

Employee's right to respect for private life

Earlier this month the European Court of Human Rights announced its decision in the case of *Copland v United Kingdom* (Copland v United Kingdom, 62617/00 [2007] ECHR 253), which concerned the monitoring and storing of personal information relating to an employee's telephone, email and internet usage.

Lynette Copland was employed by Carmathenshire College, which is administered by the UK Government and is therefore a public body to which the European Convention on Human Rights applies. Article 8 of the Convention states:

"Everyone has the right to respect for his private and family life, his home and his correspondence" (article 8(1)).

"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the for the protection of the rights and freedoms of others" (article 8(2)).

The Court held that the monitoring, collecting, and storing of information relating to Ms Copland's use of telephone, email and internet facilities, without her knowledge or consent, was an interference with her right to respect for her private life and correspondence under Article 8 of the Convention.

At the time that the case was heard, there was no domestic law in place in the UK regulating monitoring of telephone, email and internet usage by employers, and therefore the College's actions were not "in accordance with the law" as required by article 8(2). However, the Court noted that even if such legislation, for example the Regulation of Investigatory Powers Act 2000, or the Data Protection Act 1998, had been in force at the relevant time, the College would still have needed either to obtain Ms Copland's consent (for example through acceptance of her employment terms and conditions), or to have in place a clear policy or procedure dealing with the monitoring, collection and storage of personal information.

The decision provides useful confirmation that Article 8 of the Convention covers not only telephone calls but also email and internet usage in the workplace, and it is worth noting that simply storing the collected data, without using it for an adverse purpose, was also considered to be covered by the Convention. The decision also highlights the importance of putting in place policies or procedures, to ensure that employees are aware that their personal communications whilst at work may be monitored.

This e-briefing is sent to you by Anderson Strathern's **Employment Department**. We hope you find it useful. If we can help with any matters arising from this e-zine, or any employment law matter please contact **Neil Maclean**, or any other member of our team.