AISMA Doctor Newsline

A helpful resource for the practice business

GP income Useful tips to help you look after the pennies ▶3

Your business A quick catch-up on topics you may have missed ▶5

Curing the blues Yes, you can make your business better! ▶6

Email control Beware the legal risks of monitoring staff ▶8

Issue 35 Autumn 2016

Fraud: check you are using effective protection

Hot on the heels of our last issue's alert about fraud threats from outside the practice, AISMA members have been busy preparing more detailed advice.

Here we outline key areas to protect yourselves from threats from within – adapted from the Association's new *Guide to Preventing Fraud in Medical Practices*

Internal financial controls in some practices are so poor they are leaving themselves open to financial loss through insider fraud.

A small minority of insiders will commit fraud if the opportunity arises. Thankfully rare, these cases can cause catastrophic financial loss.

People who commit fraud inside a medical practice may be sophisticated criminals who target practices with poor financial controls. Or they may be long-serving staff members who are trusted by the partners but have personal financial issues or cash flow pressures.

Whatever the case, opportunities to commit fraud within the practice, for example by creating fictitious payees, syphoning off over the counter cash or de-frauding the NHS by, for example manipulating claims, adding ghost patients to increase the list size or mis-managing prescription claims, need to be minimised.

Funds generated in this way could be diverted into the hands of the fraudster without the partners' knowledge. This could also lead to a visit from the NHS Fraud Investigation team and action potentially being taken against the partners who had no knowledge of what was being perpetrated.

All medical practices should have a proper system of financial checks and balances to ensure they are not losing money through fraud.

The accountant's role

While accountants prepare the annual financial statements for the practice they do not audit the accounts and underlying books and records. So it

is essential to understand that the work they do is not specifically intended to spot a fraud. Robust internal financial controls are essential.

See how much you are at risk

Answer these questions to help rate your practice's financial controls:

1 Are the accounting records for the practice overseen by more than one person?

2 Are periodic financial reports produced monthly or quarterly and reviewed by at least one partner?

3 Is any comparison made between results from previous years and/or previous months and are discrepancies followed up?

4 Is there a designated finance partner and, if so, do they have a clear understanding of the practice's financial systems?

5 Are the people who open the post distinct from those who look after the day-to-day finances?

If the answer to one or more of these questions is 'no', the practice is at risk of fraud.

Share the burden

AISMA accountants are finding that partners in GP practices often take little active involvement in the practice's financial affairs. Even if there is a designated finance partner, their time is eroding rapidly and they frequently rely on their practice managers to look after most aspects of the practice's finances.

But the burden of total financial responsibility for GP practices should never rest solely with the practice manager. Given the role's already wide-ranging remit, this is an unreasonable expectation. Segregation of duties is essential.

Insider fraud: how it can happen

The following example highlights how poor internal controls exposed a practice to considerable financial loss.

The practice manager had been working at the surgery for many years and was a trusted member of staff with immense control over day-to-day finances. This is what happened:

Cheques for high value personal items were signed unwittingly by GP partners who did not ask to see supporting documentation.

Suppliers including HMRC for PAYE, were not paid on time, partly because the cash flow was in such a poor state after the practice manager's personal spending spree. The partners were unaware of the situation because the post was opened by the practice manager who shredded statements and chasers for payments.

Payroll included additional payments passed through over and above normal salary levels. There was no requirement to authorise or even show the payroll reports to the GP partners prior to instructing the bank to make the payments.

Financial reports were non-existent and the partners did not review practice results regularly. This left the practice manager free to de-fraud the practice over several months before the truth came to light.

Safeguard cash too

Safeguards should be in place for recording, accounting for and receiving all cash coming into the practice. This is particularly relevant to dispensing practices because the increased amount of cash flowing through the practice makes it easier for someone to steal unrecorded money.

Here are some guidelines:

- Where the practice receives money from patients over the counter, a carbonised receipt book with pre-numbered pages should enable a quick comparison between cash recorded and physically counted. Clearly, these figures should be the same. Any discrepancies should be followed up immediately.
- Prescription cash collected from patients should equal the charges deducted by NHS Prescription Services (previously known as the PPA). While it can be difficult to match this exactly because of the delay in getting statements from NHS Prescription Services, and because sometimes charges will be deducted if an exemption hasn't been correctly claimed, large deficits should be investigated.
- Segregate tasks so that the person who handles the cash is different from the person recording it.
- Large quantities of cash should never be kept on site and should be banked regularly. This is important from both a security and cash flow viewpoint.
- Restrict access to petty cash to achieve tighter control over expenditure and aid reconciliation between the petty cash records with money physically available.
- Consider installing a card machine at reception which would limit the opportunity for cash to go astray or to fall into the wrong hands.

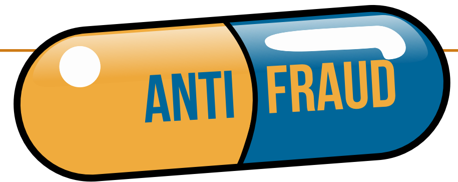
Professional risk

Strong internal controls not only reduce the risk of financial loss but also professional risk. For example, the use of locums is commonplace but controls over their identity, qualifications and defence cover arrangements must be effective. Take these steps to protect your practise:

- Contact the GMC to check the registration of the locum and their eligibility to practise.

- Request and take a photocopy of the locum's current professional indemnity cover. Without this in the event of a claim or action by a patient, the partners could be liable for the cost of a legal case.
- When the locum presents their invoice, check both the sessions you are paying for and the rates of pay. There have been cases where additional hours have been added on to the invoices and rates of pay are not as agreed.

For your copy of the AISMA Guide to Preventing Fraud in Medical Practices please contact your AISMA accountant.



Financial control check list

Use this check list to put specific financial controls in place to help reduce the risk of fraud in your practice:

- If payments are made electronically, for example by BACS transfer, supporting documentation should be presented to the partners and reviewed for reasonableness. The BACS forms should be signed as approved to provide evidence that authorisation stems from the partner group.
- Only partners should have the power to authorise standing orders and direct debits.
- A critical review of payroll reports should be carried out by someone other than the person who processed the payroll. This is likely to be a partner.
- A partner should check the practice bank statements and seek out supporting evidence for any unusual transactions. The partner should also examine the bank reconciliation each month to look out for old outstanding items.
- There should be a minimum of two cheque signatories of which at least one should be a named partner.
- When cheques are presented for signature, supporting documentation should be reviewed to ensure payments are for bona fide expenses.
- Never sign a blank cheque.
- Decide on a level, say £750, above which orders should be authorised (and evidenced as such) by a partner. For example orders for office supplies, drugs and medical supplies.
- Ensure that when deliveries are made to the practice for drugs, stationery, equipment and so on, the condition and quantity of the goods is checked before signing any delivery notes.

Smart answers to GP income pressures

Look after the pennies and the pounds really do look after themselves. **Fiona Dalziel** shares a wealth of tips to help you

I have been supporting a new practice manager who has recently been making a huge impression on the GP partners.

Although she had strong people management skills she was aware her financial management skills were weaker. She felt anxious about the complexities of general practice income and could see her new employers were keen to protect profits.

Childhood immunisation targets were being missed. Income from enhanced services was inexplicably falling, and staff costs were rising.

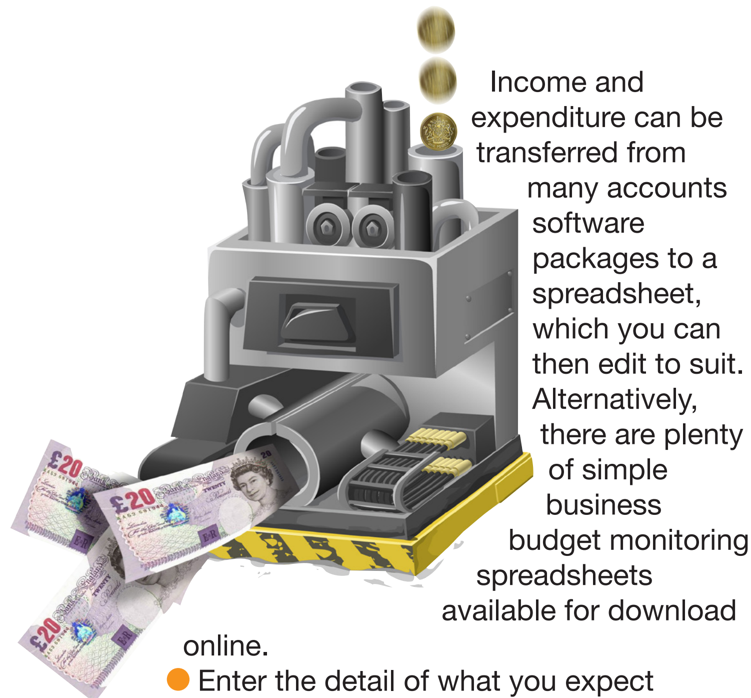
But, by the end of the following full financial year, the accounts showed that falling profits had stabilised despite practice concerns about a disappearing MPIG and threats to PMS income.

So what lessons can practices take from this?

Know the detail of what's happening

- Establish a spreadsheet which identifies all the income you expect to receive, predicts costs you will have to meet, and then allows you to record what actually happened.

Not only will you start to notice possible impending cash flow issues, but you will become intimately familiar with every single income source and cost centre.



Income and expenditure can be transferred from many accounts software packages to a spreadsheet, which you can then edit to suit. Alternatively, there are plenty of simple business budget monitoring spreadsheets available for download online.

- Enter the detail of what you expect each month and then adjust for what actually happened. The manager I was working with made the headings very detailed in order to be sure she was not missing anything. This made a difference.

Scan the financial horizon

Look ahead through the year for anticipated changes or costs, such as a cost of living pay award, new premises, or a retirement, and include estimates for them in the relevant months.

And look ahead for less frequent events such as partner tax and possible superannuation balancing payments. Get the accounts finalised as soon as possible after the year end so that you can ask your accountants for a tax estimate.

Unexpectedly high maintenance costs on a new build or a shock from a superannuation underpayment do little for morale. Let your mantra be 'No surprises!'

Keep an eye on suppliers' contract charges and renewal dates for services such as telephones and photocopiers. Could you renegotiate or get a better deal somewhere else?

Checking and chasing

- Monitor QOF points by clinical area on a monthly basis, compare with previous years, and take action if an area is lagging behind.
- Set up an enhanced services claims monitoring sheet so you can see at a glance submission deadlines, claims submitted and expected income.
- Get to know someone by name at Primary Care Support England, your Local Health Board (Wales), the Health and Social Care Board (NI) or the Practitioner Services Division (Scotland). The manager I was supporting found this helped her when she had a lot of questions to ask or when she was querying a missing payment.

Non-GMS income

Many practices have found that their non-GMS income has also been eroded in recent years. The new manager's practice did offshore medicals for the oil industry, but these had fallen off sharply.

She delegated non-GMS invoicing and monitoring to a member of her admin team and refreshed their system.

- They decided to design a dedicated spreadsheet so they could actively chase missing payments. Specialist software is also available and the IRIS accounts package does something similar.
- They introduced a policy of not providing reports (insurance, solicitors, and others) without payment in advance.
- They updated their non-NHS fees and increased some quite considerably in line with the work required and in relation to average fees charged nationally.

The cost of people

The most significant savings are to be had through actively monitoring your staff budget.

Planned increases to superannuation and National Insurance costs plus the impact of the National Living Wage mean that this is vitally important.

When establishing a system for monitoring the staff budget, we considered the following:

- Alternatives to replacement: The practice now has a policy that, when a member of staff leaves, a straight replacement is not the automatic default. It may be that some tasks could be redistributed and the hours reduced.
- Alternatives to doctors: Most practices have been forced into consideration of how GP work can be covered by other health professionals such as advanced nurse practitioners or pharmacists. There is often a cost saving associated with this kind of workload shift.
- Minimising staff overtime: The practice was in the habit of covering staff shortfalls with overtime, and in the case of the practice nursing team, costs were high. We looked at alternatives to overtime and set up a system of pre-authorisation.
- Monthly reporting: It was made routine to report monthly to the partners on staff costs, using a summary spreadsheet showing management, office/reception staff, nursing and locums separately.

Fiona Dalziel runs DL Practice Management Consultancy

OPINION

Dealing with ever-growing GP business complexities

Deborah Wood, Vice Chairman, AISMA

As many GPs and practice managers were away in the summer break I think a quick catch up on some of the topics that have arisen over recent months will benefit a wider audience.

All the following issues have led to requests for advice from AISMA member firms.

Flexible benefits schemes

All practices will face issues around staff retention from time to time and this is most certainly the case right now.

Retaining good people is vital throughout the workforce but this is not always easy with a limited expenditure budget.

Employees do value rewards in different ways so consider organising a flexible benefit (or salary sacrifice) scheme to allow staff a range of options for their remuneration package.

There can be tax, NIC and pension contribution savings as a result and if the choices are available at your practice rather than another one it could be the difference between keeping and losing an employee.

Typically the benefits that might be offered include childcare vouchers, cycle to work scheme, car parking, shopping vouchers, health screening, dental care plans and additional holiday.

Take advice from your accountant to ensure things are set up correctly to satisfy HM Revenue and Customs (HMRC).

Merger matters

This seems to be the topic my practice clients are extremely interested in.

A merger is never an easy process and requires a strong steering committee with plenty of time allocated for planning and implementation prior to merger day.

Profit estimates, premises ownership, staff employment issues, NHS contracts and a new partnership agreement may well be the more complex aspects to get to the bottom of.

Take advice from your specialist advisers in all of these areas particularly with regard to tax planning, pension implications and legal documentation. Leave time to obtain valuations and shop around for re-financing practice-based loan arrangements.

MCPs

Many *AISMA Doctor Newsline* readers are by nature forward thinking practitioners and practice managers. They are involved in planning for local changes arising out of the *GP Forward View* and may even be helping to get a new Multispecialty Community Provider (MCP) off the ground in their locality.

CCGs seem to be keen to engage with ideas in this area and to make funding available. There is a lot of crossover with fledgling federation organisations, more advanced provider companies and GP practices in order to establish new integrated models of care.

As everything is as yet untried and untested there is a steep learning curve and there are many questions around the nature of the transactions between the various parties, particularly from a VAT and NHS pensions point of view.

AISMA member firms are developing thought leadership in these areas and spending time on behalf of our clients in discussions with all parties to make sure GPs and practice managers understand the potential implications of their direction of travel.

Retirement issues

By far the most popular subject seems to be that of when to retire. GPs are in particular needing the right information regarding final pension benefits and tax implications on which to base the decision.

There are major tax savings available by acting on the right advice at the right time regarding annual and lifetime allowance tax charges, scheme pays applications, protection applications and timing of pension drawdown (both NHS and private).

Highly specialist knowledge is required to give the right answers and this will involve not only tax calculations but independent financial advice too. Obtaining meaningful and up to date details from NHS Pensions has become more difficult especially for practitioners.

Both NHS Pensions and HMRC require almost all interaction to be digital through the Government Gateway which means your specialist accountants, as agents, cannot always deal with things directly on your behalf.

It may take many months to obtain relevant data that has been checked and is suitable to use to base pensions and tax forecasts on. So advanced planning is essential and should start around five years before an intended retirement date.

As you can see from the above the summer has not been one of quiet contemplation but of complex thought-provoking activity by AISMA member firms on behalf of their clients. I am sure the next few months will not be very different.

A cure for the practice blues may be nearer than you think

Helping GPs re-capture the love of their profession and feel in control of their practices again has been a big part of the work of **Gaynor McIntyre*** over the last year.

She believes the current challenges they face represent just one of the stages in the predictable life cycle of a business and the sooner partners grab the bull by the horns and take some action, the sooner they will see some light at the end of the tunnel and get back to doing what they are great at. And it is not even that difficult…

The starting point is simple. The way to assess exactly where any business/GP practice is in its life cycle is to ask a simple question: 'If your practice was a person, how would it be feeling today?'

And if the answer is something like, 'frustrated, stressed, sick' or, as one GP confided to me, 'terminally ill', then it is crystal clear what needs to be done.

But with GPs what I tend to hear are all the reasons why it is too difficult to change:

'Well we're not really a business' or,
'We can't do such and such because we don't own the building' or,
'We can't amalgamate with the other practice in our building because they're on a different system to us' or,
'We operate in a very deprived area so that's why we have a high demand'.

The list of excuses is endless. This feeling of being trapped in a vicious, unmovable cycle of destructive behaviour then becomes worse and GPs hit the wall - and leave.

I often get called in at the point of no return, when practices are about to wave the white flag, when GPs are resigned to admitting failure and have chosen to adopt a seemingly easier life as a locum or salaried GP. Sad but true.

In my view, running away is not the only way to address the problem. In my world you can always make things better. There are always actions partners can take that will improve the situation and ensure the business runs smoother.

But this will only happen if partners work as a close team. Part of the problem, I observe, is a general reluctance to take risks.

GPs tend to operate on the side of caution so they put with up situations and behaviours that managers in the private sector would not even contemplate for one minute.

Now I fully accept that GPs are not trained in how to run a business, but if they have a practice manager there are really no excuses. I can't tell you how many times I have witnessed negative staff, inappropriate behaviours, poor people management, failing protocols, unfairness between GPs, or individuals not stepping up.

One practice manager even told me: 'Well you can't get rid of anyone these days.' What a lot of total rubbish.

Take some of the practices I am working with right now. In one, the issue was a structure that was too dependent on one GP and had too many managers due to a prior TUPE transfer.

We carried out a simple practice restructuring project and looked at the business case for change. We then made one of the management posts redundant and erased the practice overnight of toxic negativity.

The result was a swift culture change. The practice now has four GPs, one who is very entrepreneurial, and the practice is a happier, energised place to work. It has a reception and admin team who are aligned and take full responsibility for what they do.

In another practice we are taking things to a different level. We have analysed the data to really understand where the source of the problems sit, we have tightened up the management structure and taken action against staff with conduct issues.

We have also reviewed every task required to deliver excellent patient care and looked at what tasks can be done by non-clinical staff to better support GPs.

Tasks that HCAs can take away from nurses and nurses can take away from GPs have been clarified. The practice is now implementing change, including better patient signposting.

We have introduced patient consultation and education and the practice is looking to invest money in improving technology, including an out-of-date phone system.

Might this mean that some of the partners may need to invest in the practices? Yes. Indeed, I encourage it. Businesses have to invest in their own resources and capabilities if they want to shift from where they are sitting today.

For me it is all about helping practices strengthen their management foundations and giving partners the confidence to make decisions they have been putting off until now.

And it is amazing how quickly things can start to change. Even something simple like reducing GP paperwork is a perfectly easy goal to achieve, creating some much needed space for doctors.

Suddenly GPs start telling me that their practice is feeling healthier and happier and on a road to feeling physically and mentally better. And as soon as they say that, I know I have done my job.

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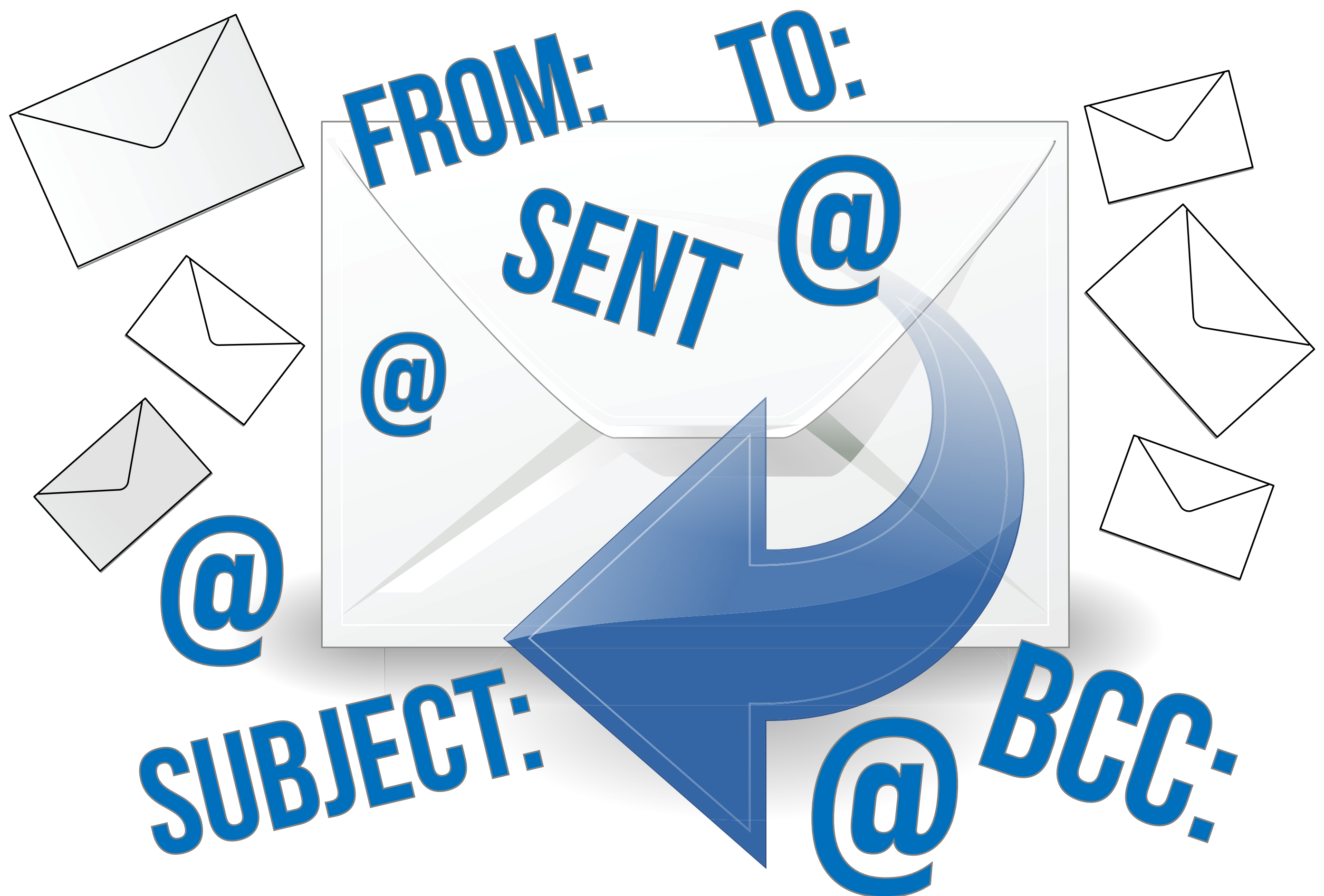
Beware the risks of email monitoring

Do practices have the right to monitor and use employees' private communications in disciplinary proceedings? **Alison Oliver** and **Fiona Campbell** of law firm Ward Hadaway explore this question in light of recent case law



Article 8 of the European Convention on Human Rights gives everyone the right to 'respect for his private and family life, his home and his correspondence'. This is then incorporated into UK law by the Human Rights Act 1998, which is relevant to all employers.

Courts and Employment Tribunals must, so far as possible, interpret all legislation consistently with the relevant convention rights. And employers must process personal information in accordance with the Data Protection Act 1998.

So do the 'right to privacy' and employers' data protection obligations prevent a practice from monitoring and using an employee's private communications in work-related matters?

The recent case of Garamukanwa v Solent NHS Trust extends the types of material that employers may be permitted to use.

The case

Mr Garamukanwa was employed by Solent NHS Trust as a clinical manager. He had a relationship with staff nurse Ms Maclean, which ended.

He was dismissed, without notice, by reason

of gross misconduct after the Trust found he had launched a campaign against Ms Maclean and another colleague, Ms Smith.

Mr Garamukanwa claimed they were in a relationship together and had engaged in inappropriate sexual activity at work.

He made these allegations directly to them and it was found by the Trust that he had sent anonymous emails and letters to colleagues making the same allegations.

As part of its investigation process, the Trust was given copies of photographs and documents that the police had acquired through their own investigation, which followed complaints made to them by Ms Smith and Ms Maclean.

This included material that, in the Trust's view, was sufficient to link Mr Garamukanwa to certain malicious emails that had been sent anonymously.

Mr Garamukanwa's internal appeal was unsuccessful and he brought a number of Employment Tribunal claims. He argued that the Trust had breached Article 8 by failing to respect his right to a private life, by examining matters that related to his private life, and by using evidence in relation to such matters to justify its decision to dismiss him.

The Employment Tribunal held that Article 8 had not been engaged because:

- The conduct of the person who sent the anonymous emails had an impact, or potential impact, on work-related matters and accordingly the employment relationship between that person and the Trust as their employer.
- The emails were sent to work addresses and dealt at least in part with work-related matters.
- The impact on Ms Maclean and Ms Smith affected their emotional stability and caused distress to an extent that could adversely affect their performance at work.
- The Trust was properly concerned that if Mr Garamukanwa was responsible for sending the emails it would raise questions about the requirement for him to behave in an appropriate manner, having regard to his senior position and the fact he was subject to professional standards.

The Employment Tribunal dismissed the claims and Mr Garamukanwa appealed.

But the Employment Appeal Tribunal (EAT) dismissed his appeal. The EAT found that the Employment Tribunal had been entitled to find that, on the facts, Article 8 was not engaged because Mr Garamukanwa had no reasonable expectation of privacy in respect of what he termed the private material:

- The Employment Tribunal was considering a disciplinary investigation into matters that, while relating to a personal relationship, had been brought into the workplace by Mr Garamukanwa. The emails of particular concern were sent to work email addresses, had an adverse consequence on other employees for whom the Trust had a duty of care, and raised issues of concern so far as the Trust's working relationship with Mr Garamukanwa was concerned.
- The Tribunal had been entitled to take the approach of not separating out the 'private' material as Mr Garamukanwa had argued it should. No such distinction had been made by the police who had provided and given the Trust permission to use all of the material from its criminal investigation.

What does this mean for practices?

The case of Garamukanwa v Solent NHS Trust extends the situations in which an employer can monitor an employee's communications to include personal or private emails, provided the employer can show that the emails are impacting on the workplace and at least touch on workplace issues.

Nevertheless, practices are urged to exercise a degree of caution. For instance, a private argument entered into by colleagues in a personal relationship but which resulted in one party being upset at work, would almost certainly continue to engage Article 8. The above case involved extreme behaviour, over an extended period of time, impacting on several employees.

Practices should adhere to the Information Commissioner's Employment Practice's Code which recommends that:

- If it is necessary to check the email accounts of workers, ensure that they are aware this will happen;
- Ensure monitoring is confined to the address or heading, unless it is essential for a valid and defined reason to examine content; and
- Encourage workers to mark personal emails as such and to tell those who write to them at work to do the same.

When undertaking a disciplinary process which relies on emails or evidence which could arguably be considered personal, practices would be well advised to take legal advice before progressing.

Alison Oliver and Fiona Campbell are solicitors with law firm Ward Hadaway