



Guidance on the use of Overt Closed Circuit Televisions (CCTV) for the Purpose of Surveillance in Regulated Establishments and Agencies

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FOREWORD

This guidance is aimed at assisting registered providers in meeting the best interests of service users when considering the use of overt CCTV systems and reminds them of the requirements of the Data Protection Act 1998 and the regulations associated with that Act.

Residential care homes, nursing homes, accommodation in which people are in receipt of day care or domiciliary care (including supported living services) and regulated establishments are not public buildings. People using such services have the right to privacy, dignity and respect and these are some of the values which underpin the relevant DHSSPS Minimum Standards.

The use of CCTV in regulated establishments has the potential to significantly compromise these values and rights and must be justified and given proper consideration before use. Surveillance must be considered in the context of the Legal framework as lawful fair and proportionate.

SCOPE

Surveillance is the monitoring of a place, person, group or ongoing activity in order to gather information. There are many forms of surveillance available some of which are overt (where the person or group would be reasonably aware of the surveillance occurring), and those which are covert (where the person or group would not be reasonably aware of the surveillance occurring). These include a range of systems and equipment such as CCTV, hidden cameras, WiFi cameras, radio frequency identification (RFID), sound monitoring and recording equipment, monitoring equipment for medical treatment purposes and many other types of systems.

This guidance relates only to the use of overt CCTV systems which may be deployed internally, externally or adjacent to regulated establishments.

1. INTRODUCTION

- 1.1 This guidance makes reference to the term “service user”. This incorporates patients in nursing homes, residents in residential care homes, people in receipt of day care or domiciliary care (including supported living services) and people who use regulated services.
- 1.2 Where this guidance makes reference to “homes”. This refers to residential care homes, nursing homes, children’s homes and accommodation in which people receive their domiciliary care (including supported living services).
- 1.3 This guidance provides an overview of the key principles that should be taken into consideration on the use of CCTV in regulated establishments and agencies.
- 1.4 This guidance should be read in conjunction with the relevant legislation, regulations, guidance and standards listed in appendix 1.

2 KEY PRINCIPLES

- 2.1 In any situation the Data Protection Act 1998 requires that any surveillance must only be used in pursuit of one or more legitimate (reasonable, lawful and appropriate) purposes and be necessary, proportionate and fair to meet an identified and pressing need. It should also be used for purposes that support the delivery of safe, effective, compassionate and high quality care.
- 2.2 Consideration should be given to Article 8 of The European Convention on Human Rights – Right to respect for private and family life. Everyone has the right to respect for his private and family life, his home and his correspondence.

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 for the protection of the rights and freedoms of others.

- 2.3 The following principles should be adopted where the use of CCTV is in place or under consideration:

- a) CCTV should only be used where there is an identified and justifiable need to do so and this should be appropriately assessed and documented. A needs assessment should be carried out to show how it supports the needs and the interests of the people using services and whether intrusion is justified. See 3.1 below.
- b) CCTV should be used in a proportionate manner and only for the purpose identified by the assessment. You may wish to use surveillance for more than one purpose and each purpose must be identified as necessary and proportionate in its own right.
- c) Where CCTV footage is to be recorded, the Data Protection Act 1998 will apply and providers will be required to fully comply with that legislation. Guidance on this can be found in the Code of Practice issued by the Information Commissioner at: <http://ico.org.uk>. If in doubt we advise you to seek legal advice.
- d) CCTV should not be considered as an alternative to appropriate care and supervision of service users nor should it be used as a substitute for trained and well supported staff. There should never be an over reliance on CCTV surveillance.
- e) Where CCTV is to be used for purposes relating to staff management, this shall not be to the detriment of service users' privacy, dignity and respect. When considering whether to use CCTV you should weigh up the benefit against the impact on people's privacy.
- f) Consideration must be given as to whether there are less intrusive steps a provider can take to ensure care is high quality and safe. Service Providers should balance the legitimate and necessary aim against privacy concerns and intrusion of those affected to decide if the surveillance is fair and proportionate.
- g) Service Providers should address concerns about surveillance raised by service users and aim to minimise the potential impact on privacy. They must protect the dignity, privacy and independence of service users.
- h) Where CCTV is to be used for purposes relating to service users' care needs or safety/welfare, this shall be clearly identified in the establishment's statement of purpose, service user care plans and agreed with the service users, their relatives/representative and where relevant, the appropriate HSC Trust staff.
- i) In all cases where CCTV is used, service users, their relatives/representatives and the appropriate HSC Trust staff should be notified in writing of the relevant details as listed in 3.1 below.

j) CCTV should not be used in areas and rooms where service users normally receive personal care or where they could reasonably expect relative privacy. This includes areas such as:

- bedrooms
- sanitary accommodation
- treatment rooms
- dining rooms
- dayrooms/lounges/sitting rooms etc
- Corridors and internal circulation spaces used by service users for purposes associated with normal daily living.

3. ASSESSMENT OF NEED FOR CCTV

3.1 Assessment must be carried out into the need for the use of CCTV and must:

- be carried out by someone with sufficient understanding of the issues around the use of CCTV
- consider all other alternatives to the use of CCTV
- include input from the multi-disciplinary team
- include consultation with the service user or their relative/representative. Consultation should be an ongoing process.
- identify the specific reason for use of CCTV
- identify the duration for which the CCTV will be used
- identify which specific areas and rooms where CCTV is to be used
- identify whether CCTV footage is required to be recorded
- outline the procedures around storage of and access to recorded data
- be reviewed regularly on an ongoing basis and when there is a relevant change in needs of service users and circumstances for which the CCTV is in use.

4. RECORDING OF CCTV FOOTAGE

4.1 Recording of CCTV footage must be carried out in accordance with the provisions of the Data Protection Act 1998. There must be controls to ensure that only appropriate and authorised people are given access to recorded information and to ensure that information is kept secure.

5. COVERT AND HIDDEN CAMERAS

- 5.1 Covert and hidden cameras are beyond the scope of this guidance. When such equipment is to be used due to suspicion of criminal activities, advice should be sought from relevant crime prevention agencies, on the appropriate use and management of this equipment, e.g. P.S.N.I.
- 5.2 When footage or images from such equipment is passed to RQIA, this data will be handled in accordance with the requirements of the Data Protection Act 1998. Where such data is related to allegations of abuse of vulnerable persons or other unlawful acts, it is likely that these will be passed to relevant law enforcement and safeguarding agencies without first being viewed by RQIA.

6. STAFF AWARENESS

- 6.1 All staff must be given adequate instruction and awareness training on the appropriate use of CCTV in accordance with the agreed policy and procedures of the establishment / agency. This should include adequate instruction and awareness training on the Data Protection Act 1998.

7. POLICIES AND PROCEDURES

- 7.1 A policy must be in place which outlines the provider's position on the use of CCTV.
- 7.2 The policy should clearly outline the provider's position on compliance with the Data Protection Act 1998 if CCTV footage is to be recorded including the arrangements for storage and retention of the footage.
- 7.3 Associated procedures must be developed which detail how CCTV is to be managed in the establishment / agency.

8. RECORD KEEPING

- 8.1 The following records must be retained:
- a) records of the assessment and decision making process leading to the use of CCTV
 - b) records relating to staff awareness training and instruction.
 - c) copy of the policy and procedure for the use of CCTV

d) records relating to compliance with the Data Protection Act 1998

9. EQUIPMENT

9.1 Equipment must be suitable, safe and properly maintained.

10. CONSENT AND MENTAL CAPACITY

10.1 This guidance is on the use of overt CCTV and therefore due consideration should be given to obtaining consent from all relevant parties. Where there are instances in which consent is withheld or cannot be obtained (due to cognitive difficulties etc.) the appropriateness of the use of CCTV must be considered. The service provider must at all times be able to demonstrate that the use of CCTV outweighs any actual or potential interference with the service users' experience of privacy or dignity.

10.2 Surveillance that is used in a non-public place for the purpose of capturing more sensitive personal information is likely to require explicit consent of that individual to be lawful.

10.3 It is unlikely to be lawful to use surveillance to directly observe a person's medical treatment, intimate care or someone practicing their religion in a private place without the explicit consent of the person.

APPENDICES

This guidance should be read in conjunction with the following relevant legislation , regulations, guidance and standards which are available on RQIA website <http://www.rqia.org.uk/publications/index.cfm> and/or Department of Health Social Services and Public Safety (DHSSPS) website: www.dhsspsni.gov.uk:

Legislation

- Data Protection Act 1998
- Human Rights Act 1998
- Health & Personal Social Services (Northern Ireland) Order 1972
- Health and Social Care (Reform) Act (Northern Ireland) 2009
- Health and Social Care Amendment Act N. Ireland 2014
- Freedom of Information Act 2000
- Health and Personal Social Services (Quality Improvement and Regulation (Northern Ireland Order) 2003
- The European Convention on Human Rights

Regulations

- The Nursing Homes Regulations (Northern Ireland) 2005

- The Residential Care Homes Regulations (Northern Ireland) 2005
- The Children's Homes Regulations (Northern Ireland) 2005
- The Voluntary Adoption Agencies Regulations (Northern Ireland) 2010
- The Children (Leaving Care) Act (Northern Ireland) 2002
- The Voluntary Adoption Agencies Regulations (Northern Ireland) 2010
- The Independent Health Care Regulations (Northern Ireland) 2005
- The Nursing Agencies Regulations (Northern Ireland) 2005
- The Domiciliary Care Agencies Regulations (Northern Ireland) 2005
- The Day Care Settings Regulations (Northern Ireland) 2007
- The Residential Family Centres Regulations (Northern Ireland) 2007
- The Adult Placement Agencies Regulations (Northern Ireland) 2007

Guidance

- Information Commissioner's Office Codes of Practice on CCTV
- Information Commissioner's (ICO) standards and guidance
<http://ico.org.uk>
- Northern Ireland Human Rights Commission standards and guidance
<http://www.nihrc.org>
- Care Standards for Nursing Homes April 2015
- Minimum Standards for Residential Care Homes August 2011
- Minimum Standards for Nursing Agencies August 2011
- Minimum Standards for Domiciliary Care Agencies August 2011
- Minimum Standards for Dental Care and Treatment March 2011
- Minimum Standards for Residential Family Centres April 2011
- Minimum Standards for Day Care Settings January 2012
- Minimum Standards for Leaving Care and Young Adult Supported Accommodation Projects September 2012
- Minimum Standards for Children's Homes April 2014
- Minimum Standards for Independent Health Care Establishments July 2014.

This list is not exhaustive and may change over time. Service providers should ensure that they comply with all current versions of standards and procedures and of and relevant legislation, standards and circulars.



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