

USE OF SURVEILLANCE CAMERAS IN SOCIAL CARE

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SESSION AIMS

To raise awareness and discussion around the use of cameras in care settings – legal and ethical issues

To clarify what is meant by privacy

Consent

UK Law

Risk Assessment

Case studies and discussion – interactive part

Alternative AT options





Privacy

“a state in which one is not observed or disturbed by other people”

“If you have privacy, you are in a place or situation which allows you to do things without other people seeing you or disturbing you”

“The state or condition of being alone, undisturbed, or free from public attention, as a matter of choice or right; seclusion; freedom from interference or intrusion”



PRIVACY IS OPEN TO
INTERPRETATION AND
MEANS DIFFERENT
THINGS TO DIFFERENT
PEOPLE.

▶ Private?



IF WE ARE WALKING IN THE STREET – IS THIS PRIVATE?

▶ Private?



IF WE ARE DRIVING ON ROADS AND
MOTORWAYS – IS THIS PRIVATE?

▶ Private?



IF WE ARE WALKING AROUND A SHOP – IS
THIS PRIVATE?

▶ Private?



IF WE ARE ASKING ALEXA OR GOOGLE
SOMETHING – IS THIS PRIVATE?

OUR RIGHT TO PRIVACY

Article 8 – the right to respect for private and family life, your home and correspondence

(Human Rights Act, 1998)

What's meant by private life?

Private life has a broad meaning. It means you have the right to live your life with privacy and without interference by the state. It covers things like:

- your sexuality
- your body
- personal identity and how you look and dress
- forming and maintaining relationships with other people
- how your personal information is held and protected



What's meant by family life?

Family life includes the right to have and maintain family relationships. It covers your right not to be separated from your family and to maintain contact if your family is split up

To decide if a relationship is covered by family life what matters is the closeness of the relationship rather than the legal status

Relationships covered by family life include relationships between:

- parents and their children, including illegitimate and adopted children
- husband and wife as well as unmarried couples
- siblings

Same sex couples are protected under article 8 but their protection falls under their private life rather than family life



What's meant by home?

Your right to respect for your home doesn't mean you have the right to housing but it protects the home you already have. It means public authorities mustn't prevent you from entering or living in your home. You also have the right to enjoy your home peacefully without intrusion by a public authority

A public authority may need to take positive steps so you can peacefully enjoy your home - for example, by reducing air craft noise or protect your home from serious pollution



What's meant by correspondence?

Correspondence includes things like:

- letters
- emails
- fax
- telephone



Examples of article 8 breaches



Examples of where there could be a breach of article 8 include:

- searches and surveillance of your home
- your right to privacy at home and at work - for example, phone tapping, the monitoring of emails and internet use, CCTV
- if your personal information is disclosed to other people without your consent

Qualified rights

A public authority can sometimes interfere with your rights if it's in the interest of the wider community or to protect other people's rights. These rights are qualified. **Article 8 is a qualified right**

A public authority can only interfere with a qualified right if it's allowed under the law. It must also show that it has a specific reason set out in the Human Rights Act for interfering with your rights. The Act calls these reasons a **legitimate aim**

Examples of legitimate aims include:

- the protection of other people's rights
- national security
- public safety
- the prevention of crime
- **the protection of health**



The interference must be no more than what's absolutely necessary to achieve one of the aims in the Act. The Human Rights Act says the interference must be **necessary in a democratic society**



Live facial recognition cameras

Surveillance cameras on our streets

Roads

Shopping areas

Schools/ colleges

Public buildings (libraries etc)

Parks

Drones and aerial cams

Dash cams

Vest cams



THE USE OF CCTV AND CAMERAS IN OUR HOMES

Security

Pets

Children

Elderly relatives





ELDERLY RELATIVE / DEMENTIA

Worry around leaving their loved one alone

Need to check on them when carer/family not there

AT can be used to enable someone to remain independent and safer in their home for longer

Does not automatically justify use of a camera



LEGAL AND ETHICAL ISSUES

Consent?

Apply the MCA key principles and rules

With Capacity; –

Decision is theirs to make and must be respected even if family/carers disagree



Choices can only be made if people have information. If they know the options, the risks and possible implications they can make the choice that is right for them. This is 'informed' choice

LACKING CAPACITY



Decision is made in the person's **Best Interests**

Least restrictive

When judging the best interests of people without mental capacity to give informed consent, practitioners should strive to find the right balance between quality of life outcomes, including independence, and safety



DOES A CAMERA BREACH THE PERSON'S HUMAN RIGHTS?

Right to privacy can be infringed upon but it needs to be carefully considered

Are the camera's recording and storing information?

Who is viewing it?

Recordings are personal to the person and should not be widely shared

If the recordings highlight abuse or neglect then this should be shared with social care services

Legally the use of cameras do infringe upon a person's right to privacy and dignity, and so if used, careful consideration is needed and consultation with a professional from social care



WHO ELSE DOES THE CAMERA AFFECT?

Care staff or visitors to an individual may be uncomfortable being watched or recorded

It could breach their rights and they can take legal action

UK SURVEILLANCE LAW

How do users of cctv/cameras stand when it comes to the law?



There are two key things to remember when considering whether your actions are legal or illegal;

-firstly does the subject have a reasonable expectation of privacy and secondly, do they give their consent?

The latter typically supersedes the former. You can't have a reasonable expectation of privacy if you consent to working in an office where your conversations will be recorded, for example

A reasonable expectation of privacy



The key measurement, should you need to defend yourself against accusations of illegal or unethical use of cctv/camera equipment, is that the subject had a reasonable expectation of privacy

In short, that's why it's legal for you to place surveillance in your own living room but not the bathroom..

There are exceptions to this. For example, it's legal for the police to bug your house. You may have a reasonable expectation of privacy in your own home but if you're suspected of criminal activity, the pursuit of justice and protection of the public takes precedence

Consent

The concept of consent is very important too. While most people may take issue with having their likeness or voice recorded and stored, they regularly imply consent to this without really considering the implications. For example, the words “calls are recorded for training and quality purposes” are effectively soliciting implied consent. If you stay on the line, you accept these conditions



Relevant UK Legislation for Spy Equipment

The use of cctv/camera equipment falls under one or more of six separate pieces of UK legislation

There is no specific law on privacy like the Privacy Act of 1974 in the States, but our right to privacy is covered mainly by the Human Rights Act

The Data Protection Act governs how data handlers manage and protect our personal data. If you are a data handler you must comply with the **Data Protection Act** too, or face heavy fines or even imprisonment

So, if for example, you legally record a conversation taking place during office hours at your business, and then post that online, you could potentially be in breach of the Data Protection Act. The employee may have given consent to be recorded by signing their employment contract, but it's unlikely they'll have given their consent to having those conversations made public or shared



The CCTV Code of Practice – recording could breach the non-legislative code of conduct. In order to operate certain pieces of equipment, for example closed circuit networks, one needs to sign up to specific codes of practice

The 1998 Wireless Telegraphy Act covers the use of discreet or hidden recording devices. Significantly, it's an idiosyncratic piece of law that actually seems to protect the person using the camera more than the subject

The Lawful Business Practice Regulations Act covers the monitoring of employee behaviour, typically computer and telephone usage. The relevant parts are in the main there to protect employee privacy and prevent them from being unduly snooped on. Public bodies, such as the police, HMRC or spy agencies are subject to the **Regulation of Investigatory Powers Act**, which limits and controls their powers to record, monitor and gather information on members of the public



Cameras and the Law in the UK

Under UK law you are generally permitted to use cameras, under certain conditions. Elements of the **Data Protection Act** and the **Human Rights Act** govern where you can and can't conduct recording, but in general their use is legal

Key considerations for legally using spy cameras in the UK:-

- It is illegal to fit spy cameras to a business or residential property that you do not own or in which you don't have legal occupancy
- It is **legal** to set up a camera in your own home or business
- It is illegal to use spy cameras in areas where subjects may have a reasonable expectation privacy. The office is fine, the toilets or bathroom are not



- You can fit and operate a CCTV system to the outside of your property, provided it doesn't infringe on anyone else's right to privacy. For example, you may breach the Human Rights Act if your CCTV camera is pointing directly into a neighbour's bedroom



- It is illegal to make sound recordings on CCTV networks

- All CCTV systems recording in public must be registered with the Information Commissioner's Office

- All CCTV systems used in public must be accompanied by signs that alert members of the public that CCTV is in operation

- You must take reasonable steps to safeguard and protect any footage gathered via a public CCTV system. Failure to do this, for example leaving a DVD of CCTV footage unattended or uploading footage to YouTube, could be a breach of the **Data Protection Act**
- You must not share footage from CCTV without express permission from those captured unless as part of a legitimate criminal investigation





CASE STUDIES....

CASE STUDY 1

Elderly lady with dementia, lives with daughter. Daughter does not have deputyship yet for her mother. Daughter needs to go out and collect children from school or pop to supermarket. When she does this, she locks her mother in the house. There is a key safe outside. Potential that mother will not know what to do if there is a fire/smoke in the property and would not be able to get out. Assessed as lacking capacity regarding ability to recognise and react to risk. Daughter would like to get a 'RingCam' so that she is alerted to the smoke detector going off or any movements her mother might make which could result in a fall.



Discuss the issues around the following scenarios:-

- Daughter can fund and set up the camera herself. Do we need to intervene?
- Daughter asks us to fund and install – what would we need to do e.g what is the correct protocol?

CASE STUDY 2

Young lady with LD and night seizures which mean that if the correct intervention is not administered within 2 mins of the seizure occurring, her life is threatened. 24- hour carer and waking night carer. Sleep in night carer in office next door. Currently have a sound detector but on two occasions recently it has not picked up the seizure, only when staff heard her fall out of bed that they were alerted. It has been deemed that the sound detector is not reliable enough now and a camera has been suggested. Young lady does not have capacity to consent to the camera.

Discuss the issues around the following scenario:-

A suggestion has been made that the waking carer sit in the bedroom of the young lady and watch her closely for any seizures.

Versus a camera which is the more restrictive?



The young lady can sometimes masturbate in her bed....

If a camera was in place how do we feel about this?
Versus her medical need could we still justify the use of a camera?

What if the waking night carer is a male?

What is the least restrictive option?
What could we consider instead of a camera?

- Sound/movement detectors?
- Specific epilepsy detector? (evidence of effectiveness an issue)

Risk Assessment is key to consideration of a camera

- The Health and Safety Executive (HSE) propose five steps to risk assessments:
 - 1. Identify the hazards.
 - 2. Decide who might be harmed and how.
 - 3. Evaluate the risks and decide on precautions.
 - 4. Record your findings and implement them.
 - 5. Review your assessment and update if necessary.



What other options are available and are these more suitable?



Other forms of AT may be suitable such as sensors or pressure pads which can monitor when someone leaves or enters the home/room/area

If there isn't a less restrictive option, or it wouldn't work, then the least restrictive way of using the camera must be considered:-

Place only where they are needed

Not in areas where the person goes to the toilet, washes or dresses



Using Assistive Technology



As in all direct care services, any infringement on privacy needs to be justified

Information generated from technology services can help service providers determine whether the overall care plan is effective. However, this is dependent on data-sharing arrangements

Service providers must be clear about the purpose of collecting information generated from technology

Technology users and their carers should be informed about what information will be collected and how it will be used

The emphasis should be on using information from technology to drive improvement and to promote people's independence as well as their safety

Data should be securely stored and transferred between agencies using industry good practice standards and agreed joint protocols



Installing a hidden camera or other recording equipment in a care home or other care service is a big decision

- Raise concerns with the provider first
- Consider the legal risk (breaching the rights of the staff)
- CQC cannot authorise you to carry out 'intrusive covert surveillance'. This means they cannot tell you to put hidden cameras or other recording equipment in someone's bedroom. This is because there's a law that sets out when public bodies can use or authorise surveillance. It's called the **Regulation of Investigatory Powers Act (RIPA) 2000**
- Check the provider's policy
- Get permission
- Store the recordings securely





Studies show that when people can see they are being recorded it can help calm them down and avoid conflict

Berrywood Psychiatric Hospital, Northamptonshire Healthcare NHS Foundation Trust carried out a pilot study of body worn camera's:

The study reported that in the course of its focus groups, examples were given by staff where they felt the use of BWCs may have changed behaviour such as when a female patient kicking a door stopped when was told she was being filmed or a gentleman who had a habit of hitting staff stopped when the cameras were on

Patients themselves described what they considered were the benefits of staff wearing BWCs which included: "better treatment for patients, respect for staff, accurate recording and clarifying situations in the face of possible unjust accusations."

(calla.co)

Questions? Discussion?

