

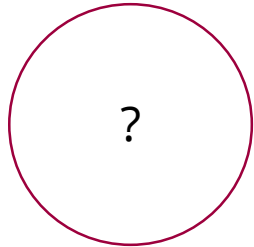
Monitoring your workforce: An employer's guide to monitoring in the new world



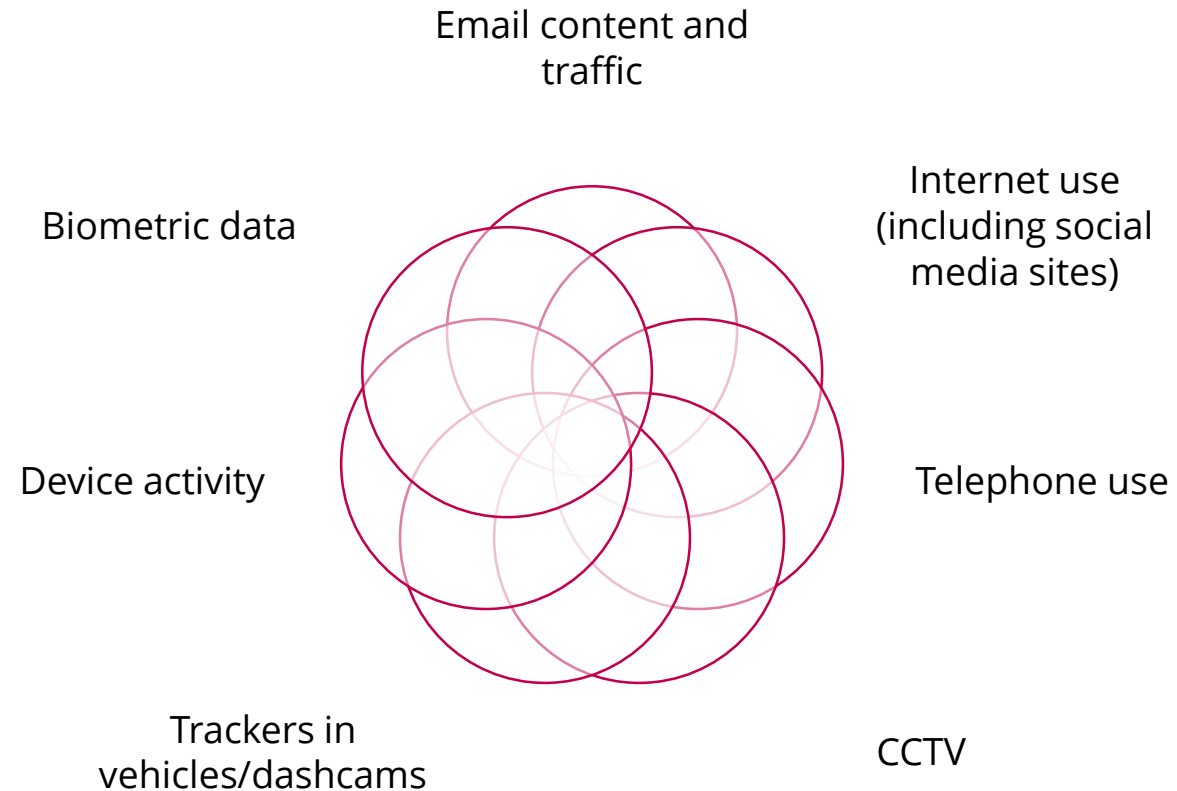
Agenda

1. Welcome
2. What is workplace monitoring?
3. What are the legal parameters surrounding workplace monitoring?
4. Case study 1- Remote working
5. Case study 2 – Tracking of vehicles
6. Case study 3 – Biometrics
7. Case study 4 – Drug testing
8. What should a workplace monitoring policy look like?
9. What does the ICO Employment Practices: monitoring at work guidance mean for employers?
10. What does the future hold for workplace monitoring?
11. Questions

What is workplace monitoring?



What are the different channels for workplace monitoring?



What are the legal parameters surrounding workplace monitoring?

- ⓪ Is there a right to privacy at work?
- ⓪ Is consent of an employee required to undertake monitoring?
- ⓪ Does this change with increased AI capabilities?
- ⓪ Can I use data we've collected for one purpose for something entirely different?

Data Protection Laws – check the countries and apply the principles

Data Protection Guidance – as above

DPIAs – a useful assessment tool

The "tandem effect"



What are the legal parameters surrounding workplace monitoring?

The **employment** risks of getting this wrong are:

- Constructive dismissal
- Disciplinary investigations and unfair dismissal
- Indirect discrimination
- Poor staff morale

Employers should be mindful of the Employment Practices Code and ensuring clarity in their policies and procedures



Case study 1: Remote working

Since the start of the pandemic Smart Accounting has allowed remote working on a large scale. With employee engagement and work-life balance measures at a high, Smart Accounting would like to continue offering remote working on a hybrid basis with a 50:50 split between the office and home.

Smart Accounting would like to monitor employee performance when working at home compared to working in the office.

dwfgroup.com

The logo for dwf, consisting of the lowercase letters 'dwf' in a dark grey font inside a white circle with a soft drop shadow.

Case study 1: Remote working

- ① What risks are there to Smart Accounting should they monitor their workforce on this basis?
- ② What if Smart Accounting would like to monitor the use of email and website visits?
- ③ What if Smart Accounting would like to record or listen to Teams calls?
- ④ What if Smart Accounting would like to use web cams to monitor activity?
- ⑤ Smart Accounting employees have security passes used to enter into the workplace. Can the data gathered from the security passes be used to measure workplace attendance?

Case study 2: Tracking of vehicles

Smart Lorries Limited is a logistics company providing logistics solutions to a range of supermarkets across the UK. Tracking devices have been fitted to the vehicles to help optimise efficiencies to ensure the routes taken are time and fuel efficient.

dwfgroup.com

dwf

Do any issues
arise with regard
to monitoring the
vehicles in this
way?

Case study 2: Tracking of vehicles

Smart Lorries has been analysing the data obtained from the tracker and has noticed discrepancies between the data obtained and the log sheets the employees have filled in stating when they are working.

Smart Lorries would like to investigate this further and possibly carry out a disciplinary with regard to the employees.



Are there any issues with using the data for this purpose?

Case study 3: Biometrics

A Step Ahead Chemical Solutions is working on a new formula for an industrial cleaning product and would like to introduce some sort of biometric recognition access control to the section of the building where the formula is being worked on.

A core set of five employees will need access to the area pending finalisation of the formula.

dwfgroup.com

dwf

What are the key considerations for a Step Ahead when using biometric recognition?

Case study 4: Drug testing

Harvester Machinery would like to start carrying out random drug and alcohol testing on their employees who operate the machinery for health and safety reasons.

Harvester Machinery are particularly concerned about an employee who has come into work smelling of alcohol.

dwfgroup.com

dwf

Can Harvester Machinery carry out random drug and alcohol testing?

What if Harvester Machinery want to target the individual who has been the cause of concern?

What should a workplace monitoring policy look like?

The policy should be clearly **communicated** to the employee at the start of employment and regular reminders/updates should be sent out

Consider the interrelation with the **data protection policy** and **privacy notice**



Clarity as to standards of conduct and performance



Examples of appropriate/inappropriate behaviour



Remind the employee that inappropriate behaviour will be dealt with under the disciplinary policy



Set out the purpose of monitoring



Set out who will make decisions on monitoring and who will have access to the results of monitoring



Provide information on access rights and retention /deletion



Provide clear communication on what electronic communications are permitted



Additional considerations for different types of monitoring – for example CCTV

What does the ICO Employment Practices: monitoring at work guidance mean for employers?

Transparency, fairness and accountability are core themes throughout the draft guidance



Lawfully monitoring workers



Automated processes in monitoring tools



Specific data protection considerations for different types of workplace monitoring



Using biometric data for time and attendance control

What does the future hold for workplace monitoring?

- Hybrid working here to stay
- Likely to see an increase in worker monitoring
- As technology advances – more potential to catch data and monitor – employers beware

Guidance and regulation is likely to continue to evolve

Questions



Contact us



JP Buckley
Partner

Data Protection & Cyber Security

T 0161 603 5039
M 07513 121776

E jp.buckley@dwf.law



James Drury-Smith
Partner

Data Protection & Cyber Security

T 020 7280 8821
M 07912 498512

E james.drury-smith@dwf.law



Leanne Francis
Director

Employment

M 07936 047 523

E leanne.francis@dwf.law



DWF is a leading global provider of integrated legal and business services.

Our Integrated Legal Management approach delivers greater efficiency, price certainty and transparency for our clients.

We deliver integrated services on a global scale through our three offerings; Legal Services, Legal Operations and Business Services, across our eight key sectors. We seamlessly combine any number of our services to deliver bespoke solutions for our diverse clients.

© DWF 2023, all rights reserved. DWF is a collective trading name for the international legal practice and multi-disciplinary commercial business comprising DWF Group plc and all of its subsidiaries and subsidiary undertakings of which, the entities that practice law are separate and distinct law firms. Please refer to the Legal Notices page on our website located at dwfgroup.com for further details. DWF's lawyers are subject to regulation by the relevant regulatory body in the jurisdiction in which they are qualified and/or in which they practise. This information is intended as a general discussion surrounding the topics covered and is for guidance purposes only. It does not constitute legal advice and should not be regarded as a substitute for taking legal advice. DWF is not responsible for any activity undertaken based on this information and makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability or suitability of the information contained herein.

dwfgroup.com