeated offending affecting residents. The window also overlooks two private rear gardens.
3. Consider powers, policies and procedures	Covert, planned and likely to obtain private information, so directed surveillance under RIPA s.26(2). For a local authority, the crime threshold (SI 2010/521 art 7A) and magistrate approval (RIPA s.32A) apply. Following LMN, private rear gardens that are not shared and have no public access may be residential premises.
4. Identify options and contingencies	Overt signage and a visible camera; a covert camera positioned or masked to exclude the gardens; no camera.
5. Take action and review what happened	Record the option chosen and why, and set a review date.

RIPA 2000 ss.26(2), 32A; Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (SI 2010/521) art 7A, inserted by SI 2012/1500 — legislation.gov.uk.

BDG Training

To discuss decision-making and rationale recording training for your team, contact info@bdgtrainingconsultancy.co.uk

Develop Your Investigation Skills with BDG

BDG Training Consultancy offers a comprehensive range of investigation training courses tailored to your organisation's needs — from initial investigations through to covert powers, court skills and OSINT. Courses are available individually or as structured Bronze, Silver and Gold professional packages, delivered over 12 months in-house or virtually.

Our Investigation Courses



Initial Investigations
Building the foundations of effective investigative practice



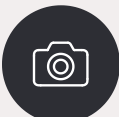
Statements & Exhibits
Producing legally sound witness statements and managing exhibits



Investigative (PACE) Interviews
Conducting compliant and effective investigative interviews



Disclosure (CPIA 1996)
Understanding and applying disclosure obligations



Investigatory Powers
RIPA, directed surveillance, authorisation and gatekeeping



Managing Digital Evidence
Handling and preserving digital material in investigations



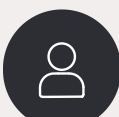
Court Skills
Giving evidence and presenting cases effectively in court



OSINT
Open source intelligence gathering and legal compliance



Covert Investigations
Covert methodology, CHIS and surveillance operations



HUMINT
Human intelligence, CHIS handling and RIPA compliance

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Editor's Note

The Investigator Bulletin is produced by BDG Training Consultancy to support professionals working in overt and covert investigation. It is a training and awareness summary, not legal advice. Your organisation's policy and your legal adviser take precedence. If you have a topic you would like covered in a future edition, please get in touch.

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