



USE OF CCTV EQUIPMENT IN DISCIPLINARY CASES

With the introduction of CCTV becoming more widespread, it is important to understand the parameters for use of such equipment and this guide is a tool to help you achieve this.

The legal position

Under reg 3 of the Management of Health and Safety at Work Regulations 1999, every employer must make a suitable and sufficient assessment of the risks to the health and safety of its employees to which they are exposed while at work.

This requires a systematic examination of the workplace, examining the hazards present and the likelihood of them arising; the extent of this assessment will vary with the complexity of the operation.

The risk assessment is intended to identify the measures to be taken to comply with the employer's statutory duties (see reg 3). Because these duties include very general ones to ensure the health, safety and welfare of employees and to minimise health and safety risks to others, the risk assessment should cover all risks other than the utterly trivial, taking account of any relevant publications or guidance. Any assessment should be kept under regular review in the light of changing knowledge or practice: see reg 3(3).

In relation to the use of CCTV at work the two main relevant pieces of legislation are the [Data Protection Act 1998 \(legislation.gov.uk\)](https://legislation.gov.uk) (DPA) and the [Human Rights Act 1998 \(legislation.gov.uk\)](https://legislation.gov.uk) (HRA). The DPA 1998 does not prevent monitoring, however any adverse impact on the individual(s) being monitored must be justified by the benefit to the employer. The HRA applies primarily to workers in the public sector although private sector employees may be able to rely indirectly on the terms of the European Convention of Human Rights.

To help clarify the situation the Information Commissioner's Office (ICO) published, in 2003, [The employment practices code \(ico.org.uk\)](https://ico.org.uk), which seeks to explain the legal position and also sets out recommendations in terms of good practice. Part 3 of the code deals specifically with monitoring at work and is available on the internet. It can be found at: [The employment practices code \(ico.org.uk\)](https://ico.org.uk)

Overt surveillance

Staff and their Trade Union representatives should be informed and consulted in circumstances where overt surveillance is under consideration. In terms of the general approach to workplace monitoring the Employment Practices Code sets out five core principles that the employer should consider;

- It will usually be intrusive to monitor your workers
- Workers have legitimate expectations that they can keep their personal lives private and that they are also entitled to a degree of privacy in the work environment
- If employers wish to monitor their workers, they should be clear about the purpose and satisfied that the particular monitoring arrangement is justified by real benefits that will be delivered

- Workers should be aware of the nature, extent and reasons for any monitoring, unless (exceptionally) covert monitoring is justified
- In any event workers' awareness will influence their expectations

In order to determine whether monitoring should be used the employer should carry out an impact assessment to decide whether such a step represents a proportionate response to the problem it is seeking to address. An impact assessment involves;

- Identifying clearly the purpose(s) behind the monitoring and the benefits it is likely to deliver
- Identifying any likely adverse impacts of the monitoring
- Considering alternatives to monitoring or different ways in which it might be carried out
- Judging whether monitoring is justified
- Taking into account the obligations that arise from monitoring

If the employer decides to go ahead with the installation of CCTV systems, they should ensure that where possible monitoring is targeted at areas of particular risk and confined to area where expectations of privacy are low. Continuous monitoring of particular individuals is only likely to be justified in rare circumstances. **Workers should be informed of the extent and nature of any monitoring that is taking place and the reason for it.** Adequate notices should be displayed to inform workers that monitoring is taking place.

If CCTV evidence is gathered using overt surveillance methods, workers should have access to the information, be afforded the opportunity to explain or challenge the footage and be allowed to make representations before any disciplinary or other action is taken by the employer

Covert surveillance

The Employment Practices Code makes clear that covert monitoring should only be used in exceptional circumstances where criminal activity or equivalent malpractice is suspected. Furthermore, it should only be deployed as part of a specific investigation and should cease once the investigation is completed. Other information collected in the course of the investigation should be disregarded and, where feasible, deleted unless it reveals information that no employer could reasonably be expected to ignore.

Covert monitoring should not be used in places such as toilets and private offices except where there is a suspicion of a serious crime and there is an intention to involve the police.

The role of RMT representatives

In circumstances where the employer is considering the use of covert surveillance, it should seek the prior agreement of RMT representatives for the surveillance to begin. RMT representatives should only agree to such monitoring to taking place where there is a reasonable suspicion of criminal activity and/or serious wrongdoing.

Trade union CCTV agreements

In a case reported in the Labour Research Department's pamphlet: *Monitoring and surveillance*

- a *guide to privacy at work* pamphlet the GMB, following the use of CCTV evidence to discipline one of their members for spending too much time in the toilet, secured agreement from the employer that CCTV would only be used to detect theft or sabotage.

The trade unions at Walsall Borough Council have drawn up with the employer an '*employee surveillance protocol*' which provides a framework for circumstances in which CCTV, and other forms of surveillance, are in use.

- Surveillance is only allowed when it is essential to establish reliable facts following a reasonable suspicion of wrongdoing
- It must be a proportionate response - if a minor misdemeanour is suspected then going to great lengths to set up elaborate surveillance would be unreasonable
- Justifiable reasons for surveillance include crime detection or prevention, the protection of health and safety of the public and/or employees
- Fishing exercises are not allowed - surveillance should only take place for as long as justifiable under the terms it was approved

Here is a link on the use of CCTV from the Information Commissioner's Office:

<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/cctv-and-video-surveillance/>

Conclusion

With the introduction of CCTV becoming more widespread, it is important to understand the parameters for use of such equipment, particularly in the workplace and in disciplinary cases. However, should any member have concern that these parameters are being abused by their management this should be brought to the attention of their Branch Secretary.

In conjunction with this document, please also see *RMT's guidance on Body Worn Video Cameras* and *Model Body Worn Video Policy*.