

# Here's looking at you – workplace monitoring in a remote working age

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With a huge increase in employees working from home, some employers have devised new ways to supervise and monitor the work their employees are undertaking.

This article gives an overview of the legal risks involved with monitoring employees or subjecting them to surveillance and gives some practical tips to help make sure that any surveillance system your clients put in place is compliant with expected standards.

## What is the issue?

Recent research has analysed the impact of the pandemic on state surveillance generally. Verisk Maplecroft (a research firm specialising on global risk analytics) recently published Human Rights Outlook 2020 in which it lists some of the steps being taken to curtail individual rights in response to Covid-19. These include increased surveillance, tracking of citizens, and the creation of new offences which it suggests are open to abuse by governments seeking to tighten their grip on citizens.

Within the employment sphere, Verisk Maplecroft reports that in India it is compulsory for employees to download the local track and trace app before returning to the workplace. They opine that *“Employees subject to these conditions may be at risk of excessive collection of personal information, potentially with little oversight and a vague understanding of how long their data may be stored for and who has access to it.”*

Closer to home, monitoring of employees has been hitting the headlines with some companies taken new approaches to making sure that employees are working whilst at home. The founder of a small wholesaler recently boasted to BBC News that *“I monitor my staff with software that takes screenshots”* (<https://www.bbc.com/news/business-54289152>); the same article reports that the company providing the monitoring software has seen a 400% year-on-year increase in customers.

This has the potential to cause conflict between employer and employees. A survey by the Chartered Institute of Personnel and Development in June 2020 found that 73% of employees feel that introducing workplace monitoring would damage trust between workers and their employers. [Click here to read the survey.](#)

## What are the risks?

Where monitoring is being used, whether via overt or covert methods, an employee's rights under Article 8 of the European Convention on Human Rights are likely to be engaged – this is the right to privacy.

We are all familiar with the mantra of proportionality where convention rights are engaged. If appropriate safeguards are not in place, or the extent of monitoring or surveillance is a disproportionate interference with Article 8 rights then the employer runs the risk of any subsequent dismissal being found unfair. A number of cases have been before the domestic and European courts on these issues<sup>1</sup>

## Practical tips

So what can be done to keep an eye on employees, without falling below the standards expected by tribunals? For clients wanting a full and detailed guide the ICO has published an [employment practices code](#). There is also supplemental guidance which accompanies the code.

For those wanting a quick overview here are some of the key expectations for monitoring:

- Where monitoring is being considered or implemented, make sure that there is a written policy in advance and that employees are aware of it
- The policy ought to make clear what is being monitored, why, and what use will be made of the information obtained.
- Take steps to limit the number of staff who have access to the monitoring, to make sure that it is as few as necessary
- Remind employees of the monitoring policy at regular intervals, including whenever there are any changes to the policy
- Consider whether less intrusive steps can be taken, e.g. spot checks.

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<sup>1</sup> E.g. *McGowan v Scottish Water* [2005] IRLR 167 (EAT); *Köpke (App No 420/07)* (5 October 2010, unreported) (ECtHR)

Covert monitoring is only likely to be reasonable in cases of gross misconduct or criminal activity. It should be time limited and targeted. Usually there should be something which has already causes suspicion to be raised (e.g. stock takes)

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