'Drawing the line' and 'applying the brakes': an interview with Richard Thomas, the UK's Information Commissioner

The Information Commissioners Office (ICO) was set up on 30 January 2001 when the Freedom of Information Act came in to promote and protect access to official information. In this interview Enver Solomon of CCJS and Kevin Stenson, guest editor of CJM, ask him how he sees the future of surveillance and information collection, particularly in regards to its impact on the criminal justice system.

Kevin Stenson: In November last year you published a report (Report on the Surveillance Society' available at: www.ico.gov.uk/upload/documents/library/data_protection/practical_application/surveillance_society_full_report_2006.pdf) in which you said that fears that we were 'sleep walking into a surveillance society' have become a reality. What kind of surveillance, in particular, most concerns you?

Richard Thomas : The most worrying types of surveillance are hidden surveillance. As you may know I'm also the Commissioner for Freedom of Information and so transparency is a very important drive generally but, if people know what is going on, then that is less threatening. Let me give you a few examples of that. In the workplace we have an Employment Code of Practice for Data Protection in the Workplace and there are many ways in which employers can monitor the activities of their staff. For example looking at email traffic, internet usage, kit in lorries and cabs of cars. We take a very hard line on that, saying that the employer should tell the employees they are being monitored so that no-one is caught by surprise. That's one example. We talk about CCTV and I'm sure we'll say more about that in a moment, but the technology now exists for very small cameras to be hidden away. One can foresee a scenario where you could have micro CCTV cameras in every lamppost. The current code of practice for CCTV is that it requires clear labelling as to who runs the camera, what its purpose is and what it's there for, and there are ways and means by which that can be done; not necessarily a label on every camera. We've thought about other ways of communicating the information but we think it's important that there should be only covert surveillance in the most exceptional circumstances and where it can be justified.

Our report painted the picture of life in 2006, which was a very comprehensive survey of different types of surveillance, and then it rolled forward to 2016, 10 years ahead. Now, interestingly, we're only, what, seven months on since our report was published, and already there are so-called 'spies in the sky'. We predicted that by 2012, for the Olympics, we might start seeing spies in the sky for the sake of good public order. Here we are in summer 2007 and Liverpool police now have a hovering camera to keep good order in the city of Liverpool. Scarborough has cameras in the streets now with loudspeakers attached to them, and the Home Office recently announced a programme to roll out more cameras with loudspeakers, saying for instance 'you in the checked shirt, you're not behaving properly; pick up that cigarette' or asking someone to stop misbehaving in a particular way. I'm not saying you can never ever use a microphone, but to pick up conversations I think would be objectionable, with the exception of the most narrowly defined circumstances, and the only circumstance I can think of at the moment are the microphones you get on tube trains where you can talk to the driver.

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Enver Solomon: In terms of hidden surveillance then, the police have argued that the only unseen surveillance they might carry out is 'proportionate' and that there are appropriate and sufficient safeguards in place. Do you think that any surveillance of that nature is indeed proportionate and that there are, in your view, satisfactory safeguards in place?

Richard Thomas: Well, first of all you have to recognise, in terms of cameras, that we are probably

the most watched country in the world. You've got the figures: 4.2 million cameras at least, one for every 14 citizens, and some people estimate around 300 times a day you can be on camera somewhere. And I think I also recognise that they're extremely popular with the general public and that, quite understandably perhaps, MPs would say that most of their constituents would like to see more cameras, not fewer. We also recognise that there can be beneficial effects in the prevention and detection of crime, but I think these need more serious debate. There has been a certain amount of research done within the Home Office as to the efficacy of cameras. I don't claim to be an expert on this because I think it's fair to say the jury is still out in terms of the role of cameras in the prevention of crime and there's some evidence that it tends to displace it rather than prevent it altogether. In terms of detection I think probably one can see the arguments being rather stronger. Clearly, if criminal activity has taken place and is caught on camera, one recognises that. I think what I would say is that, if there's a clear need in a particular situation for a camera - say in a particular street where a great deal of drug dealing is going on; if you know that people are likely to be victims of drunken loutish behaviour, that assaults can take place, if you know that women are at risk in a particular park, then I have no difficulty at all, nor do I think anybody else does, but not just an indiscriminate roll-out of cameras.

What I am saying is we need to be more discriminating, more focused as to the purposes, the benefits, the raison d'être for every piece of surveillance, whether it's in the street or in shopping centres, cameras in stations and so on, before it's actually deployed. And then there's another whole set of questions about, if you are going to deploy it, well you may as well make sure it works, because many of the cameras are not recording images which can legitimately be used in evidence or in courts of law and so on, so what is the point of that?

Kevin Stenson: Moving on to information sharing and particularly in relation to targeted early intervention programmes for children and families who are considered to be at risk of offending: do you think it's legitimate to bring together data in order to establish who might be the criminals or problem families of the future?

Richard Thomas: I think there are various risks associated with excessive collection of information and, just to run through some of those, risks of both positive and negative mistaken identity, believing you're individual A, he's individual A, and in fact they're B, or missing someone because you think you've got an accurate check. There are risks of inaccurate information; there are risks of out of date information, there are risks of improper access to that information and there are risks with security breaches, which is becoming one of the hot topics at the moment.

Now we move on to sharing, because if there are risks associated with the collection in one environment, those risks can be multiplied more and more as the information is shared from one database to another or more, and more people have access to it. For example: let's say that there's a mistake about somebody incorrectly associated with a conviction, incorrectly under suspicion, mistakes about their age, mistakes about their race, all sorts of factual or judgemental mistakes being made; if that information moves on to another organisation, even if it's corrected in the first organisation, there's no guarantee that it's going to be corrected in the second organisation, and we have seen examples – in the area of social services, child protection, education, in the criminal justice field – where information has been incorrect, has been retained too long and has not been put right, even when the problem's been discovered. And yet another example: if you've got one database from which it can leak out inappropriately, if that information is shared across other organisations, well that increases the risk of security breaches.

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Enver Solomon: So, if you're bringing data together across different datasets to try and determine who might be more likely to offend there are dangers with that?

Richard Thomas: The short answer is yes there are dangers, and there might be relevance but there are dangers.

Enver Solomon: Do the benefits outweigh the dangers?

Richard Thomas: Well, I think you'd have to look at that case by case. I think we are moving to more and more intelligence-based policing and, if that proves to be effective in both deterring and detecting crime, then there are going to be some benefits in that. But one of the risks which we associate with

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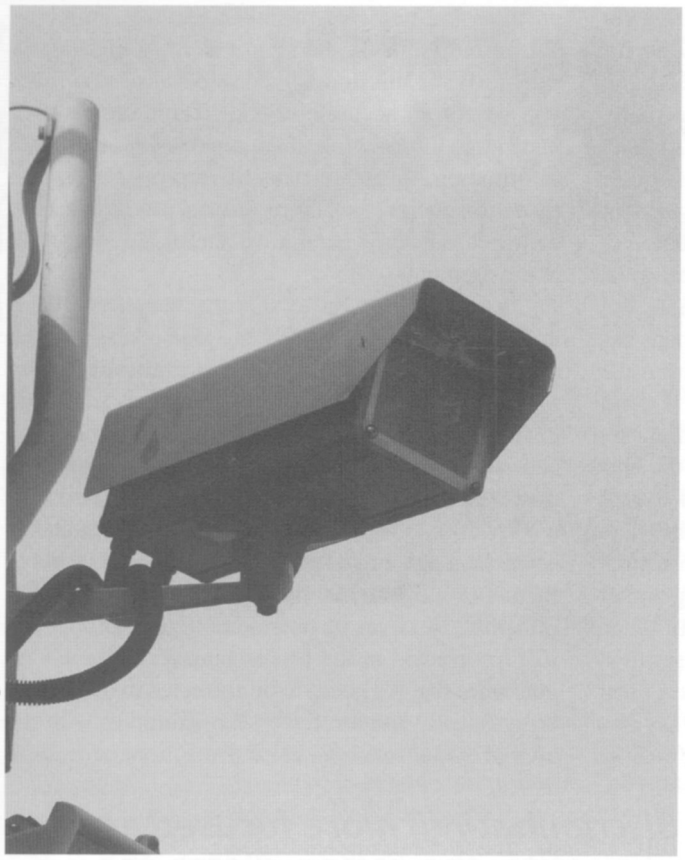

Photo: Julie Grogan

Three hundred times a day you are on a camera somewhere

the excessive use of high technology to process information, is where profiling gets out of hand. Now I think everyone is familiar in the private sector with the way in which profiling is used for commercial advantage as a general proposition, without any great harm or risk. If internet book companies know our preferences for marketing purposes, they may know what sort of books you like to read; if travel companies know your last six holidays, well they can begin to work out what sort of holidays you might like. That causes maybe irritation from time to time and some people don't like too many mailshots or too much marketing material; by and large there's a good solution which is the waste bin. But when it comes to using similar techniques in the law enforcement, child welfare and education world, I think we've got to tread carefully. People say we can feed in lots of characteristics, lots of factors, and we can predict families at risk, children at risk; we can predict even people who may be the criminals of the future. I think this is technology which needs to be used with the very greatest of care. I wouldn't be hostile to using it in a very structured and cautious way where it can protect children from being abused or where some sort of intervention is required with a family to, if you like, help them back on the straight and narrow, but it is very easy to make false conclusions or misleading judgements, which can actually go to the heart of people's life chances for the future. And so, if these techniques are going to be used, and there are already signs that they're starting to be at least thought about, then I think there needs to be the very tightest control framework around them.

Kevin Stenson: To what extent do you think that surveillance and methods of greater improved information sharing should rightfully and legitimately change the nature of a democratic society like ours?

Richard Thomas: Well, I think technology is the thing I keep coming back to because we've now got a situation where, as the price of technology reduces, as the potential of technology increases, we have almost unlimited capacity now to collect unimaginable amounts of information about individuals, to process that in ways which were unthought of 10 years ago, and to hold it forever. Storage can go on forever. And I think that's got absolutely vast implications for the sort of society we want to live in. And these are the questions which we are currently asking. We're saying we need to have a debate about where we want to draw some boundary lines. I have no doubt at all the boundary lines need to be drawn. You could, in theory, say, by planting cameras inside everyone's bedroom, everyone's living room, everyone's kitchen, you know, we can really deal with terrorism and crime, but I think everybody would say that's wholly and utterly unacceptable, so that's clearly a line drawn there. But where do you draw the line? Do you have cameras in every high street, every side street, every narrow street, and every village? And with satellite monitoring, it's not that difficult to monitor the entire country. And so I like to think, but I'm not that optimistic, that Data Protection with its basic framework has the answers, but I think actually it doesn't by itself. I think we can pose the questions: we can say is this a purpose too far, is this an activity where the legitimate functions of preventing terrorism or fighting serious crime, or even minor crime, involves excessive use of data?

Kevin Stenson: Finally, you did at the beginning of this interview present a fairly dystopian picture of spies in the sky-style surveillance. Do you really think that we are moving in that particular direction?

Richard Thomas: I think we're moving in the direction of more and more surveillance but I'm not convinced that we're moving to a destination of a dystopian society as you paint it. I think it's part of my organisation's role to apply the brakes somewhat, to slow down, to make people stop and think before we just go there mindlessly. The report we published last year is very explicit; we're not suggesting that there are evil or sinister powers out there trying to create a Big Brother Orwellian society – an all-seeing all-knowing state – but we may get to a point where we look back and say how the hell did we get here; and if we are slowing things down, if we're raising a debate. I think the view we took was, if we don't do it, no-one else is going to do it. And already I think it's entering into the political mainstream. I don't want to get political about this but I think it has been said that a lot of these things, which can be seen as an attack on civil liberties, or at least undermining civil liberties, have happened over the last 10, 20, 30 years, without any proper awareness of the issues, let alone proper debate. I'm an optimist in life; I don't think we're going to that sort of chilling society that you project; I think we are indicating that's where we could end up if we don't apply the brakes more vigorously, but we're not saying we will end up there. ■