As well as some headline grabbing Brexit litigation, 2019 featured many important cases for public authorities and those that deal with them. Our experts have chosen their top ten cases of 2019 that highlight an important principle or point of law for inclusion in our first update of the year.

The cases that made it onto their list include:

1. **KPMG was not amenable to judicial review when acting as an independent reviewer of a bank's redress scheme** - 
   R (Holmcroft Properties Ltd) v KPMG LLP

2. **The Supreme Court considers whether judicial review of decisions of the Investigatory Powers Tribunal was successfully excluded - or ousted - by statute and whether such ouster was permissible in any case** - 
   R (on the application of Privacy International) v Investigatory Powers Tribunal and others

3. **The Supreme Court determines that the Scottish Parliament cannot make provisions for Scots law after Brexit where this would modify the scope of its powers** - 
   A Reference by the Attorney General and the Advocate General for Scotland

4. **Comments made in strict confidence did not give rise to a legitimate expectation** - 
   R (Jefferies) v Secretary of State for the Home Department

5. **The standards of consultation required, legitimate expectation and intensity of review in the context of the Heathrow judicial review challenges** - 
   R (Spurrier) v Secretary of State for
When can a private body be amenable to judicial review?

The Court of Appeal upheld the decision of the Divisional Court, in *R (Holmcroft Properties Ltd)* v *KPMG LLP*, and agreed that KPMG was not amenable to judicial review when acting as an independent reviewer of a bank's redress scheme. However, while both courts ultimately reached the same conclusion, their reasons for doing so were quite different.

Barclays Bank voluntarily agreed with its regulator, the Financial Services Authority (now the Financial Conduct Authority - (the "FCA")), to establish a redress scheme for customers and appoint an 'Independent Reviewer', approved by the FCA. The Independent Reviewer was to decide whether the redress arrangements were appropriate, fair, and reasonable.

The appellant applied for and was offered compensation under the scheme. KPMG (a private entity) approved the offer as Independent Reviewer and it was this decision that the appellant challenged by way of judicial review.

The first question for the courts was whether KPMG was amenable to judicial review in its capacity of Independent Reviewer.

The Divisional Court had concluded that the role of the Independent Reviewer did not have sufficient "public law flavour" to make KPMG amenable to judicial review. Its reasons for this were that (i) the scheme was voluntary, (ii) the arrangement between Barclays and KPMG was
contractual, (iii) it was not enough to say that KPMG was amenable because the role of the Independent Reviewer promoted the regulator's objectives, (iv) the regulator did not have any statutory obligation, or the resources, to carry out the role itself, and (v) complaints about the arrangement could be made to the FCA and its decision on any such complaint potentially subject to judicial review.

The Court of Appeal came to the same conclusion but it considered that the lower court had focussed much too narrowly on the source of KPMG's power.

In terms of the regulatory position, the Court of Appeal held that it was necessary to examine the function that was being fulfilled by KPMG in the overall scheme of things. The court did not focus solely on the redress scheme but also on the background and reasons for the scheme and the FCA's role within that background.

The Court considered it too narrow a view of the FCA's statutory functions, and what it was trying to achieve, to say that KPMG's role was outside of the scheme of statutory regulation.

Looking at the factual context it noted that there were similarities between this redress scheme and other industry-wide redress schemes, but also some differences in that the FCA had imposed an obligation on Barclays to grant redress and had required it to appoint an Independent Reviewer. It did not consider that the FCA's involvement in these matters changed the fundamental nature of the scheme which was essentially for the pursuit of private law rights.

The decisions confirm where a private body is tasked with undertaking functions which are, as the lower court put it, "woven into the fabric" of a regulatory authority's regulatory functions, it is necessary to consider the nature of the power and function that has been exercised in order to assess whether the decision has sufficient "public law flavour".

**Can the High Court surveil the Investigatory Powers Tribunal?**

In *R (on the application of Privacy International) v Investigatory Powers Tribunal and others*, the Supreme Court considered whether judicial review of decisions of the Investigatory Powers Tribunal ("IPT") was successfully excluded - or ousted - by statute and whether such ouster was permissible in any case.

The IPT was established under the Regulation of Investigatory Powers Act 2000 ("RIPA") with the power to examine the conduct of the Security Service, Secret Intelligence Service and GCHQ. Privacy International sought judicial review of a decision of the IPT on the scope of the Secretary of State's power to authorise certain surveillance activities.
Section 67(8) of RIPA provides that:

"Except to such extent as the Secretary of State may by order otherwise provide, determinations, awards, orders and other decisions of the Tribunal (including decisions as to whether they have jurisdiction) shall not be subject to appeal or liable to be questioned in any court."

Despite the seeming clarity of that provision, the Supreme Court ruled by a majority of 4-3 that it did not prevent the High Court from reviewing decisions of the IPT. The Court then went on to consider the means, if any, by which Parliament could in fact do so.

In *Anisminic Ltd v Foreign Compensation Commission* the House of Lords considered a similar clause (absent the parentheses) which purported to prevent a decision by the Foreign Compensation Commission from being called into question in any court of law. By a majority of 3-2 it was held that the clause only prevented challenges to decisions which fell within the jurisdiction of the Commission. Where the Commission strayed outside its jurisdiction its decisions were not valid decisions at all and were hence amendable to review by the High Court.

Over the years, that decision has become authority for the idea that any error of law would not be protected by an ouster clause, giving rise to a strong common law presumption against ouster of judicial review in regards to errors of law.

The specific reference to jurisdiction in section 67(8) would therefore seem to have been an attempt to guard against the effect of Anisminic. However, following the Supreme Court’s determination in *Cart*, judicial review can only be ousted by the 'the most clear and explicit words'. In 2003 a more explicit clause had been suggested and then withdrawn by the government - so the wording could be found if desired.

The wording in this case was not so explicit and, in the face of the presumption against ouster, section 67(8) was held to apply only to those decisions of the IPT which are free from any errors of law.

In relation to the second issue, Lord Carnwath held that it is ultimately for the courts, not Parliament, to determine the limits set by the rule of law to the power to exclude judicial review.

Some forms of ouster clause may be acceptable - such as the shortening of time limits to apply for judicial review in certain cases.

However, it is doubtful if the role of the High Court can be excluded altogether. Specialist tribunals such as the IPT do not develop law in isolation, but deal with legal principles applied across the legal system. A central function of the High Court is to ensure the consistent
development and application of such principles across all courts and so specialist tribunals must not be permitted to develop their own 'local law'.

The limits of devolution - can the Scottish Parliament make its own provision for Scots law after Brexit?

Reference by the Attorney General and the Advocate General for Scotland is a case which tested the limits of the powers of the Scottish Parliament to legislate for the effects of Brexit.

The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill ("the Bill") was a bill in the Scottish Parliament intended to secure legislative continuity in Scots law following Brexit. It was passed following the failure of Scottish MPs at Westminster to secure certain changes to the European Union (Withdrawal) Act 2018 ("EUWA"). The Supreme Court was asked to consider whether the Bill fell within the legislative competence of the Scottish Parliament.

Section 29 of the Scotland Act 1998 ("the Scotland Act") states that "an Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament". This will be the case where the Act:

- relates to reserved matters listed in Schedule 5, which include foreign affairs (including relations with the EU),
- modifies a provision listed in Schedule 4, or
- is incompatible with EU law.

Under Section 28 of the Scotland Act the UK Parliament retains the power to legislate for Scotland, even in respect of devolved matters.

The concerns about the Bill were twofold. Firstly, that it fell within the matters listed in section 29 of the Scotland Act as being outside the Parliament's legislative competence. The Court held that since the Bill related to what would be domestic law after Brexit, rather than law flowing from the UK's obligations as part of the EU, it could not be said to be 'related' to foreign affairs. Likewise, it could not breach the requirement for compatibility with EU law, since EU law would have ceased to have effect.

However, clause 17 of the Bill sought to impose a requirement that Scottish Ministers must consent to subordinate legislation made by UK Ministers in devolved areas formally subject to EU law. The Court held that, as powers to make subordinate legislation are granted by the UK
Parliament, imposing a restriction on the exercise of those powers interfered with the power of the UK Parliament to legislate under section 28 of the Scotland Act, which was protected from modification under Schedule 4.

The second concern was that the Bill sought to create a Scottish version of the regime instituted by the EUWA, whereas the UK Parliament plainly intended the body of retained EU law created by the EUWA to be UK-wide.

The Court noted that where the UK Parliament intended to reserve a particular area of law-making solely to itself, it listed it as a reserved matter in Schedule 5 to the Scotland Act. However, the EUWA was instead added to the list of provisions protected against modification in Schedule 4. Therefore, although the Scottish Parliament was not precluded from legislating in relation to the statute book after Brexit, certain provisions of the Scottish Bill did act to modify the EUWA and as such, these were outside of the Scottish Parliament's competence.

As a result, the Court held that these provisions, along with clause 17 of the Bill, were outside the competency of the Scottish Parliament. The rest of the Bill was, however, within competence.

Can a legitimate expectation be created by a promise that is given in strict confidence?

The Leveson Inquiry into the behaviour of the British press was originally intended to take place in two parts. The first of these finished in 2012. There was then to be a gap during which criminal prosecutions could be brought. After this, the Inquiry would reconvene for a second session. However, in March 2018 the government announced that part two of the inquiry would not now occur. R (Jefferies) v Secretary of State for the Home Department was a judicial review of this decision.

The claimants were all people who had been affected in some way by the misconduct of the press. At the heart of their case was the claim that in 2012 - just before the report into the first part of the inquiry was published - the then Prime Minister, David Cameron, promised the claimants in a private meeting that part two of the inquiry would definitely happen. This, they claimed, created a legitimate expectation that the government was now required to honour.

When the case came to court, a recording of the meeting with Cameron emerged. This showed that his assurances as given in the private meeting were guarded and ambiguous. They fell a long way short of the standard of an unequivocal and unqualified promise that is the basic requirement for any legitimate expectation. That, by itself, would have been sufficient to defeat the claim.
However, the real interest of the case arises from a second point relied on by the Secretary of State. The private meeting had taken place under conditions of strict confidence. At the beginning of the meeting, wanting to assure the Prime Minister that he could speak freely, one of the claimants' representatives said that 'what is said in this room stays in this room'. This, it was argued, meant that promises given in the meeting could never be relied upon in court.

Giving the judgment of the Divisional Court, Davis LJ agreed with this argument and took a dim view of the claimants' reliance on statements made in a meeting that they themselves had promised would be strictly confidential - 'Any expectation engendered by what Mr Cameron said in this meeting, conducted on the basis that it was, cannot, in my judgment, be recognised or protected as a legitimate expectation'.

This raises interesting questions for future claims. Legitimate expectations often arise because of things said in meetings, or correspondence, which occur under conditions of formal confidentiality. Is Jefferies to be confined to its specific facts - and in particular the strength of the promise made to David Cameron personally about his comments 'staying in the room' - or can confidentiality be pleaded more widely as a basis for defeating a legitimate expectation that would otherwise arise?

We suggest the former. A fuller consideration of these issues can be found in the article Developments in Legitimate Expectation.

Consultation, legitimate expectation and intensity of review in the Heathrow challenges

In R (Spurrier) v Secretary of State for Transport and R (Heathrow Hub) v Secretary of State for Transport, two sets of claimants brought unsuccessful challenges against the decision of the Secretary of State for Transport to designate the Airports National Policy Statement ("ANPS"). The ANPS set out the government’s policy to approve an additional runway to the north west of the current runways at Heathrow airport (the "NWR Scheme").

The challenge in Spurrier was brought by a group of claimants in favour of a second runway at Gatwick Airport (the "G2R Scheme"). Their challenge focused mainly on the Secretary of State’s treatment of evidence in relation to noise, climate change and pollution levels, as well as whether the statutory consultation had been conducted with an open mind.

On the environmental grounds, the Divisional Court held that the Secretary of State had regard to the wide range of advice and evidence and did not act inconsistently with the relevant legislation. The NWR Scheme was capable of being delivered in a way that ensured that
matters of environmental importance were protected, which was sufficient at this stage in the development process.

On the consultation ground, the court emphasised that the Secretary of State was permitted to have a strong preference for the NWR Scheme and to highlight this in various speeches, press releases and leaflets. Having such a preference did not amount to predetermination. The consultation had been properly carried out and there was no evidence that he did not approach it with an open mind.

The claimants in Heathrow Hub were advocates of an extension to the current northern runway at Heathrow (the "ENR Scheme"). Although they had designed the scheme, its actual delivery depended on Heathrow Airport Limited ("HAL"), which was in favour of the NWR Scheme. They claimed that they had a legitimate expectation that the Secretary of State would not consider issues relating to the deliverability of a scheme arising from the identity of the promoter. This expectation was breached by the request that the claimants obtain from HAL a 'guarantee' that HAL would implement the ENR Scheme if selected, with HAL's refusal to provide this being a deciding factor against the scheme.

The court held that no legitimate expectation existed as the Secretary of State had not made an express promise to the effect claimed. Statements made by the Airports Commission relied on by the claimant could not create a legitimate expectation which bound the Secretary of State.

If, contrary to this, an expectation did exist, the Secretary of State was entitled to use his discretion to depart from it in order to determine the very important issue of whether the scheme could actually be implemented and delivered. In any event, the ENR Scheme was rejected on its merits, not on the basis of deliverability.

In both cases, the Divisional Court emphasised the wide margin of appreciation given to decision-makers in relation to issues of national economic, political and social policy, particularly where detailed technical and scientific advice was relied upon. The ANPS covered a wide spectrum from broad macro-economic judgments to the proposal to locate the airport expansion in a particular locality. Where on the spectrum a particular strand of policy under challenge lies may affect the intensity of review, whether the alleged ground is made out, or the nature of any relief granted.

**Legality of Voter ID Pilot Schemes**

Following an announcement made in November 2018, the Minister for the Cabinet Office made orders - under section 10 of the Representation of the People Act 2000 (the "Act") - for the implementation of pilot schemes which required voters to produce some form of ID ("Voter ID
pilot schemes”).

Section 10(2)(a) of the Act provides that a scheme under section 10 is one which makes provision 'differing in any respect from that made under or by virtue of the Representation of the People Act 1983 or the 2000 Act as regards...(a) when, where and how voting at the elections is to take place'.

In *R (on the application of Coughlan) v The Minister for the Cabinet Office and others*, Mr Coughlan contended that the Minister had acted outside of her powers in approving the Voter ID pilot schemes because: (i) the requirement to produce ID is not concerned with *how* voting takes place; and (ii) the schemes were contrary to the statutory purposes for which the section 10 power could be exercised, which he contended was only for the purpose of facilitating and encouraging voting at elections.

Firstly, the claimant argued that 'how voting at elections is to take place' is concerned with the way or manner in which voting occurs or the physical means by which it takes place and is not concerned with entitlement to vote.

The court disagreed and held that section 10(2)(a) of the Act deals with voting procedures and, on their natural and ordinary meaning, the words in dispute were broad enough to include procedures for demonstrating an entitlement to vote. In support of its conclusion, the court highlighted that: (a) had Parliament intended to limit the provision to a physical mechanism by which a vote is cast it could have made that clear (as it had in section 10(2)(b) of the Act); and (b) if, as accepted by the claimant, the words were broad enough to impose ID requirements for remote electronic voting, that indicated that they were also broad enough to include ID requirements in non-remote voting.

The claimant's second argument proceeded on the basis that the purpose of the power under section 10(1) of the Act is only to facilitate or encourage voting.

The court disagreed and accepted the Minister's reasoning that the pilot schemes could test a range of matters concerned with the modernisation of electoral procedures in the public interest and that there was no express limitation on the public interest considerations to which the Minister may have regard for these purposes.

The court also agreed that even if the claimant had correctly identified that the purpose of the section 10(1) power was to facilitate or encourage voting at an election, (a) the voting that is to be facilitated is *lawful* voting (i.e. by persons entitled to vote), and (b) the purpose cannot be limited only to the pilot schemes themselves but extends to schemes that lead to changes in procedures that encourage voting over the longer term.
Clear and express words are required if a statutory power conferred on one person is to override a statutory duty conferred on another

In R (on the application of VIP communications) v Secretary of State for the Home Department, the court considered whether section 5(2) of the Communications Act 2003 (the "CA 2003") created a power entitling the Secretary of State to direct Ofcom (the communication regulator) not to comply with a statutory duty which was imposed on it under section 8(4) Wireless Telegraphy Act 2006 ("WTA 2006").

The section 8(4) duty requires Ofcom - where it is satisfied that certain conditions as specified in section 8(5) of WTA 2006 are met in respect of the use of wireless telegraphy stations or apparatus - to make regulations providing for exemptions from the individual licensing requirement set out in section 8(1) of WTA 2006.

Having consulted on the issue, Ofcom issued a notice setting out its intention to make regulations exempting a type of telecoms device known as a 'GSM Gateway' from the individual licensing requirement. The Secretary of State gave a direction to Ofcom under section 5(2) of the CA 2003 not to make the proposed regulations, because of concerns about national security and public safety arising from the use of GSM Gateways.

The claimant brought a claim for judicial review on the basis that the direction was ultra vires because the powers available to the Secretary of State pursuant to section 5(2) of the CA 2003 did not permit a direction under that section to have the effect of directing Ofcom not to comply with a statutory duty imposed on it under other primary legislation.

The Secretary of State argued that: (a) section 5(2) not only conferred powers on her but imposed a duty on Ofcom to act in accordance with any directions given under it and therefore imposed a duty on it not to comply with its duties under primary legislation; and (b) the claimant's construction of section 5 would lead to absurd consequences which Parliament could not have intended.

The court considered and summarised the principles of law applicable to statutory construction and agreed with the claimant. It concluded that: (i) clear words are required to give a power, by way of secondary legislation, to override a statutory duty imposed by primary legislation, (ii) section 5(2) of CA 2003 did not include such express wording, (iii) the power conferred under section 5(2) was limited to the giving of a direction as to how Ofcom should carry out its duty; and (iv) a direction not to carry out that duty could not be said to be within the scope of the statutory power.
'A Blank Piece of Paper': Supreme Court quashes prorogation

In the case of R (Miller) v the Prime Minister and Cherry and Ors v Advocate General for Scotland 11 justices of the Supreme Court held that the Prime Minister's advice to the Queen to prorogue Parliament was not only capable of being reviewed by the Court but was also unlawful. The decision is all the more remarkable for the fact that it was unanimously reached; a show of judicial consensus that was not expected.

The first big question for the court was justiciability - was the Prime Minister's advice to the Queen something that the Court could examine in legal proceedings?

The Supreme Court drew a distinction between political questions - which it could not decide - and genuine legal questions which happened to arise in a political context. It was explained that the courts had long exercised a supervisory role over the lawfulness of the actions of the Government and that the Prime Minister's accountability to Parliament does not prevent the courts from exercising this supervisory function. Parliament has a role in holding the Government to account but that does not mean that the Court does not have a parallel role.

In order to determine whether the prorogation was justiciable, the Court had to determine what the lawful limits of the power to prorogue Parliament were. These limits represent the legal standard by which to assess the decision, and therefore form the grounds on which it could be said to be justiciable.

Having examined the limits and finding that there was a power to prorogue, the Court formulated a test for the lawfulness of any particular decision to prorogue Parliament, articulated as follows -

'[A] decision to prorogue Parliament...will be unlawful if the prorogation has the effect of frustrating or preventing, without reasonable justification, the ability of Parliament to carry out its constitutional functions as a legislature and as the body responsible for the supervision of the executive.'

Equipped with that test, the Court concluded that 'of course' the prorogation had the effect of frustrating or preventing the constitutional role of Parliament, and that the length of the prorogation was not 'normal' for preparation for a Queen's Speech (that being four to six days on the evidence presented by ex-Prime Minister Sir John Major).

In respect of whether a 'reasonable justification' for the abnormal length of the prorogation existed, the Court considered it impossible for them to conclude that there was 'any reason - let
alone a good reason' for the decision. The only reason given was to prepare for a Queen's speech and the unchallenged evidence to the Court was that it did not take anywhere near five weeks to do so.

The Court declared the advice and the Order in Council that gave effect to it to be unlawful, null and of no effect. As Lady Hale explained in her oral summary of the judgment at hand down, it was as if the Order in Council that had been presented to Parliament by the Royal Commissioners was merely 'a blank piece of paper'.

**Challenging expert regulators: the limits of judicial review**

In *R (Lasham Gliding Society Limited) v Civil Aviation Authority* the claimant - Lasham Gliding Society ("LGS") - challenged the Civil Aviation Authority ("CAA")'s decision to approve a change in air traffic controls in the airspace around Farnborough Airport.

The claimant's argument was that the permitted change increased the risk of a mid-air collision as it would lead to an increased number of aircraft - those being diverted away from the airspace around Farnborough Airport - using the uncontrolled airspace near the town of Lasham that was used by LGS and its fleet of approximately 240 aircraft.

It contended that in reaching its decision the CAA had breached its statutory duties under section 70 of the Transport Act 2000 by failing to secure a high standard of safety in the airspace and the most efficient use of airspace, and in doing so had acted irrationally.

In support of its contentions LGS submitted that the CAA did not itself carry out or rely on the factual or evidence-based analysis which would be necessary for it to reach a rational conclusion on safety, but had simply accepted the analysis undertaken by Farnborough Airport. It also argued that the CAA had misinterpreted the duty relating to efficient use of airspace by not basing its decision on the actual numbers of aircraft using the airspace. Its case was that the flaws in the analysis relied upon by the CAA were so obvious that no specialist knowledge was required to identify them and therefore the court should not afford the CAA an enhanced margin of appreciation.

The judge disagreed with all of these arguments. She held that the decision was taken in a regulatory context where the expert regulator had been given a wide discretion in the performance of its statutory functions and in respect of which the scope for judicial review was extremely limited. Airspace classification is a technical and specialised area of regulation, and it was not the court's place to assess the merits of competing tenable opinions on such highly technical issues.
In dismissing the claim, the judge concluded that the safety analysis was only part of a complex technical and predictive expert judgement, that there were no obvious flaws in the analysis, and that reliance on it did not fall outside the enhanced margin of appreciation that applies to the exercise of regulatory judgment in technical and specialised areas. She also ruled that the CAA had properly interpreted its statutory duty with regard to efficient use of airspace. Having done so, its decision making was not irrational, as it was entitled to consider the capacity of the aircraft to use the airspace in general terms, and not strictly on the basis of actual numbers.

The case reinforces the position that judicial review is not concerned with the merits of a decision and is eminently not suitable where, as it was in this case, the crux of the grievance is that the claimant simply disagrees with the decision maker’s decision and reasoning. It also reinforces the 'deference' that is shown by the courts to the expertise, knowledge and experience of regulators making decisions in highly technical and specialist areas.


R (Liberty) v Secretary of State for the Home Department (National Union of Journalists intervening) constitutes Liberty’s second challenge to the Investigatory Powers Act 2016 (the "Act"), following on from its successful EU law challenge to Part 4 of the Act last year.

The focus of the present case was on powers under the Act to -

- conduct bulk interception of communications,
- acquire communications data in bulk,
- retain, and for public authorities such as the police to acquire, retained communications data,
- conduct 'thematic' and bulk equipment interference (i.e. 'hacking'), and
- retain and examine bulk personal datasets (such as travel records).

It was alleged that these powers are incompatible with Articles 8 and 10 of the European Convention on Human Rights ("ECHR") which protect the right to private life and the right to freedom of expression respectively.

The relevant warrants are not directed towards particular individuals but are issued for the purposes of intelligence gathering, including to identify targets for more directed surveillance. As such, not all data obtained is either examined in depth or retained.

The claimant argued that the powers did not meet the requirement that interference with human rights must be 'in accordance with the law' as they lacked the minimum safeguards established
by the ECHR in relation to the operation of covert surveillance regimes. Further, the powers were unnecessary and disproportionate in a democratic society, posing the risk of everyone unknowingly becoming susceptible to surveillance.

The Divisional Court dismissed the claim, refusing to issue the requested declaration of incompatibility. It made clear that it was concerned with the provisions of the Act itself, rather than any hypothetical action taken under it. As to that, the First Section of the European Court of Human Rights has already held that in principle bulk powers are compatible with the ECHR (Big Brother Watch v United Kingdom).

The Divisional Court stated that the statutory framework had to be read as a whole and that, taken together, it comprised a detailed set of interlocking safeguards to protect human rights. These include -

- the fact data can be collected only for set statutory purposes, which impose a high threshold,
- the need for warrants to be necessary for, and proportionate to, the relevant purpose,
- various codes of practice issued under the Act providing guidance on the preservation of confidentiality and acting in the public interest,
- the need for authorisation of a Judicial Commissioner, who has held high judicial office, and
- individuals' right to appeal to the Investigatory Powers Tribunal (the "IPT").

The court was particularly impressed by the 'double-lock' provided by the Commissioners and the IPT, which had been absent from earlier surveillance legislation.

In addition to its more general challenges to the Act, the claimant also argued that the legislation failed to respect lawyer-client communications as well as journalistic material, including the protection of sources.

Again, both points failed, with the court finding that the Act provides adequate protection to both classes of material.