

**PROGRAMME: “NICE WORK”**

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Paul, ex-offender  
Katya Klasson, Head of Employee Relations, Confederation of British Industry  
Paul Cavadino, Chief Executive, National Association for the Care and  
Resettlement of Offenders (NACRO)  
Paul McDowell, Deputy Governor, Feltham Young Offenders Institute  
Godfrey Allen, Magistrate and Chief Executive Officer, Apex Trust

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Presenter Hello. Welcome to the new series. On the programme this afternoon, have you ever wondered whether your employer sometimes reads your emails? Well if you work for a large organisation you can stop wondering because it's standard practice. We'll be finding out how they do it and why. Also in the programme the launch of a “Nice Work” campaign to combat work-related stress and life after prison. A quarter of our workforce has a criminal record but a lot of them aren't admitting it because they can't get a job if they do. The government think it's come up with an answer, bosses organisation, the CBI is far from convinced. First though, the use and abuse of email at work. For millions of office workers sending and receiving emails has become a part of every day life, like making phone calls, or opening their post. Over the past decade it's become a ubiquitous business tool but, inevitably, like the phone, office workers don't only

use email for business purposes. Employers are worried, not least because improper use of their email system can expose them to legal action. It's not uncommon now for companies to be sued over sexist or racist emails sent by members of their staff. Concerns like that,

- Presenter along with the innate curiosity that all employers have about what their staff are doing on company time, have led to email monitoring becoming common practice. But what exactly are office workers using the office email for?
- Recorded voice "Just talking to mates, getting downloads and stuff like that, footie, loads of things, you know, just to make my job a bit more interesting during the day."
- Recorded voice "Personal banking, restaurant bookings, that kind of thing."
- Recorded voice "Just correspondence really with people that I don't see on a regular base and perhaps if I want to book a flight or something like that, I will do it in work time."
- Recorded voice "More business than personal but I tend to do a lot of group emailing because I'm not from here, so probably once a month is a massive half-an-hour email. I work hard, so I'm entitled to email my friends and sort out my weekend."
- Recorded voice "Organising where to go out in the evening, or you know which pub to meet at."
- Recorded voice "Ones to organise my evenings and stuff like that, catch up with friends. I should probably not spend quite as long on it as I do, but there you go."
- Presenter Unfortunately for those workers, computer software makes it childishly simple for their employers to monitor what they're getting up to. Most organisations search emails for thousands of key words in order to check whether they are business-related or indeed legal. That means that if a range of words that might be related to say, shopping, or foreign travel crop up in one of your emails, the computer system may stop it being sent or even tip off your manager about the content.
- Presenter Well joining me now from our Cardiff studio is Employment Lawyer Barry Clarke, who's a Partner with Russell Jones & Walker. Barry can employers read anything and everything we put in an email at work?
- Clarke They can certainly read a lot of it. The answer is they can intercept our emails but subject to limitations. The starting point is that an

employee is on company premises using company property on company time. An employer can therefore monitor and control the

Clarke use made of that property. The law doesn't say that an employer can't read our emails or at least not in those terms. What it says is that an employer can only read emails in certain circumstances where there will have to be some sort of balancing exercise between the employer's interests on the one hand, and the employee's natural desire for privacy.

Presenter Now we've got a new Code of Practice on employee monitoring being completed today, in fact, by the Data Protection Commissioner. What difference, if any, will that make?

Clarke I think it's going to produce a sea change in the approach employers take to monitoring staff. Up until now, the approach of many of them has been along the lines of, "it's my computer you're using so I can look at everything you do on it." By contrast the Code of Practice expects employers to carry out what it calls an "impact assessment" in respect of each type of monitoring of staff it proposes to carry out.

Presenter Right.

Clarke What it will do is prompt the employer to ask itself what exactly it's hoping to achieve through monitoring. It will prompt the employer to ask whether there's a less intrusive way of trying to achieve the same result, not necessarily involving reading all of the emails themselves.

Presenter Okay, thanks for that Barry. So what exactly is the bottom line here? How much time do people really waste on personal emails at work? Grahame Thomas and Robin Smith from the Security Consultants, Peapod are confident they know the answer to that. That's because rather than relying purely on technology to vet emails, they actually go into their clients' computer systems and carry out a full-scale audit of all the emails sent during a particular hour, day or week.

Thomas It was identified to us fairly early on by one of our customers that this technology wasn't actually solving the problem for them. So what we did for that particular client was manually audit a range of emails that we collected over a period of time because we felt that the only way to identify all of the material accurately was to look at each and every email message and the results were very surprising. We found, for example, that almost 80% of their email was personal usage. So only 20% of that corporate email traffic was business-related.

Presenter That's astonishingly high. So you're saying 80 out of every 100 emails were a total waste of time as far as the business was concerned?

- Thomas Yes, now as we've run more and more of these engagements, we've found that that was in fact the worst case to date, but typically I would expect to see around 60% of corporate email usage being personal. So the only way to understand how email is being used correctly is not to rely upon technology but to actually use the human brain to analyse each one of those emails.
- Presenter So you're talking about taking a team of real people into an office, sitting them down in a room and opening up every email on the system?
- Thomas Yes, it's actually a little bit more sophisticated than that. We have to firstly intercept the emails and we have to transmit them securely and store them on a secure server. We then have a piece of technology that enables each one of these reviewers to very quickly assess that material that's contained within the emails and then record the information that they've found into a database i.e. the type of email that it is, the nature of the content, the types of files that are attached.
- Presenter Robin can you show me how this auditing process actually works on screen? I can see lots of on-screen buttons along the top, what are they about?
- Smith When we've actually decided what kind of content there is in the emails, when we've actually read it quickly, we then click on one of the category buttons, so here we look at whether an email's illegal.
- Presenter I can see the whole list in front of me now. So it's whether it's defamatory, whether it's considered to be pornographic, whether it's sprout-chain mail I see crops up, that's a usual one isn't it? So there's a big pie chart on the screen here and that's telling me that nearly 40% of the email was not related to business at all, but 7% contained profane language and another 8% was potentially illegal or pornographic.
- Smith Yea, that's right.
- Presenter So what can you do with that data?
- Smith What we can do is determine the sort of average salary of the organisation, the number of working days that people tend to work every year and the time it would take somebody to actually read that email and then decide it was quite funny and send it off to all their friends. Multiply that up over the course of 20,000 employees, that figure becomes quite significant.

Presenter So this is the interesting bit really, isn't it? This is the bit that management are going to be really keen on because it tells them exactly how much all this time wasting is costing them.

Smith Absolutely, yes.

Presenter Grahame, it's all amazingly labour intensive and presumably expensive. Is it worth it?

Thomas Yes. What it's all about is whether you're going to get caught or not. So with this kind of system, because we're reviewing every single email for the audit period, individuals absolutely will get caught, and I think that is the best enforcement you could possibly have.

Presenter Barry Clarke, this sounds even more intrusive than monitoring for key words. How will it square with the new Code of Practice?

Clarke Well the code really emphasises the key of proportionality. What it says is that there should be a relationship of proportionality between the purpose of monitoring and the reasonable method used by the employer to achieve that purpose.

Presenter And do you think this will be considered reasonable?

Clarke Mmm, I have my doubts actually. I don't know the facts of the case but I think some of Peapod's clients might be in danger of putting the cart before the horse a little bit. What the code says, is the employer should identify what is the problem it's trying to counter. For example, is it employees downloading film trailers, is it pornography, is it people passing confidential information to a competitor, is it harassment? Once they've decided what the purpose is, they can then choose the most appropriate method of investigating it. If they suspect that there is harassment going on, then the most appropriate and least intrusive approach is to interview those under suspicion, not to go reading every single email that everyone's sent in that firm during the month of June.

Presenter Okay now because of the problems we've been discussing, some employers are attempting to tackle the issue by banning personal use of not only email, but phones, the internet, pages and mobiles as well. Glasgow City Council has gone down this route, but as these council workers explained, blanket bans can create problems of their own.

- Recorded voice "It's been an issue that's been discussed in every tea room, in every canteen in the council because really people are at a loss to make any sense of it."
- Recorded voice "I mean we talk about all these family-friendly policies and that certainly I think flies in the face of any of these initiatives."
- Recorded voice "I don't really want people to know all the circumstances of my private life which might be subject to an emergency phone call. To be honest, I don't trust everybody with that sort of information because gossip can be rife in the workplace."
- Recorded voice "I've got child-care commitments and if things go wrong I would like to be able to think if my child was ill that I could use the phone during my working hours."
- Recorded voice "It does give a veil of suspicion that staff are not doing their work. I think it's a bit heavy handed, I don't honestly understand why they have done this."
- Recorded voice "They should trust their employees, it's never been an issue in my workplace before. We've always had reasonable access and my workplace is quite an isolated place, there's no public phone boxes or anything close to me."
- Presenter Well despite all that John Brown of Glasgow City Council remains convinced that a blanket ban on personal use is the best way to go.
- Brown What we're trying to clarify is that the phones, the computers and internet are not for checking up holiday destinations or arranging somebody's social calendar. That is not what the equipment of the City Council is for. But there may be circumstances where a caring matter with either a child or a caring relative may be appropriate. It's an issue about resources but there is also an issue of time. If somebody's chatting for twenty minutes about arranging some social event or some football team, that is taking time away from their duties. There is plenty of opportunities for the individual to have these facilities either in their own home. The Council does provide learning centres. We have in all our libraries computer facilities and all the rest of it and with flexi-hour arrangements for many of our employees, there are other opportunities. But in work time, the use of these facilities are for the business of the council and that is what this policy is spelling out quite clearly.

Presenter John Brown of Glasgow City Council. Barry Clarke, if I can come back to you again, do you think a blanket ban is a reasonable policy for employers to adopt?

Clarke Well it's certainly one possible approach but I don't necessarily think it's the best one. Even an outright ban is fraught with difficulties. I'm pleased to see the Council is trying to be rather flexible in the way it implements it, but you can imagine how difficult it would be if I had to go and ask my boss in advance if I could make a private telephone call and explain to him the purpose for that as to why it was an emergency. I would feel that I was passing on information that I didn't really want to. Similarly, if I have to make a personal call, the whole point about them is that they're often urgent. So it would be good if pay phones could be provided in accessible places that would exist alongside a blanket ban. My own view is that the best approach isn't so much big brother but little brother and that is to allow reasonable use of internet, emails, telephones and so on for private and personal purposes. But to ensure that there is a clear policy that makes specific what the circumstances are for when these things can be used on a personal basis. So they're not for booking holidays at half past three in the afternoon, but it's entirely appropriate to do something on your lunch hour if you're sorting out meeting up with some friends in the evening.

Presenter Now of course the rights of both employers and staff are central to the whole question of monitoring and controlling employees at work. But given the opportunity to minimise uncertainty and risk, most businesses understandably will tend to go as far as they can to do so, and that's certainly been the experience in the United States as Professor Matt Finkin of the University of Illinois explained to me.

Finkin They can monitor the employee's movements by use of a chip card in the identification card that the employees register. They can monitor them by their computer use, which is done by about 78% of American employers. They can monitor their eating habits in the cafeteria.

Presenter How do they do that?

Finkin When you purchase food in the company cafeteria the computer will register the items that you bought, and if it's too high in cholesterol, you'll get a call from a company wellness officer, because after all in the United States medical care is provided mostly by private employers. My favourite is a computer chip, it records not only the moments you spent in the washroom, but whether you turned the water on and used the soap.

Presenter This is I take it is a health and safety measure?

Finkin That's right.

Presenter I've also heard about hidden microphones by water coolers, they're checking up on gossip, I take it?

Finkin Now we're beginning to watch on to the legality of it, that's dicey. There are some premises that are audio monitored and occasionally one will see a placard, the legal effect of which remains to be seen. But certainly hidden cameras are ubiquitous, displayed cameras are even more ubiquitous.

Presenter And computer screens with cameras in I understand as well?

Finkin That can be done. The idea is they want to know how much time you're actually spending at work. So the computer will record your number of key strokes per minute. Some employers are quite clever and they will leave a weighted object on the keyboard and it would constantly repeat the same digit over and over. So there are indeed models with tiny cameras, one can barely see the pin hole. When you're watching the screen literally, the screen is watching you.

Presenter How much of this is covert?

Finkin A good deal of it. There is no obligation to inform employees that this is going on. There are certain areas that are, I think, off limits, washrooms, places where the employee might be found in a state of undress.

Presenter Are there any limits on what bosses can snoop into?

Finkin Virtually none.

Presenter So are American workers just accepting this, or are they trying repeatedly to challenge this sort of intrusion in the courts?

Finkin For the most part, those who care about these issues tend to be white coloured employees, these are almost always cases involving high level sales people and middle managers and almost invariably they lose.

- Presenter Professor Matt Finkin of Illinois University and, interestingly, Professor Finkin thinks that the UK is at important crossroads on the whole question of monitoring staff at work, so it'll be fascinating to see if he's right.
- Presenter Now stress is the second biggest cause of work-related illness in the UK after back problems. One in five workers say they've been affected by it. The causes are well known, long working hours, conflicting demands, pressure from managers and the constant need to meet deadlines. What is less clear is how to solve the problem, and if a recent survey of local government of personal professionals is anything to go by, there may not be a lot of point expecting your employer to have all the answers. Two-thirds of them admitted they didn't know how to help staff reduce their stress levels. But as Gary, an IT Contractor told me, long-term exposure to stress at work can make life really unbearable.
- Gary The anticipation of the coming day, even starting from the night before, panicking about what you needed to do and would you be able to do it in time, would you personally and your team be up to it. Coming to some mornings and just not wanting to go to work because you knew what was facing you, and sometimes the problems were not understood by the management. So it was a case of you just had to get on with it, and as a contractor it was very much if you didn't get on with it, they'll find someone else who will. So the anticipation of the coming day sometimes is just unbearable.
- Presenter This summer the Health and Safety Executive have launched a campaign to raise awareness of stress at work, we'll be hearing about that later in the series, but with that in mind, "Nice Work" is going to be exploring ways to tackle the problem over the next few weeks. There are plenty of helpful techniques on offer, books, CDs, stress-management classes, advice lines, life coaches, yoga, but do any of them actually work? We're looking for three volunteers to road test stress busting techniques for "Nice Work." So if you're feeling the strain at work and don't know what to do about it, get in touch with us. I'll be giving out our contact details at the end of the programme.
- Presenter I bet you didn't know that a quarter of the UK workforce has a criminal record, and that's not including driving offences. That means there is a reasonable chance the person sitting next to you at work falls into that category, but even if they do, you're unlikely to hear about it because many ex-offenders conceal their criminal history when they apply for jobs. They argue the prejudice on the part of employers

Presenter gives them no choice. Now the government is thinking of drastically reducing the length of time after which convictions become spent and no longer have to be revealed to employers. The proposals wouldn't cover all offences and they wouldn't apply to jobs involving vulnerable members of the community or national security. I'll be discussing them in a minute, but first let's hear from our reporter, Mike Johnson.

Reporter I've come to a pub in Tilbury in Essex to meet 28 year-old Paul, that's not his real name. In total, Paul's spent more than two and a half years behind bars for burglary. Paul, you first left prison four days before your eighteenth birthday. What was it like trying to find work with a criminal record?

Paul Very hard. You went to employers, employers want to know where you were for the last six months. I told the truth. I was young, I was naive, I just assumed that people would give me the benefit of the doubt.

Reporter What was the result?

Paul Sorry you can't have a job, or maybe not even getting a reply.

Reporter And what happened next?

Paul I ended up going back into the system.

Reporter You broke into houses again?

Paul Yea, I was homeless, I was on the streets, and that's the only way I could earn money.

Reporter Paul was soon back in jail, this time serving a 21 months sentence for burglary. When he got out he vowed to take a new approach to job hunting.

Paul I started to lie because that was the way to get through the door. They ask you on the form, do you have a criminal record, you say no, and you just pray to God they don't check, or you pray that you've had enough time to prove your worth.

Reporter Did you find that you were getting interviews much more readily, much more quickly?

Paul Yea easily. It was easy to get an interview. I was on the level playing field.

Reporter The new tactic worked. Paul got a job soon after leaving prison. Now out of trouble for five years he's building a successful management career.

Paul I've got staff underneath me, I've got a couple of big contracts. I don't want to be on the benefit system, I don't want people paying for me to live, I want to do it myself.

Reporter But if your bosses knew about your record for burglary, what do you think they would say?

Paul I'd probably lose my job because they couldn't take the risk.

Reporter Do you feel guilty or bad in any way about lying?

Paul I feel guilty of my crimes, I don't feel guilty of lying to obtain work. If you don't want to be a criminal and you want to go out there and work, you have to lie to get a job.

Reporter But by lying, Paul is once again breaking the law. Under the Rehabilitation of Offenders Act unspent convictions must be declared to employers if they ask. "Nice Work" has spoken to several ex-offenders who say their only option is to defy that law to stand any chance of getting work and staying out of trouble and the government knows it. A root and branch review of the Act is now underway. Ministers are considering results of a Home Office study which calls for a significant reduction in the length of time criminal records need to be declared where there's no threat to children, vulnerable adults or national security. At the moment Paul has to tell employers about his conviction for ten years after the end of his sentence which for him means the year 2005. If the Home Office proposals are adopted, Paul could have stopped lying in 1999, just two years after his sentence expired. Those proposals have the full backing of Paul Cavadino, Chief Executive of the National Association for the Care and Resettlement of Offenders or NACRO.

Cavadino About 60% of the adult ex-offenders that we deal with have been explicitly turned down for jobs by employers because of their criminal record and in most cases those convictions had no obvious relevance to the job for which people were applying. It's not simply a question of prejudice, it's also a question of people wanting to play safe and by playing safe that means simply not taking on an ex-offender even if the conviction that they've got has got no relevance to making them a risk in the job.

Reporter It's a problem which the prison service is only too well aware of. Governors know if in-mates can find a job, it halves the risk that they'll re-offend. But they need some skills if employers are to see them as less of a risk. That's leading to a new breed of jail-based training programmes.

Reporter Here inside Feltham Young Offenders Institute in Middlesex, it's become a key part of the prison regime to give inmates the chance to learn a skill to help jump-start their careers.

Recorded voice "Keep the revs up Chris. That's right, hold it there."

Reporter This is Feltham's motor project workshop. It's been set up by the car maker Ford. The workshop gives prisoners the chance to gain a national vocational qualification in car maintenance but there's no guarantee of a job at the end. So far this year only one person has found work as a result. But it is early days. Feltham's Deputy Governor, Paul McDowell, believes changes in the labour market are slowly encouraging employers to be more willing to consider people with a criminal record.

McDowell Employers are, maybe understandably, reluctant to take on ex-offenders, when in the past they've had a wide range of people that they can take on to fulfil the tasks that they need. Recently we've seen the job market very much constricting, and so I think there is a real trend for employers to have to look at different ways of finding people with the skills that they need.

Reporter So speaking honestly, do you think there has been any substantial change in employers' attitudes to the people that are in your care?

McDowell I think honestly, I think substantial would be over-egging. I think there has been a shift in attitudes and I think that they continue to shift in the right direction.

Reporter The trouble is if ex-offenders feel they have to hide their prison past because of employer prejudice, they'll feel forced to lie once again when it comes to explaining where they got their skills. Former burglar, Paul, did work to gain a qualification while inside and it did help him find work. But he believed that if he was honest about where he'd got it, employers would run a mile.

Reporter So what did you say about that?

Paul I just, it's the college that did that course and said I did it at that college.

Reporter Hoping they wouldn't check?

Paul Of course, if you've got the certificate, it's got your name on it, it doesn't say what college it come from, you just hand it in, there's your certificate. Most people don't bother phoning up the college to say was this person here between this date and that date, because it's not worth their time.

Reporter According to Paul Cavadino of NACRO, as long as ex-offenders feel they have no choice but to lie to employers, much of the time and money now being spent on training them will be wasted.

Cavadino It's very important that ex-offenders have opportunities for skills training but that is of limited use if, having got the skills, they can't get a job because of unfair discrimination by employers. So developing skills and combating unfair discrimination have to go hand in hand.

Presenter Paul Cavadino ending that report by Mike Johnson.

Joining me from her office to discuss this I have Katya Klasson, who's Head of Employee Relations at the bosses' organisation, the CBI and with me in the studio is Godfrey Allen, a Magistrate and Chief Executive Officer of the Apex Trust which promotes employment opportunities for ex-offenders. Katya Klasson, if I can start with you, I think we can all agree it's advantageous to society as a whole for ex-offenders to find work. Clearly, many of them feel they have to lie in order to get a job. So isn't it a sensible idea to cut down the period during which they have these old convictions hanging round their necks?

Klasson Yes we do think it's a sensible idea to cut down the period. At the moment it varies from seven to ten years or never for certain serious crimes. But we believe that the proposal to cut the period to two years goes too far in the other direction.

Presenter So what would you propose?

Klasson I think our members would feel much more comfortable with a period of say four to five years and that's because after two years there is still

Klasson a significant risk of re-offending. 45% of people who have been in prison re-offend within two years and that falls to about 20% after four or five years.

Presenter Let me put that point to Godfrey Allen. What do you make of that? Is it actually more sensible to have a slightly longer timeframe, not as long as it currently is but not as short as two years?

Allen I think it really does depend on what gives employers the most confidence, because for most employers the thought is very much, you have someone with a criminal record, are they likely to cause trouble to my business. That's their primary concern and it's about being able to look at that particular individual, look at the conviction that they've had, make an informed judgement about the effect that it may or may not have on their ability to do their job, and then make a decision based on that as opposed to arbitrary figures about whether it's two years, three years, four years, or five years. Because we can clearly see from history that it really hasn't been working very well and employers are not particularly confident by all our research in the current arrangement for disclosure.

Presenter Katya, would it be fair to say that a lot of employers are actually placing too much importance on the conviction which might be years old and indeed totally irrelevant to the position you're trying to fill, rather than focusing on the skills and suitability of the job candidate?

Klasson I think it's about getting the balance and I think it is important to look at the conviction and how relevant it is and assess it against the person's other skills and experience. But equally we need to recognise that the criminal record can be evidence that is relevant when you apply for a job. So, for example, if you have a conviction for fraud, you're unlikely to get a job in financial services and equally if you have a conviction for say theft, or arson, you're not going to get a job in the security industry. And I do think they have to recognise that employers have a duty towards their other employees as well as to customers to make sure that the people they take on are suitable.

Presenter But isn't it fair to say that this opens the door for most employers to just habitually reject all ex-offenders?

Klasson I don't think that's necessarily the case. I do think as a matter of good practice employers should look at the relevance of the conviction and assess it against other skills and experience and they shouldn't just automatically bar anybody with a criminal record from applying to their company, and it is an issue about balance, that's what it comes

Klasson down to. And I think also what your programme has shown, is that it's an issue about changing attitudes and the best way of doing that, I think, is through case studies. So, for example, there are now more and more companies that are working together with the probation service to try and encourage ex-offenders into particular jobs. I was speaking to one last week.

Presenter Well indeed this is very much of course what Godfrey does. Let me put this point to him. What advice do you give to employers in this situation?

Allen Well at the moment they do have the option of getting in touch with their own organisations, be it the CBI, Institute of Directors or indeed there's a number of help lines. We're involved in running the help line as well which is aimed at employers and ex-offenders so they can get independent advice if that's what they're looking for. But we'd always say that the primary consideration for an employer is, is this person able to do the job that we're advertising, you know, what are the criterias there?

Presenter Katya Klasson, Godfrey Allen, I'm afraid we have to leave it there. Thank you both very much indeed.

Join me again for another live edition of "Nice Work" at the same time next week.