



Surveillance & Monitoring in the Workplace

A talk for IER – Autumn 2019, Liverpool and London

By
Paul Scholey
Senior Partner
Morrish Solicitors LLP



Context

- ❑ “I’ll be watching you”
- ❑ A report on workplace monitoring - TUC 17 Aug 2018
- ❑ Over half of workers (56 per cent) think it’s likely that they’re being monitored at work
- ❑ Workplace monitoring is more likely to be happening to younger workers and employees in large companies



Context

- ❑ “I’ll be watching you”
- ❑ Two-thirds of workers (66 per cent) are concerned that workplace surveillance could be used in a discriminatory way if left unregulated
- ❑ 70 per cent think that surveillance is likely to become more common in the future
- ❑ Recommendations:
- ❑ Trade unions should have a legal right to be consulted on and to agree in advance the use of electronic monitoring and surveillance at work
- ❑ The government should ensure employers can only monitor their staff for legitimate reasons that protect the interests of workers



Legislative Framework

- ❑ Common Law e.g. effect of employment contract
- ❑ European Convention on Human Rights & HRA 1998
- ❑ GDPR
- ❑ The ICO and the Employment Practices Code
- ❑ The Investigatory Powers Act 2016
- ❑ (and a bunch of Public Law stuff e.g. POFA 2012)



ACAS guidance

- ❑ “**Being monitored at work**” ([acas.org.uk](https://www.acas.org.uk) or Google)
- ❑ Employers should have written policies and procedures in place regarding monitoring at work
- ❑ Monitoring shouldn't be excessive and should be justified
- ❑ Staff should be told what information will be recorded and how long it will be kept
- ❑ If employers monitor workers by collecting or using information the Data Protection Act will apply
- ❑ Information collected through monitoring should be kept secure



ICO - EPC: Monitoring Requirements

- ❑ Tell employees:
- ❑ Circumstances of monitoring
- ❑ When
- ❑ What
- ❑ How
- ❑ How used
- ❑ Limit availability to management subset?



EPC: Monitoring

- ❑ Has the employer undertaken an “impact assessment”?
- ❑ A proportionality test
- ❑ Other, less intrusive methods available?
- ❑ And for a code on surveillance cameras see:
- ❑ <https://ico.org.uk/media/for-organisations/documents/1542/cctv-code-of-practice.pdf>



ECHR - Article 8

- Article 8 ECHR: the right to family and private life
- Qualified – but are limits proportionate/necessary in a democratic society?
- The development of ECtHR jurisprudence and the approach of the UK courts and Tribunals



Article 8 - Cases

- Halford v UK
- Copland v UK ECHR
- Atkinson v Community Gateway Association
- Barbulescu v Romania
- interception of private emails



Recent Cases

- **Garamukanwa v United Kingdom (2019)**
- use of private mobile phone contents
- **Antović and Mirković v Montenegro (2017)**
- cameras in student auditoriums
- **López Ribalda and others v Spain (2018)**
- hidden cameras monitoring workplace theft
- **López Ribalda update: 28.10.19**



Related Cases

- ❑ **Phoenix House v Stockman**
- covert recording of meeting with HR
- ❑ **BC and others v Chief Constable Police Service of Scotland and others (2019)**
- use of WhatsApp messages in misconduct proceedings
- ❑ **Curless v Shell Industries (2019)**
- a word overheard in the pub?



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- **R (Bridges) v Chief Constable of South Wales police and others**
[2019] EWHC 2341
- live facial recognition
- **Use by private companies? Big Brother Watch report**
- <https://bigbrotherwatch.org.uk/>



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- **ICO Opinion:** “The use of live facial recognition technology by law enforcement in public places” (31 October 2019 - Reference: 2019/01)
- Recommendations
- “As far back as Sir Robert Peel, the powers of the police have always been seen as dependent on public support of their actions. It’s an ideal starting point as we consider uses of technology like live facial recognition. How far should we, as a society, consent to police forces reducing our privacy in order to keep us safe?”





Any Questions?

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