

(1) Claimant  
(2) L. Audibert  
(3) Second  
(4) Exh: LA3 and LA4  
(5) 22.06.23

**Claim No:**  
**CO/4272/2022,**  
**CO/4273/2022,**  
**CO/4274/2022,**  
**CO/4275/2022**

**IN THE HIGH COURT OF JUSTICE  
KING’S BENCH DIVISION  
ADMINISTRATIVE COURT  
BETWEEN:**

**THE KING  
ON THE APPLICATION OF**

(1) [REDACTED]  
(2) [REDACTED]  
(3) [REDACTED]  
(4) [REDACTED]

**Claimant**

**-and-**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Defendant**

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**SECOND WITNESS STATEMENT OF LUCIE AUDIBERT**

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I, **LUCIE AUDIBERT**, Legal Officer of Privacy International, 62 Britton Street, London, EC1M 5UY, WILL SAY as follows:

**A. INTRODUCTION**

1. I am Lucie Audibert, a Solicitor and Legal Officer at Privacy International. I make this statement in reply to the evidence filed with the Secretary of State’s Detailed

Grounds of Defence. I am also updating the Court on several of matters referred to in my first witness statement of 10 November 2022.

2. This is my second witness statement in these proceedings, and I have not repeated the information contained in my first statement. Where relevant I will however refer to the contents of my earlier evidence.
3. I am authorised to make this statement on behalf of Privacy International (PI). Where I rely on sources other than my own knowledge, I identify them below. Where the facts and matters to which I refer in this statement are within my own knowledge I confirm that they are true. Where they are based on information obtained from other sources (which sources I identify), I confirm that they are true to the best of my knowledge and belief.
4. This statement addresses the following topics:
  - a. **Section B** provides information in relation to the frequency with which GPS trackers can collect locational data (“Trail Data”) as well as the capabilities of GPS trackers on which we conducted technological research;
  - b. **Section C** sets out additional evidence about the accuracy of the Trail Data collected by GPS trackers;
  - c. **Section D** outlines alternative technologies that can monitor location that are not based on 24/7 GPS tracking; and
  - d. **Section E** responds to the assertion at §15 of AD’s witness statement that the ICO has reviewed the Defendant’s 24/7 GPS tracking procedure without comment.
5. Sections B, C, and D of this witness statement rely on technological research carried out by our technologists who *inter alia*, through their expertise in disciplines such as Computer Science or Electronic Engineering, analyse devices and applications, and their generation and uses of data in order to uncover how data is exploited by governments and corporations.

## **B. The frequency with which GPS trackers collect locational data**

6. As per §37 of my first witness statement, GPS trackers can collect trail data at varying intervals. This is also recognised at §15 of ██████████ (“AD”) statement in which he stated that *“it is possible to calibrate different “ping” rates”*. AD’s statement discloses in the same paragraph that the GPS trackers used by the Defendant are calibrated to collect locational data *“every few seconds”*. AD also accepts that the frequency of signal transmission could be reduced in the context of the devices used by the Defendant.
7. To my knowledge, this is the first time that the Defendant has provided this information. The fact that data is being collected every few seconds is not referenced in either the Immigration Bail policy version 15.0 published by the Defendant on 27 January 2023 (the “Immigration Bail Guidance”), or the Data Protection Impact Assessments (“DPIAs”) undertaken by the Defendant. As far as I understand from the solicitors for the Claimants in these proceedings, this information has also not been provided to individuals subject to GPS tracking unless they request their trail data and receive it from either the Defendant or Capita EMS.
8. The information provided by the Defendant in relation to the frequency of the data collection also appears to be inconsistent with the trail data disclosed to the Claimants pursuant to their subject access requests. In the case of the First Claimant (“C1”), the trail data demonstrated that the tracking device frequently gathered location data every minute.<sup>1</sup> In the case of the Third Claimant (“C3”), most data points are also collected every minute but there are a number of gaps of at least 2 minutes between data entries, including some gaps of 5 minutes. Some of these gaps correspond to data entries labelled ‘invalid’ in which no location data was gathered at all<sup>2</sup>. I understand from the Claimants’ solicitors that C3 received a letter from the Defendant alleging that he had breached his GPS tracking condition. The letter indicates that the timing of the alleged breach corresponds to the data entries that were marked invalid. I have been informed

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<sup>1</sup> See, Exhibit AA/1 to C1’s first witness statement.

<sup>2</sup> See Exhibit CBR/2 to CBR’s second witness statement.

by the Claimants' solicitors that the Defendant subsequently retracted the breach allegation in response to representations they sent on C3's behalf.

9. To my knowledge, the Defendant has not provided an explanation for the inconsistencies between AD's confirmation that the tracking devices are calibrated to gather data every few seconds and the issues set out in the above paragraph relating to the Claimants' trail data.
10. AD's statement confirms at §15 that an operational decision was made to limit the number of different tracking configurations. I understand from PI's technologists that the presence of gaps of several minutes between numerous data points, tracking only every minute rather than every few seconds, and invalid entries may be due to technical defects in the tags or to unreliable GPS signal.

*Research on alternative capabilities of GPS trackers*

11. As set out at §45 of my first witness statement, we have undertaken technological research on several GPS trackers available on the open market, which were worn by our technologists over varying periods of time and the resulting data analysed. While we have not seen what model of GPS tracker is supplied to the Defendant by G4S, we obtained alternative products that we believe are likely to have similar specifications, as all models of GPS trackers we have reviewed, based on their online marketing materials, offer similar functions in particular in terms of tracking intervals settings<sup>3</sup>. We tested two models of GPS trackers: the Megastek Technologies – MT60X (the "MT60X") and the ThinkRace - TR40 (the "TR40").
12. Both of these devices allow for different intervals to be set in relation to the frequency of trail data collection. The available pre-set intervals ranged from every 30 seconds to every hour<sup>4</sup>. As outlined at §37 of my first statement, this capability extends to other models that our technologists did not test including GPS trackers made by Lowrance that can collect trail data every 15 minutes, 30

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<sup>3</sup> <https://privacyinternational.org/long-read/5064/life-under-247-gps-surveillance-gps-ankle-tag-experiment>

<sup>4</sup> <https://privacyinternational.org/long-read/5064/life-under-247-gps-surveillance-gps-ankle-tag-experiment>

minutes, or hour<sup>5</sup>. As is apparent from AD's statement, this capability extends to the trackers used by the Defendant.

13. Therefore, based on our research undertaken so far – the reference to the tracking intervals in AD's witness statement shows that the Defendant has chosen settings on the devices it uses to track individuals subject to Electronic Monitoring ("EM") conditions which involve the most extensive level of tracking and trail data collection.
14. The MT60X enables 'on-demand tracking' so that locational data can be provided to the controller in response to a specific request<sup>6</sup> rather than tracking at all times. As indicated at §38 of my first witness statement, this is also the case for other models whose manuals are available online and which in some instances only allow for on-demand tracking rather than 24/7 monitoring<sup>7</sup>.
15. The TR40 has a complete management portal designed to be used by the authority managing the tracking program. The portal enables the authority to see how often locations are visited in aggregate, which avoids the need to look through an entire dataset to see if or how often a tracked individual has been to a certain location.
16. The Defendant could for example use such a management portal to satisfy itself in the event of intelligence of a breach of immigration bail conditions that the tracked individual had complied with their conditions over a period of time without having to retain and review their entire trail data. This is because the portal enables the authority to see how often an individual has visited a particular location by plotting the number of instances on a map. I exhibit to this statement a screenshot of the map interface enabled by the management portal as LA3. The pins with letters show locations that the individual has visited once, while the pins with numbers show locations that the individual has visited multiple times. In relation to a residence condition, for example, a similar management portal

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<sup>5</sup> Manualslib, Link-2 User manual, <https://www.manualslib.com/manual/587617/Lowrance-Link-2.html?page=54>.

<sup>6</sup> <https://privacyinternational.org/long-read/5064/life-under-247-gps-surveillance-gps-ankle-tag-experiment>

<sup>7</sup> <https://www.brickhousesecurity.com/gps-trackers/tracking-intervals>

could show that the tag wearer has regularly returned to their registered address after absences from it.

17. The possibility of more targeted monitoring of compliance with bail conditions contrasts with the Defendant's current approach, which permits caseworkers to request and access the full trail data in order to investigate an allegation or intelligence relating to a breach of immigration bail<sup>8</sup>.
18. The US's Alternative to Detention ("ATD") tracking programme also deploys GPS monitoring technology that does not solely collect trail data on a 24/7 basis. The US programme is similarly employed in relation to non-citizens above the age of 18 "*who are generally in removal proceedings or subject to a final order of removal*"<sup>9</sup>.
19. The ATD programme uses both fitted ankle trackers and an app called "SmartLINK", which is installed on mobile phones and uses both GPS and facial recognition technology. As of April 2022, SmartLINK was the most common form of tracking in the ATD programme (it was being used in relation to 75% of individuals monitored through ATD)<sup>10</sup>. SmartLINK is enabled to carry on-demand tracking in order "*obtain a single GPS point to monitor participant compliance at the time of a login or scheduled check-in*"<sup>11</sup>.
20. We note that several claimants filed a lawsuit against the US's Immigration Customs and Enforcement ("ICE") in respect of the SmartLINK programme before the United States District Court: Northern District of California on 14 April 2022<sup>12</sup>. The claim, which appears to be ongoing, concerns the failure of the immigration authorities to disclose information relating to what data is being collected; for how long it is retained; and with which parties it is being shared.

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<sup>8</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1132640/Immigration\\_bail.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1132640/Immigration_bail.pdf), page 54.

<sup>9</sup> <https://www.ice.gov/features/atd>

<sup>10</sup> <https://time.com/6167467/immigrant-tracking-ice-technology-data/>

<sup>11</sup> <https://www.ice.gov/features/atd>

<sup>12</sup> <https://time.com/6167467/immigrant-tracking-ice-technology-data/>

### C. The accuracy of the data collected

21. AD's witness statement addresses the capabilities of the technology (§12 – 15) and claims that *"GPS devices provide for a more effective means by which to locate a service user's whereabouts. [...] The use of GPS also enables more effective management of exclusion or inclusion zones, preventing or requiring the service user's presence in certain locations, which may be a condition of licence conditions or are required to reduce the risk of re-offending"*. AD seems to assume a high level of reliability of the data produced by GPS tracking, sufficient to determine whether an individual has complied with their bail conditions or committed criminal offences but does not provide any information about the accuracy of GPS tracking devices. This part of my witness statement therefore addresses the accuracy of GPS trackers and the limitations of GPS technology, based on PI's technological research.
22. The research we carried out enabled our technologists to act as both the wearers and controllers of the device and the accompanying locational data. They were therefore able to check the data recorded by the device against the actual location of the wearer. This revealed a number of instances where the location points recorded were inaccurate, including where the wearer was marked in a different place than their actual location. For example, in exhibit LA4, showing a portion of the MT60X's trail data visualisation platform, each pin shows where the wearer was at 30 seconds intervals. We know from our technologist that they were at the time cycling along Exmouth Market (the street parallel to Rosebery Avenue). The fourth data point (from right to left on the trail) appears off road, in the middle of a church. We know from our technologist that he did not get off this bike or enter the church at any point.
23. The location data was also sometimes inaccurate when the wearer was at home and not moving. In one such example, our technologist was at home; however, the tag recorded that he was located in the next street for a period of 6 hours. I have checked the screenshots that record this error but have not exhibited them because they reveal our technologist's address.

### *Battery life*

24. At §40 of my first statement, I explained that the more frequent the duration of tracking intervals, the lower the battery life of a GPS ankle device. This has been confirmed through research undertaken by PI's technologists.
25. For example, we found that the MT60X has a short battery life of about 20 hours of use between charges. This was both because of its comparatively smaller 750mAH battery, but also because we used frequent intervals of locational tracking (as above the time interval was every 30 seconds). The time to fully charge the MT60X was between 2 and 3 hours.
26. This contrasts with the TR40, which had a battery life of 2-4 days with a charging time of between 2 and 3 hours. This in part due to its 4000mAH battery but also because communication intervals were set to 3 minutes, which meant that the device consumed less energy.
27. Due to the short length of the cables provided with the charging bases for both devices we tested, the wearer needs to have access to either a computer or a charging brick and stay very close to the charging source. Given the 2 to 3 hours required for a full charge, the wearer would need to be physically locked to the power source for that amount of time. The short cable also makes charging at night difficult without a power cord extension. Under such circumstances, charging was mostly done when sitting at a desk near a computer, or on a couch. These charging conditions are obviously highly constraining both during the day and while sleeping at night and can become very problematic if the wearer needs to be present somewhere at a given time such as a reporting appointment. Both devices only informed the wearer as soon as the battery levels fell under 15%, which makes it difficult to plan journeys away from home without the fear that the tracker could lose charge at any time.
28. I understand from EMS's tagging handbook that individuals tracked via fitted ankle trackers are provided with a portable and mains charger<sup>13</sup>. The tagging handbook states that the portable charger needs to itself be charged via the

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<sup>13</sup> Page 409 of AD/1.



mains for at least 2 hours per day. According to the report entitled *Every Move you Make: the Human Cost of GPS Tagging in the Immigration System* (which was exhibited to the first statement of [REDACTED]), numerous tag wearers, interviewed for the report, stated that the portable charger did not fully charge the device, but rather topped up the battery for “*an hour, or a few hours*”<sup>14</sup>. Other participants stated that their portable chargers did not work at all. As such, in order to ensure that the device does not run out of battery, individuals subjected to GPS tracking via ankle devices are likely to have to use their mains chargers daily. The evidence from tag wearers’ in the above-mentioned report is that this is highly constraining for the reasons set out in the above paragraph – namely that the charger cords are too short and require the wearer to stand or sit by the mains.

29. AD’s witness statement does not refer to the charging time required by the GPS ankle trackers used by the Defendant. However, the Defendant’s recognition of the lengthy period of time required to bring the devices to full charge is apparent from other documents including the EMS tagging handbook, as I explain in the below paragraph.
30. As set out in our complaint to the Forensic Science Regulator (“FSR”) (relating to the quality of the GPS trackers and their accuracy), a handbook produced by EMS in relation to EM dated 29 November 2018 stated that wearers would need to charge the device for a minimum of 1 hour per day<sup>15</sup>. This was repeated in a YouTube video hosted on the HM Prison and Probation Service channel<sup>16</sup>. By contrast, the most recent, undated, EMS tagging handbook provided by the Defendant together with her Detailed Grounds of Defence states that: “*you must charge your tag daily until fully charged, this is usually for at least 2 hours every day*”<sup>17</sup>.
31. The Independent Chief Inspector of Borders and Immigration (‘ICIBI’) report March-April 2022 ‘*An inspection of the global positioning system (GPS)*

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<sup>14</sup> [https://publiclawproject.org.uk/content/uplodas/2022/10/GPS\\_Tagging\\_Report\\_Fina.pdf](https://publiclawproject.org.uk/content/uplodas/2022/10/GPS_Tagging_Report_Fina.pdf) , page 32.

<sup>15</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/823813/Subject\\_Handbook.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/823813/Subject_Handbook.pdf)

<sup>16</sup> <https://www.youtube.com/watch?v=yAsUEcB0yUg> dated 5 March 2019

<sup>17</sup> Page 405 of AD/1.

*electronic monitoring of foreign national offenders*’ noted that inspectors were informed that devices had to be charged more frequently than was first advised<sup>18</sup>. The complaint PI filed with the FSR included several case studies of individuals subject to EM. The issue of the length of time taken to fully charge the device, as well as the lack of clear of guidance on the duration of battery life and required charge time were raised in almost every case study<sup>19</sup>.

#### **D. Alternative modes of monitoring and necessity of 24/7 GPS tracking**

32. AD’s witness statement states at §13 that RF tracking requires “*a curfew to be an effective immigration tool*”. RF tracks the presence of individuals in a contained area and monitors when they leave and return<sup>20</sup>. Therefore, RF is deployed to track compliance with conditions that mandate individuals to remain in a specific location/building for specified periods<sup>21</sup>. RF monitoring is usually paired with curfew conditions but given the binary nature of the locational data it can also be deployed to track compliance with a residence immigration bail condition, for example.
33. Recent research also suggests that “*RF technology is tried and tested and has a high degree of accuracy*” in contrast to GPS devices which often have “*problems... with poor signals and drift*” as documented in literature<sup>22</sup> and as show in the example at §23 above (in which the wearer would presumably have been flagged to be in breach of curfew). RF devices also do not require the wearer to regularly charge the tracker, therefore avoiding the issues with the battery life also addressed above.
34. At §13 of his statement AD states that RF technology became “*outdated*” and had to be replaced with 24/7 GPS tracking. It is unclear what is meant by this.

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<sup>18</sup> ICIBI March – April 2022 ‘An inspection of the global positioning system electronic monitoring of foreign national offenders.’ <https://www.gov.uk/government/news/inspection-report-published-an-inspection-of-the-global-positioning-system-gps-electronic-monitoring-of-foreign-national-offenders-march-april-2>

<sup>19</sup> Exhibit LA/2 to the first witness statement of Lucie Audibert

<sup>20</sup> A Hucklesby, K Beyens, M Boone, *Comparing electronic monitoring regimes: Length, breadth, depth and weight equals tightness*, Punishment & Society 2021, vol. 23(1) 88-106, <https://journals.sagepub.com/doi/pdf/10.1177/1462474520915753>

<sup>21</sup> *Comparing electronic monitoring regimes: Length, breadth, depth and weight equals tightness*

<sup>22</sup> *Comparing electronic monitoring regimes: Length, breadth, depth and weight equals tightness*

RF technology is not “out of date” compared to GPS tracking, it is just different. The two technologies offer different capabilities and are regularly deployed side by side. For example, in Belgium, where both GPS and RF monitoring are used in the context of the criminal justice system, as of 2021 86% of EM deployment was by way of RF technology<sup>23</sup>. As per the Immigration Bail Guidance, the Defendant in certain circumstances may also use RF devices where there is a curfew condition, or where limited GPS signal is available.

35. As set out above, GPS tracking can also be deployed in ways that limit the functionality of the devices to monitoring compliance with conditions. The devices can be enabled to monitor location at particular times, to provide on-demand locational data, and to track compliance with inclusion/exclusion zones as opposed to 24/7 tracking. None of these uses appear to have been considered for implementation by the Defendant.
36. There are also other conditions that can be used to manage an individual’s contact with the immigration authorities effectively. An example of this is telephone reporting, which is already used by the Defendant in some cases.
37. According to the Defendant’s guidance, this involves the individual subject to the condition receiving a telephone call at the designated time and day on which they must report<sup>24</sup>. In order to comply with the condition, the individual would need to answer the call and then would receive a reminder by way of a text stating the date and time of their next reporting requirement. As set out above, SmartLINK combines such a condition with on-demand tracking that only monitors compliance with the reporting condition itself.

#### **E. The Defendant’s assertion regarding the ICO**

38. At §15 of AD’s statement, the Defendant asserts that: “*GPS devices are calibrated to send a signal to the satellite every few seconds to provide for 24-hour monitoring... This procedure has been reviewed by the Information Commissioners Office without further comment.*” To the extent that AD implies

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<sup>23</sup> *Comparing electronic monitoring regimes: Length, breadth, depth and weight equals tightness*

<sup>24</sup> <https://www.gov.uk/guidance/immigration-detention-bail-telephone-reporting>

that the Information Commissioner's Office has concluded its review and somehow sanctioned the Defendant's approach, he is wrong to do so for the following reasons.

39. As above, the Defendant's 24/7 tracking procedure is subject to a pending complaint before the ICO filed by Privacy International on 17 August 2022. The complaint raises the issue of the frequency of the tracking intervals and the compliance of 24/7 GPS monitoring and the subsequent processing of personal data with several data protection principles under the UK GDPR and DPA 2018.
40. After our case was opened, we received confirmation in November 2022 that our complaint was being investigated and enquiries were being made of the Home Office. We recently followed up and were informed on 11 May 2023 that enquiries to the Home Office were still ongoing.
41. As the frequency of monitoring is one of the key features of the scheme and goes to compliance with a number of data protection principles, I would expect that it remains an open issue in the ICO's enquiries and considerations.
42. As such, as far as I am aware, the ICO's scrutiny of the SSHD's GPS tagging scheme has not yet concluded and no formal decision has yet been reached on the lawfulness of the 24/7 GPS data processing regime.

### **Statement of Truth**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed by:

A black rectangular box with a white 'X' drawn across it from corner to corner, used to redact the signature.

Name: Lucie Audibert

Date: 23 June 2023