Care Protect Limited

Submission to the Committee for Health -
Adult Protection Bill (Northern Ireland) 2025

September 2025

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Summary

Introduction to Care Protect

Established in 2015, Care Protect provides independent safety monitoring across UK health and social care settings through its *PRISM* system—Professional Retrospective Independent Safety Monitoring. *PRISM* uses motion-triggered cameras in communal and private areas to enhance resident safety and care quality, with footage reviewed retrospectively by qualified health and social care professionals. The system supports incident investigations and proactive audits, identifying risks and promoting best practices via structured reporting. *PRISM* operates on a consent-based model, compliant with the UK Human Rights Act 1998 and UK GDPR, ensuring cameras in private spaces are activated only after formal consent or Best Interests Decisions. Data is securely stored and shared under strict access controls, with no live monitoring or blanket surveillance. Care Protect is Cyber Essentials Plus certified and uses encrypted cloud storage founded on ISO 27001-accredited AWS infrastructure. A comprehensive suite of 28 documents supports partner care providers in meeting legal and regulatory obligations, reinforcing transparency, accountability, and continuous improvement in care delivery.

Review of Guidance and Evidence

This submission critically reviews guidance and evidence related to the use of cameras in care settings. It highlights strengths in RQIA's 2016 guidance, including its rights-based approach and emphasis on consent and accountability, while noting outdated legal references and limited practical implementation support. A 2020 rapid evidence review by Queen's University Belfast provides a balanced overview of international findings, acknowledging both benefits and ethical concerns, though it is constrained by limited stakeholder representation and short-term data. More recently, a 2023 qualitative study from Sweden explores staff experiences with camera use in care homes, identifying privacy considerations and operational benefits, but also gaps in training and guidance. Outcome data from two UK dementia care units show significant reductions in incident reports following the implementation of independent safety monitoring, suggesting improved safety, care quality and staff training. These findings underscore the need for updated guidance and robust implementation frameworks from the regulatory authority.

Recommendations

The Adult Protection Bill (Northern Ireland) 2025 presents a key opportunity to enhance safeguards for vulnerable individuals in regulated care environments. Care Protect, operating exclusively within such settings, recommends targeted amendments to strengthen oversight of camera technologies. It proposes expanding Part 4 Section 43 to include third-party CCTV review providers under RQIA regulation, ensuring accountability and alignment with care standards. Amendments to Section 44 are also advised to prevent blanket bans on monitoring in private spaces, advocating for decisions based on individual assessments, cognitive diagnoses, and formal consent. Additionally, the legislation should assign RQIA responsibility for overseeing a structured seven-day post-admission monitoring period, should a care provider opt to implement such, followed by a formal review based on safety-related incidents. These changes aim to establish clear, consistent, and person-centred protocols, removing reliance on subjective inspector interpretation and supporting a robust regulatory framework.

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Preface

1. This submission to the Committee for Health is only in relation to Part 4—Regulation of CCTV Systems on Certain Establishments—of the Adult Protection Bill (Northern Ireland) 2025.

Introduction to Care Protect

Background Information

2. Established in 2015 through the operation of residential care homes in Northern Ireland and England, Care Protect now delivers independent safety monitoring across the UK. With a registered office in the North East of England and an Operations Hub in Belfast, the organisation deploys motion-triggered cameras in communal areas and private spaces of care facilities to help protect vulnerable individuals.

3. Care Protect is currently in situ at 21 sites across the UK, including 3 acute mental health hospitals and 14 dementia care units in England, 2 in Northern Ireland, and 2 in Wales.

4. Care Protect operates uniquely within the UK care sector, offering specialist safety monitoring services exclusively in health and social care environments. Its distinctive methodology means it currently has no direct competitors and is the leading expert in this field.

Professional Retrospective Independent Safety Monitoring (*PRISM*)

5. Care Protect delivers Professional Retrospective Independent Safety Monitoring - *PRISM*. The use of this acronym is derived from the service attributes as detailed below.

6. *Professional* - The Care Protect operations team in Belfast is entirely comprised of professionals from nursing, social work, and allied health backgrounds, ensuring compliance with NMC, NISCC, and HCPC standards. Care Protect professionals complete a recurring two-year CPD programme consisting of 30 modules covering key aspects of care delivery. Therefore, with extensive experience in health and social care and mandatory Access NI checks through the Security Industry Authority's individual licensing requirements, the Care Protect team delivers trusted, informed support to those responsible for safeguarding residents and delivering quality care.

7. *Retrospective* – Recorded footage is always reviewed retrospectively and is never monitored ‘live’. *PRISM* facilitates investigations by providing timely access to recordings related to unwitnessed falls, unexplained injuries, and allegations involving care staff.

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8. *Independent* - Independent review from the Care Protect professionals is essential. If their raised concerns are not adequately addressed, they are empowered to escalate issues to the relevant regulatory body, ensuring transparency and preventing the suppression of serious incidents. This independence enhances resident safety, builds trust, and drives improvements in care quality.

9. *Safety* - *PRISM* is designed primarily to enhance resident safety, while also supporting care staff with a safer working environment and serving as a robust care quality assurance tool. Footage is reviewed retrospectively, either reactively in response to specific incidents—such as unwitnessed falls, unexplained injuries, or allegations—or proactively through daily safety audits. These audits target care delivery risks, encompassing both intentional harm and unintentional harm due to substandard practices in areas such as personal care, moving and handling, infection prevention and control, PPE usage, medications administration, and assisted mealtimes. Furthermore, the presence of an overt, independent safety monitoring system serves as a decisive deterrent to any rogue element within a cohort of care staff from engaging in harmful or degrading behaviour toward vulnerable individuals.

10. *Monitoring* – To monitor resident safety and care quality, Care Protect routinely reports deviations from accepted practices that have been identified during proportionate proactive sampling at partner sites. These 'Incident Reports', supported by footage, enable thorough risk evaluation and are classified using a traffic light system: RED for occurrences of harm or significant events requiring urgent action; AMBER for "near misses" and training needs; GREEN for person-centred care planning clarification; and GOLD to highlight moments of exemplary care. Monthly Summary Reports offer graphical trend analysis over the previous three months, detailing incident volumes, classifications, and categories such as falls, dignity and respect, infection control, moving and handling, medications administration, and mealtime support. This structured reporting supports the monitoring of continuous improvement and care quality assurance.

PRISM and Human Rights

11. Cameras in private spaces are used as an opt-in and consent-based monitoring system, distinct from conventional CCTV. *PRISM* does not operate in real time, is not continuously monitored, and is never used for blanket surveillance.

12. Cameras in private spaces remain inactive until written consent or a formal Best Interests Decision is completed and notification received by Care Protect. Consent may be given directly by individuals with capacity or via a person-centred care assessment, supported by a Health & Welfare Lasting Power of Attorney, Deputyship, or the Deprivation of Liberty Safeguards (DoLS). The Best Interests protocol typically applies, requiring evidence that less restrictive options are unsuitable and that the individual cannot reliably report being subjected to harm or mistreatment. In private spaces, proactive sampling is limited to just 0.35% of the resident's lived time.

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13. Consent or Best Interests Decisions may allow unrestricted reviewing or specify limitations—such as excluding certain care activities, restricting review periods, or applying redacted zones.

14. Appendices 1–3 form part of a comprehensive set of 28 documents provided by Care Protect to new partner care providers. These resources clarify legal responsibilities and ensure consistent, compliant application of consent and Best Interests Decision processes.

15. Consequently, *PRISM* operates in full compliance with the UK Human Rights Act 1998. It is used in private spaces only when necessary and with proportionate review, in alignment with Article 8—the qualified right to respect for private and family life. Its implementation also meets the legitimate aim requirement under Article 8, namely the absolute right of Article 3—freedom from inhuman or degrading treatment, which can be considered as a distinct risk because of substandard care delivery. Further legal context is provided in Appendix 4, detailing the specialist opinion obtained by Care Protect in September 2024.

PRISM and Data Protection

16. Care Protect has obtained specialist legal advice on *PRISM*'s compliance with the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018, detailed in Appendix 4.

17. Under UK GDPR, Care Protect acts as the data processor, while the care provider is the data controller. Appropriate signage for communal areas and supporting documents—including a template policy relating to *PRISM* and a guide and template Data Protection Impact Assessment for submitting to the Information Commissioner's Office—is included in the full suite of 28 onboarding documents provided to new partner care providers.

18. *PRISM* recordings are motion-triggered, with no cameras installed in en suite or bathroom areas. As standard, data is stored for 30 days before automatic deletion, while incident-related footage may be retained for up to one year to support ongoing regulatory or legal investigations. Access to footage is strictly controlled and securely shared, typically limited to the facility manager, deputy manager, and specialist care manager.

19. Care Protect is Cyber Essentials Plus certified. *PRISM* uses banking-grade end-to-end encryption and secure off-site cloud storage via AWS infrastructure, which is ISO 27001 accredited.

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Review of Guidance and Evidence

Guidance on the use of Overt Closed-Circuit Television for the Purpose of Surveillance in Regulated Establishments and Agencies (RQIA, May 2016)

20. The RQIA guidance demonstrates several strengths, including its rights-based approach grounded in human rights principles, a comprehensive framework for risk-based safety monitoring, and a strong emphasis on consent, capacity, transparency, and accountability. It appropriately asserts that surveillance must be necessary, proportionate, and serve a legitimate aim.

21. These elements align fully with both ethical and legal standards, as well as the *PRISM* system implemented by Care Protect.

22. However, owing to its publication in May 2016, the effectiveness of the RQIA guidance is limited by outdated legal references, relying on the Data Protection Act 1998 rather than the current UK GDPR and Data Protection Act 2018. It also lacks coverage of emerging technologies and provides little in the way of practical examples to support implementation.

23. The RQIA guidance is a well-intentioned and ethically grounded document that provides a basic foundation for use in regulated care settings but a wider ranging revision incorporating current legislation and practical implementation strategies would significantly enhance its utility and compliance potential.

A review of the international evidence of the effectiveness of the use of CCTV in care home settings (G. Davidson *et al*, Queen's University Belfast, Jan 2020)

24. This rapid evidence assessment was commissioned by RQIA, completed at Queen's University Belfast and is now publicly available on the RQIA website.

25. The assessment offers an overview of international evidence on the use of camera technology in care home settings, highlighting both potential benefits and ethical considerations. It presents a balanced discussion on how surveillance may enhance safety, accountability, and transparency, while also acknowledging the importance of protecting residents' privacy and dignity. The rights-based approach makes it a potentially useful resource to care providers.

26. However, the review is limited by a narrow evidence base, with many studies lacking long-term data. Its findings are often context-specific, reducing applicability across diverse care settings. Additionally, the

rapid review format may have excluded relevant literature, and the underrepresentation of residents, families, and care staff as key stakeholders diminishes the person-centred focus of the analysis.

27. While the paper provides a thoughtful foundation for understanding the implications of camera technology in care settings, its findings should be interpreted with caution. There is a clear need for more robust and inclusive real-world assessment of the impact on care quality and resident wellbeing. Future efforts should prioritise the voices of residents and their family members and explore the integration of camera technology within broader safeguarding and care improvement frameworks.

Experiences of using surveillance cameras as a monitoring solution at nursing homes: The eldercare personnel's perspectives (BMC Health Serv Res, Feb 2023)

28. This qualitative study explores the implementation and use of surveillance cameras in nursing homes from the perspective of care staff. Conducted in three Swedish nursing homes, the research involved semi-structured interviews with primarily night-shift workers, to assess the perceived benefits, challenges, and ethical considerations of digital monitoring technologies.

29. Whilst this research was conducted in a rural area of Sweden and the findings may not easily translate to other regulatory contexts, and although it only captures staff views—with residents and relatives not directly interviewed, thus limiting its insights—the paper highlights significant shortcomings in adequate training and guidance that undermines staff confidence.

30. This research is highly relevant, addressing the challenge of balancing safety, efficiency, and privacy in care delivery amid workforce shortages. It highlights key benefits of surveillance cameras, including improved night-time operations, reduced unnecessary resident disturbances, and enhanced prioritisation of care—leading to better sleep quality and decreased reliance on sedatives. The study also thoughtfully considers privacy concerns, particularly for residents with cognitive impairments, and underscores the importance of informed consent, ongoing evaluation, and the need for implicitly clear guidelines to prevent misuse or overdependence on technology.

Care Protect Outcome Data

Dementia Care Unit A, England (Dec 2023)

31. Following the launch of *PRISM* on a 24-bed dementia care unit in the South East of England—part of a residential care home with an 84-resident capacity—proactive sampling was conducted daily for 90 minutes: 30 minutes in communal areas and 60 minutes in private spaces, with appropriate consent or Best Interests Decisions in place. After nine months, an audit was completed to assess monthly reporting of

incidents involving harm to residents or staff (Red), as well as "near misses" and staff training needs (Amber). Prior to implementation and at the provider's request, reports were submitted by environment (communal vs. private). Reactive reviews were excluded from the audit due to their variable nature. The following table presents the findings.

	Communal Areas		Private Spaces		*Total*	Quarterly Average	**% Reduction vs. 1st Qtr**
Month	Red	Amber	Red	Amber			
MAR 2023	0	13	3	39	*55*	54.3	**N/A**
APR 2023	0	10	0	30	*40*		
MAY 2023	0	4	2	62	*68*		
JUN 2023	0	3	2	21	*26*	26.3	**51.6%**
JUL 2023	0	5	0	27	*32*		
AUG 2023	0	3	0	18	*21*		
SEP 2023	0	5	0	20	*25*	20.3	**62.6%**
OCT 2023	0	0	0	11	*11*		
NOV 2023	0	3	1	21	*25*		
Total	*0*	*46*	*8*	*249*			

32. Between March and November 2023, a total of 303 incidents were reported across both communal areas and private spaces, with the majority (257) occurring in private spaces. Notably, all eight Red incidents—those involving actual harm—were confined to private spaces, indicating a safer or more supervised environment in communal areas. Amber incidents, which highlight "near misses" or staff training needs, all of which are a risk to resident safety, were significantly more frequent, particularly in private spaces (249 compared to 46 in communal areas). This disparity reflects the increased complexity and risk associated with one-on-one care settings. Over time, there was a marked decline in reported incidents, representing a 62.6% reduction from Q1 to Q3. This trend demonstrates improvements in care delivery, staff training, and environmental adjustments. The consistent predominance of reports from private spaces underscores the importance of continued focus on individual care environments.

33. The findings highlight that the serious safeguarding failures at Dunmurry Manor and Muckamore Abbey could have been avoided with systems like *PRISM* in place. The ongoing failure to implement these measures continues to endanger some of society's most vulnerable adults. Additionally, the evidence

demonstrates that cameras alone are insufficient without proper independent review, and limiting their use to communal areas fails to capture the many unexplained events occurring in private spaces.

Dementia Care Unit B, Northern Ireland (Aug 2025)

34. As with Dementia Care Unit A, an audit of Red and Amber reports was conducted nine months after *PRISM* was implemented on a 22-bed dementia care unit in Northern Ireland, part of a 71-resident care home. Unlike the previous audit, data was not categorised by environment (communal vs. private). Reactive reviews were again excluded due to their variable nature. The findings are presented in the following table.

	All Areas		*Total*	Quarterly Average	**% Reduction vs. 1st Qtr**
Month	Red	Amber			
NOV 2024	0	15	*15*	12.7	**N/A**
DEC 2024	0	12	*12*		
JAN 2025	0	11	*11*		
FEB 2025	0	4	*4*	7.3	**42.1%**
MAR 2025	0	11	*11*		
APR 2025	0	7	*7*		
MAY 2025	0	6	*6*	6.3	**50.0%**
JUN 2025	0	8	*8*		
JUL 2025	0	5	*5*		
Total	*0*	*79*			

35. Over the nine-month period from November 2024 to July 2025, a total of 79 Amber incidents were reported across all areas, with no Red incidents recorded. The first quarter accounted for the highest number of reports. This was followed by a significant reduction of 42.1% in the second quarter, and then a further decline in the third quarter, representing a 50% reduction compared to the first quarter. The steady decline in incident reports indicates a positive trend in resident safety, likely reflecting improved staff awareness, training, and procedural enhancements following the implementation of *PRISM*.

36. These findings underscore that the safeguarding failures at Dunmurry Manor and Muckamore Abbey could have been prevented through the implementation of systems like *PRISM.* The continued lack of adoption

poses an ongoing risk to vulnerable adults. Moreover, the evidence confirms that surveillance alone is inadequate without independent oversight and review.

Recommendations

Part 4 Section 43.—(1)

37. The Bill as introduced states:

> "43.—(1) This Part applies to the following establishments—
> (a) a day care setting;
> (b) a nursing home;
> (c) a residential care home;
> (d) a mental health unit."

38. Although Care Protect operates exclusively within the above listed settings, it currently falls under the regulatory oversight of the Security Industry Authority—a classification that appears misaligned with its specialised role.

39. The passage of the Adult Protection Bill (Northern Ireland) 2025 presents a vital opportunity for the Northern Ireland Assembly to future-proof the regulation of camera technologies in care settings. By legislating ahead of neighbouring jurisdictions, the Assembly can ensure that regulatory bodies are granted full oversight of all aspects of camera use in these environments. This would reinforce compliance frameworks and practical guidance, while enhancing protections for vulnerable individuals—an identified need supported by the critical reviews of the guidance and evidence already outlined in this submission.

40. As such, the scope of Part 4 Section 43.—(1) should be expanded along the lines of the following:

"43.—(1) This Part applies to the following establishments—
(a) a day care setting;
(b) a nursing home;
(c) a residential care home;
(d) a mental health unit;
(e) a third-party body providing CCTV reviewing services to any of the above listed establishments."

41. Extending RQIA oversight to Care Protect and similar future entities would enable formal engagement and regulatory alignment. Care Protect supports the development of an agreed inspection framework and welcomes regular inspections to ensure ongoing compliance with legal and regulatory standards. However, without clear regulatory structures, there is a risk that future independent safety monitoring providers may be created and operate without the same level of accountability or integrity.

Part 4 Section 44.—(2)

42. The Bill as introduced states:

"(c) prohibiting or restricting the installation or use of a CCTV system in areas or locations of a prescribed kind or description"

43. The current wording openly enables misinterpretation, potentially allowing individuals with oversight authority to impose a blanket ban on safety monitoring in private spaces, regardless of individual circumstances. Such an approach would reflect personal bias, undermine person-centred care, and disregard the legal framework which supports the use of individual needs assessments and formal consent or Best Interests Decisions, as outlined in Appendix 4, which states:

"*the local authority cannot reasonably say it would never be in the best interests of an individual to have the Care Protect system in use, any more than it would be reasonable to insist that it would always be in any resident's best interests, regardless of the circumstances*"

44. Subsequently, Section 44.—(2) of the Bill should be amended to require the RQIA to engage with care providers implementing safety monitoring systems and to clearly publish essential safeguards. These must include documented diagnosis of cognitive impairment, evidence of incapacity to consent, and written agreement from a Health & Welfare LPA, Deputy, or nominated next of kin confirming the system is in the individual's best interests.

45. The legislation should assign the RQIA legal responsibility for overseeing the use of monitoring systems by care providers during an initial seven-day post-admission period to establish a safety baseline. A formal review by the care provider on day eight should then determine whether continued use is appropriate, based

on documented incidents such as falls, near misses, or behaviours that pose a risk to the individual or others. This approach would ensure consistent protocols under RQIA oversight and remove any reliance on subjective interpretations by individual inspectors.

Appendix 1 – Care Protect White Paper on Facility's Legal Obligations

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WHITE PAPER - DEPLOYING AND USING OUR SYSTEM

Thank you for considering our innovative managed safety monitoring (CCTV) services. Care Protect offers a solution which has within it a powerful set of tools, providing you with the primary ability to further ensure resident's safety, but also to monitor and manage your staff, ensuring care provision and minimising reportable incidents.

Used correctly, the Care Protect services will help you manage these and other risks - however, you must use the services in a legally compliant way. Compliance with the relevant laws and guidance is your responsibility, and this information factsheet is designed to help you be aware of the key compliance principles you will need to adopt and how Care Protect has taken steps already to help you with this. This factsheet aims to provide an overview of key legal issues. However, you should be aware that it is not necessarily comprehensive, and you may wish to seek your own legal advice and/or the support of your head office.

Status of individuals whose images are recorded, and your obligations.

The monitoring services do not record and retain data continually but capture audio and video footage when a motion sensor is triggered. The cameras are likely to capture images of Service Users, staff, visitors and others. The image data Care Protect collects for you about these individuals will be "personal data", as regulated by the UK General Data Protection Regulation and the Data Protection Act 2018 (together the "Data Protection Laws"). As you have purchased the Care Protect service, you will be responsible for obtaining and using that personal data in compliant and transparent ways, as your organisation will be the "data controller" and so has obligations under Data Protection Laws.

We set out some of the obligations below to assist you in ordering and receiving our services in a well-managed and compliant way.

Care Protect's obligations.

Care Protect will be gathering and processing personal data to your instructions and on your behalf, so we will be a "data processor". You place obligations on Care Protect regarding the processing of personal data and other security requirements when you complete our contract. Our contract includes the required protections in it for when data controllers appoint data processors. Care Protect is authorised by you to make disclosures of image data as well when there are grounds to do so.

What you should do before using the Care Protect service in your Facility(ies)

1. **Employment Contracts / Policies** – you should check and ensure your staff have employment contracts / policies which allow you to monitor them. In addition, you will need to consider this in the Data Protection Impact Assessment ("DPIA") below and document the steps taken to consult with staff in order to allow you to monitor them.

2. **Assess Privacy Impact** – be clear about why and how you will use the system. It is a legal requirement to have a documented DPIA prior to deploying any CCTV service (even if you are upgrading from a less advanced system). This should consider the positive effect on the facility of deploying the system (e.g. maintaining resident's safety, being able to review the care provided to Service Users, check quality controls and prevent/detect crime) and balance this against any potential impacts on the individuals' privacy (e.g. monitoring of Service Users/ being able to review footage of staff) and outline the steps you will take to mitigate that risk. Care Protect has developed a template impact assessment for you to review and complete, which will assist you in identifying the issues and putting in place appropriate steps to manage these.

3. **Pay your data protection fee to the ICO** – you should pay your data protection fee and update your records with the Information Commissioner's Office (ICO). Every organisation which processes personal data is required to pay a data protection fee to the ICO (unless an exception applies). Updating your data protection information with the ICO is straightforward and free of charge.

4. **Be clear on your plans** – tell your staff, Service Users, visitors and others and consult with them. Provide a clear message regarding cameras to anyone who visits the facility, telling them what monitoring will take place and for what purposes. We have prepared a template employee notification that you might find helpful to do this. We have also developed a template CCTV Policy which sets out the kind of notices you should display as well and what content they should include.

5. **Staff Training** – you should train your staff about the monitoring system, explaining to them how it will operate and for what purposes. Staff should understand the impact of the cameras from a data protection perspective, so that they can help you to remain compliant.

6. **Information or Consent?** You should understand the difference between informing people, and the need for consent:

6.1 The use of the system in communal/public areas of the facility does not require the consent of the individuals involved, but you should take steps to make people aware and have appropriate policies in place as referred to in 4 above; but

6.2 The use of the system in Service Users' bedrooms does require the consent of the individual involved. Where a Service User lacks capacity to consent, a best interests decision will be required. We have prepared a consent form (CO 004), along with consent guidance (CO 003) for you to use with Service Users. You should ensure that these processes are followed, and documentary evidence retained, as the Regulator/Local Authority/Police/other investigatory bodies can request evidence of the steps taken to consult and consent, and you must ensure that Service Users' needs and preferences for

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care and treatment are respected. Service Users or their Health & Welfare Lasting Power of Attorney/Deputy may also subsequently withdraw their consent at any time, and this should be documented and acted upon without undue delay.

7. You should ensure that you sign and complete our contract, as it contains clauses which provide protection to you, as referred to above.

What you should do <u>whilst</u> using the Care Protect system

1. You should ensure that the information gathered using the Care Protect service is reviewed only when required for the purposes set out in your CCTV policy and within the scope of the consents obtained from Service Users, and to check compliance with the CCTV policy. For example, only designated individuals should have access to footage for their job purposes (e.g. reviewing unsafe care provision, quality control or dealing with disciplinary matters).

2. You should ensure that all staff remain aware of the CCTV policy.

3. You should ensure that the information is correct, and that staff and others have the ability to correct errors (for example if on the system they have been recorded with the incorrect name).

4. Individuals may also request their own personal data, known as a Data Subject Access Request, and you should comply with these requests in accordance with your own policies and the law – we have set out a summary of this in the CCTV Policy. Individuals may also exercise other rights under Data Protection Laws, including to erase footage or restrict its processing.

5. Service Users may also withdraw their consent for the recording in their rooms, and you must act upon this, tell Care Protect immediately by the method notified by Care Protect to stop recording and keep records of this for regulatory purposes.

6. Service Users may also opt to not consent for relatives to review footage, and again you must act upon this, and keep records of this for regulatory purposes.

7. You should ensure that any changes to the way the Care Protect service is used are reflected in updates to the CCTV Policy and updated consents (if needed).

8. The Care Protect data that is gathered should no longer be used if the tools are no longer needed for the stated purposes, or it is no longer necessary to retain the data (in accordance with your data retention policy). If this is the case, you should notify Care Protect in writing that the images are to be securely deleted/destroyed.

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Appendix 2 – Care Protect Consent form

INFORMATION AND CONSENT FORM
USE OF BEDROOM CAMERA(S) IN [*NAME OF CARE HOME*]

Please ensure you have read the relevant Care Protect booklet before consenting to the activation of the cameras.

Introduction

At [name of care home] we are always looking to improve the services and standard of care offered. We would like to offer you the opportunity to activate and make use of the camera installed in your/your friend/relative's room. Many Service Users and their friends/relatives feel that the use of the camera gives a greater degree of confidence and security as to the level of care that they or their friend/relative are receiving.
This form explains how the camera(s) and footage will be used.

When will cameras record footage and when will this be monitored?

Once activated, the camera in your room does not record footage continually. The camera is on standby mode and records audio and video footage only when a motion sensor is triggered. This footage is retrospectively reviewed in the following circumstances:

i. where reasonable concern(s) about your wellbeing is/are raised by you/your friend/relative or noted by a member of the Home's staff; or
ii. for limited daily periods of randomised retrospective reviewing which we use for Service Users' safety.

Randomised retrospective reviewing of rooms and communal areas or as a result of concerns raised is carried out proportionately and in such a way as to minimise the impact on Service Users' privacy.
The recorded footage may therefore capture personal care being carried out in your/your friend/relative's room including but not limited to washing, changing, toileting, cleansing after incontinence, feeding and drinking, moving and handling, assistance with medication or in connection with medical needs.
Please note that CCTV is used in communal areas within [name of care home] but no consent is required for this.

How do I provide consent?

If you would like the camera in your/your friend/relative's room to be activated, you can give your consent on this form. **You are able to make your consent to activation of the camera subject to conditions, for example, that no recording can occur in certain areas of your room, or that there is no reviewing of footage recorded during the times when personal care is being carried out, unless an untoward incident has occurred or a reasonable concern has been raised.**

Having the camera in your/your friend/relative's room activated is entirely optional and it is completely up to you to consent or not. **If you do not consent, the camera in your/your friend/relative's room will not be activated and no recording will occur. You can document this on the No Consent form CO 025.** If you provide consent, you can withdraw your consent at any time by speaking with the Home Manager or other member of the Home's staff. If you withdraw consent, the camera will be deactivated without undue delay, but previously recorded footage may still be processed by the Home.

You may separately choose to provide consent to a named relative or friend being able to review footage of your room with the Home Manager in a secure private area. If you do provide consent to this, you can withdraw your consent at any time. You may withdraw your consent to your relative or friend being able to view the footage whilst still keeping the camera in your room.
A relative or friend cannot provide consent on your behalf unless you do not have the capacity to decide whether to have CCTV in your room *and* you have appointed them as your health and welfare attorney or they then apply to the Court of Protection and become your Personal Welfare Deputy. If you do not have capacity to make the decision and do not have a health and welfare attorney, then a decision can be made by an Independent Mental Capacity Advocate (in certain circumstances) or the Home in your best interests.

If you have any questions or concerns about the use of safety monitoring in [name of care home] please speak to the Home Manager or, where applicable, the Home's Data Protection Officer.

Who provides the system?
The cameras and system are provided by a third party, Care Protect Limited, which specialises in providing independent monitoring services to care homes and other healthcare facilities. The Home has appointed Care Protect to retrospectively review footage recorded by the camera system. Pursuant to the Contract between the Home and Care Protect, the Home and Care Protect have decided that, for the purposes of the Data Protection laws, the Home is the Data Controller and Care Protect is the Data Processor in respect of any personal data collected by or provided to Care Protect, in relation to the installation or maintenance of the CCTV Systems and for the reviewing of footage collected by the camera systems.
Care Protect Limited is committed to protecting the privacy and security of the personal information. The measures which Care Protect has in place are kept under review and updated over time.
Care Protect will retrospectively review the footage for us and then provide us with reports where a reasonable concern is raised or if something is observed during randomised retrospective monitoring together with monthly reports.

Who will have access to the footage?
The following people will have access to the footage:

- Care home staff: only a small number of trained senior staff will be able to access and view the recorded footage.
- Care Protect: as described above, a small number of specialist Care Protect health and social care professionals will review the footage to identify any causes for concern.
- Your friend/relative who is named on this form if you provide your consent on this form.

How the footage will be used?
The footage from the CCTV camera will be used for the following purposes:

- for the protection and safety of Service Users;
- to ensure the well-being of Service Users;
- for the protection and safety of care home staff and visitors;
- to monitor the activities of care home staff;
- to manage and monitor quality standards;
- to deter and detect crime;
- for the apprehension and prosecution of offenders, including use in criminal and/or regulatory proceedings.

Which third parties will the footage be shared with?
In addition to Care Protect, we will share your personal information with third parties where required by law or where we have a legitimate interest in doing so.

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Disclosure of the footage will be strictly controlled and only made in the following circumstances:

- to law enforcement agencies (e.g. the police) where footage may help in a criminal enquiry, or with the prevention and/or detection of crime;
- to regulatory bodies (e.g. the Care Quality Commission which regulates care homes, the Local Authority, or the Information Commissioner's Office which regulates the use of personal data);
- prosecution agencies such as the Crown Prosecution Service, for the apprehension and prosecution of offenders;
- legal representatives who provide us with general legal assistance as well as advice in relation to claims or court proceedings;
- emergency services in connection with the investigation of an accident or incident;
- Coroners, in connection with the investigation of any death.

How long will the footage be retained?

Footage will not be retained for any longer than is necessary. As a guideline, footage will be automatically deleted after 30 days.

Access to footage

Under certain circumstances, by law you have the right to:

- **Request access** to your personal information (commonly known as a "data subject access request"). This enables you to receive a copy of the personal information we hold about you and to check that we are lawfully processing it.

- **Request correction** of the personal information that we hold about you. This enables you to have any incomplete or inaccurate information we hold about you corrected.

- **Request erasure** of your personal information. This enables you to ask us to delete or remove personal information where there is no good reason for us continuing to process it. You also have the right to ask us to delete or remove your personal information where you have exercised your right to object to processing (see below).

- **Object to processing** of your personal information where we are relying on a legitimate interest (or those of a third party) and there is something about your particular situation which makes you want to object to processing on this ground.

- **Request the restriction of processing** of your personal information. This enables you to ask us to restrict the processing of personal information about you, for example if you want us to establish its accuracy; or the personal information is no longer necessary for the purposes for which it was collected or you exercised your right to object (pending verification of whether there are legitimate grounds to continue processing).

- **Request the transfer** of your personal information to another party. If you want to review, verify, correct or request erasure of your personal information, object to the processing of your personal data, or request that we transfer a copy of your personal information to another party, please contact the Home Manager, or where applicable the Home's Data Protection Officer, in writing.

Data Protection Principles

We will comply with Data Protection law. This says the personal information we hold about you must be:

1. Used lawfully, fairly and in a transparent way.
2. Collected only for valid purposes that we have clearly explained to you and not used in any way that is incompatible with those purposes.

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3. Relevant to the purposes that we have told you about and only limited to those purposes.
4. Accurate and kept up to date.
5. Kept only as long as necessary and for the purposes we have told you about.
6. Kept securely.

Using Personal Information
We will only use your personal information when the law allows us to. Most commonly, we will use your personal information in the following circumstances:

1. On the basis of the consent which you provide to us.

2. Where we need to comply with a legal obligation such as complying with the regulations governing hospitals and care homes or in relation to safeguarding obligations.

3. Where we need to protect your interests (or someone else's interests), for example when an untoward event occurs.

CONSENT FORM
USE OF CCTV IN [*NAME OF CARE HOME*]

Which consent declaration should be signed?
Section A – for Service Users with capacity signing on their own behalf
(NB: file with completed form CO 005E Capacity Assessment and Best Interests Decision form to demonstrate sufficient capacity to consent)

Section B – for person holding a Health and Welfare Power of Attorney

Section C – for person holding Personal Welfare Deputyship

Section D – acknowledgement by Home Manager of Best Interests Decision
(NB: file with completed form CO 005E Capacity Assessment and Best Interests Decision form to demonstrate insufficient capacity to consent)

SECTION A - CONSENT DECLARATIONS BY SERVICE USER
A 1 CONSENT TO ACTIVATION OF CAMERA: for Service Users with capacity signing on their own behalf (file with completed form CO 005E Capacity Assessment and Best Interest form to demonstrate sufficient capacity)
I have read and understood the information provided in this consent form and accompanying booklet and I give my consent to the camera in my room being activated, and the footage being recorded and used as described in this form. I understand that I do not have to give my consent and I can withdraw my consent at any time. If I withdraw my consent, the camera will be de-activated, but footage captured prior to withdrawal of my consent may still be processed.
Name: ……..
Signature: ……
Date: ……

A 2 CONDITIONS OF CONSENT
My consent to activation of the camera in my room is subject to the conditions below. I understand that I can change these conditions at any time by notifying the Home.

(Please list)

A 3 CONSENT TO ACCESS BY NAMED RELATIVE/FRIEND TO RECORDED FOOTAGE

I consent to my relative/friend …… being able to view footage recorded in my room with the Home Manager in a secure private area. I understand that I do not have to give my consent, and I can withdraw my consent at any time. If I withdraw my consent, the camera will be de-activated, but footage captured prior to withdrawal of my consent may still be processed.

Name: ……..
Signature: ……
Date: ……

SECTION B - CONSENT DECLARATION BY PERSON HOLDING HEALTH AND WELFARE POWER OF ATTORNEY

B 1 CONSENT TO ACTIVATION OF CAMERA

I confirm that I have a valid health and welfare lasting power of attorney and that I am entitled to make this decision on my relative/friend's behalf.

I have read and understood the information provided in this consent form and accompanying booklet and as activation of the camera is in my relative/friend's best interest, I give my consent to the camera in my relative/friend's room being activated, and the footage being recorded and used as described in this form. I understand that I do not have to give my consent, and I can withdraw my consent at any time. If I withdraw my consent, the camera will be de-activated, but footage captured prior to withdrawal of my consent may still be processed.

Name of Service User: ……..
Name of relative/friend: ……..
Signature: ……
Date: ……

B 2 CONDITIONS OF CONSENT

My consent to activation of the camera in my friend/relative's room is subject to the conditions below. I understand that I can change these conditions at any time by notifying the Home.

(Please list)

B 3 CONSENT TO ACCESS BY NAMED RELATIVE/FRIEND TO RECORDED FOOTAGE

I have read and understood the information provided in this consent form and accompanying booklet and as I consider access to footage recorded in my relative/friend's room is in their best interest, I consent to …… being able to view footage recorded in my friend/relative's room with the Home Manager in a secure private area. I understand that I do not have to give my consent, and I can withdraw my consent at any time. If I withdraw my consent, the camera will be de-activated, but footage captured prior to withdrawal of my consent may still be processed.

Name: ……..
Signature: ……

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Date: ……

SECTION C - CONSENT DECLARATION BY PERSON HOLDING PERSONAL WELFARE DEPUTYSHIP

C 1 CONSENT TO ACTIVATION OF CAMERA

I confirm that I have a valid Personal Welfare Deputyship and that I am entitled to make this decision on my relative/friend's behalf.

I have read and understood the information provided in this consent form and accompanying booklet and as activation of the camera is in my relative/friend's best interest, I give my consent to the CCTV camera in my relative/friend's room being activated, and the footage being recorded and used as described in this form. I understand that I do not have to give my consent, and I can withdraw my consent at any time. If I withdraw my consent, the camera will be de-activated, but footage captured prior to withdrawal of my consent may still be processed.

Name of Service User: …….
Name of Deputy: ……...
Signature: ……
Date: ……

C 2 CONDITIONS OF CONSENT

My consent to activation of the camera in my friend/relative's room is subject to the conditions below. I understand that I can change these conditions at any time by notifying the Home.

(Please list)

C 3 CONSENT TO ACCESS BY NAMED RELATIVE/FRIEND TO RECORDED FOOTAGE

I have read and understood the information provided in this consent form and accompanying booklet and as I consider access to footage recorded in my relative/friend's room is in their best interest, I consent to …… being able to view footage recorded in my friend/relative's room with the Home Manager in a secure private area. I understand that I do not have to give my consent, and I can withdraw my consent at any time. If I withdraw my consent, the camera will be de-activated, but footage captured prior to withdrawal of my consent may still be processed.

Name: …….
Signature: ……
Date: ……

SECTION D - ACKNOWLEDGEMENT OF BEST INTEREST DECISION PROCESS WHERE A PERSON LACKS CAPACITY TO CONSENT

Further to an assessment of capacity and a best interests decision process documented on Form CO 005E and undertaken on ……..*[date]* there is a reasonable belief that …… *[insert Service User's name]* lacks capacity to consent to the decision to activate cameras in their bedrooms for the purpose of safeguarding in the best interests of the Service User's care.

The care plan should show that their capacity to make decisions about this has been assessed on Form CO 005E and that such decisions are being made in their best interest.

The care plan should be reviewed until such time as the person gains the capacity to refuse or consent themselves.

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The best interest's decision recorded on Form CO 005E is:
(Tick as appropriate)

1. **Service User not subject to DOLS**

- No camera to be activated in the Service User's room

- Camera to be activated and reviewed with NO RESTRICTIONS including Personal Care (including but not limited to washing, changing, toileting, cleansing after incontinence, feeding and drinking, moving and handling, assistance with medication or in connection with medical needs)

- Cameras to be activated with the following RESTRICTIONS:

  - No review of Personal Care (including but not limited to washing, changing, toileting, cleansing after incontinence, feeding and drinking, moving and handling, assistance with medication or in connection with medical needs) unless a reasonable concern has been raised

  - Other (please specify) ……

2. **Service User subject to Standard or Urgent Authorisation DOLS (activation of camera should be recorded as a condition on the DOLS Authorisation).**

- No camera to be activated in the Service User's room

- Camera to be activated and reviewed with NO RESTRICTIONS including Personal Care (including but not limited to washing, changing, toileting, cleansing after incontinence, feeding and drinking, moving and handling, assistance with medication or in connection with medical needs)

- Cameras to be activated with the following RESTRICTIONS:

  - No review of Personal Care (including but not limited to washing, changing, toileting, cleansing after incontinence, feeding and drinking, moving and handling, assistance with medication or in connection with medical needs) unless a reasonable concern has been raised

  - Other (please specify) ……

Name of Home Manager: ……

Signature: …… Date: ……

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Appendix 3 – Care Protect Capacity Assessment and Best Interests Decision form

Capacity Assessment and Best Interests Decision Form for Bedroom Camera(s)

This form is to be used where it is suspected that the Service User may not have the capacity to decide whether the camera in their bedroom should be activated and reviewed in accordance with the CCTV Policy.

FACILITY NAME:
NAME OF SERVICE USER:
DATE OF DECISION:
NAME AND TITLE OF DECISION MAKER:

CAPACITY ASSESSMENT	**YES**	**NO**
Are they able to understand the relevant information? *What information has been provided?* *Do they understand the purpose of the CCTV?* *Do they understand who will see the recordings?* *Are they able to understand the consequences of making a decision e.g. people will be able to see them in their room and that this may be when Personal Care (*including but not limited to washing, changing, toileting, cleansing after incontinence, feeding and drinking, moving and handling, assistance with medication or in connection with medical needs) *is being carried out?* *Any other considerations?* *Why do you think they can/cannot understand?*		
Can they retain the relevant information for the length of time to be able to make the decision? *E.g. can they remember all of the above factors in order to be able to take them into account?*		
Can they use and weigh the information to make the decision? *Can they take into account all the above information, consider the pros and cons of the decision and the foreseeable consequences of making a decision one way or the other?*		
Can they communicate the decision?		

Can they communicate, verbally, in written format or through another communication method which they use (e.g. gestures, talking mats etc.).		

If the answer is 'NO' to any of the above questions, then the person lacks capacity and a decision should be made in their best interests by completing the remainder of this form.

N.B. A person should not be taken to lack capacity merely because they make an unwise decision.

If the answer is 'YES' to all the above questions then the Service User has capacity to make a decision about activation of the camera in their bedroom. This assessment should be retained with consent form CO 004E to demonstrate sufficient capacity. The best interest section of this form does not need to be completed.

BEST INTEREST DECISION CONSIDERATIONS:	**YES**	**NO**
Can a decision be delayed until they regain capacity?		
The Service User must be encouraged to take part in the decision, where possible. **What steps have been taken to involve the Service User in the decision:** *Has information been presented in a format they usually use?*		
What are the Service User's wishes and feelings on the matter? *Have they previously consented to CCTV?* *What are their applicable beliefs and values?* *What was their response when they were consulted about the decision?*		

Where appropriate and practical consult with:

- **Anyone named by the Service User**
- **Persons engaged in caring for them**
- **Persons interested in their welfare (such as family members/friends/Social Worker/GP if it concerns health etc.)**
- **Any person with a power of attorney which is not the correct power of attorney to allow that person to make the decision on behalf of the Service User.**

Who has been consulted and what are their views:

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What 'less restrictive' options to safety monitoring have been considered and state why they have been deemed unfeasible, impracticable or unsuitable?

Benefits of having CCTV activated in the room and it being monitored in accordance with the policy:
Please tick the statements which it is felt to be for the best interest of the individual or comment at others if the reason is not covered.

- To ensure the safety of the Service User
- To provide evidence if there is an alleged incident or safeguarding issue
- To evidence the Service User is receiving good care
- To evidence behaviour which may be agitated, aggressive, disorientated, confused
- To ensure a consistency of approach by all staff members
- To ensure the safety of staff and visitors
- To monitor compliance with, and enforce, workplace rules by staff
- To monitor the care and support received
- To respond to a situation and follow up an action taken
- To ensure all treatments are provided in a timely manner and at the frequency prescribed
- To evidence the support and interaction the Service User receives in his/her personal space
- To identify good practice especially attitudes and communication
- To prevent and detect criminal activity
- To enhance security and safety of property and premises

Other: Please give details

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What are the disadvantages of activating the CCTV in the Service User's bedrooms and monitoring in accordance with the policy:
Potentially there is an intrusion of Service User's privacy including footage being reviewed of Personal Care (including but not limited to washing, changing, toileting, cleansing after incontinence, feeding and drinking, moving and handling, assistance with medication or in connection with medical needs) notwithstanding that this is mitigated as far as possible by full compliance with GDPR, Human Rights and all other relevant legislation.

BEST INTERESTS DECISION:

*Take into account the above information and outline why CCTV should/should not be activated***.**

(Tick as appropriate)

Section A - For Service Users NOT subject to DOLS regime

- No camera to be activated in the Service User's room.

- Camera to be activated and reviewed with NO RESTRICTIONS including Personal Care (including but not limited to washing, changing, toileting, cleansing after incontinence, feeding and drinking, moving and handling, assistance with medication or in connection with medical needs)

- Cameras to be activated with the following RESTRICTIONS:

    - No review of Personal Care (including but not limited to washing, changing, toileting, cleansing after incontinence, feeding and drinking, moving and handling, assistance with medication or in connection with medical needs)
    - Footage to be reviewed only on request where a reasonable concern has been raised.
    - Other (please specify):

    ……

Section B - For Service Users subject to Standard or Urgent Authorisation DOLS (this should also be recorded as a condition on the DOLS authorisation)

- No camera to be activated in the Service User's room.

- Camera to be activated and reviewed with NO RESTRICTIONS including Personal Care (including but not limited to washing, changing, toileting, cleansing after incontinence, feeding and drinking, moving and handling, assistance with medication or in connection with medical needs)

- Cameras to be activated with the following RESTRICTIONS:

    - No review of Personal Care (including but not limited to washing, changing, toileting, cleansing after incontinence, feeding and drinking, moving and handling, assistance with medication or in connection with medical needs)
    - Footage to be reviewed only on request where a reasonable concern has been raised.
    - Other (please specify):

    ……

For both Section A and Section B decisions a copy of this Capacity Assessment and Best Interests Decision Form should be attached to Consent Form CO 004 and the care plan updated to document that capacity to make decisions about activation of bedroom cameras has been assessed and that such decisions are being made in their best interests.

SIGNATURE :

NAME:

TITLE:

DATE:

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Appendix 4 – Care Protect White Paper - Refresh of Legal Advice (Sept 2024)

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WHITE PAPER - REFRESH OF LEGAL ADVICE

September 2024

Thank you for considering our innovative safety monitoring (CCTV) services. Care Protect offers a system which has within it a powerful set of tools to provide you with the ability to check on Service Users' safety and treatment.

The use of the services must be applied in a legally compliant way. This white paper aims to highlight information provided via a refresh of legal advice obtained from Weightmans LLP in September 2024. However, please note that the advice is not comprehensive, was provided for Care Protect alone, is not intended to be for the benefit of any third party, and you should consider seeking your own legal advice and/or the support of your head office.

History of legal advice

Care Protect has previously obtained legal advice relating to the safety monitoring (CCTV) services, as follows:

- Irwin Mitchell (dated 16 March 2016);
- Burness Paull, re Scotland (dated 28 February 2018); and
- Carson McDowell, re Northern Ireland (dated 9 October 2019).

Refresh of Legal Opinion (Sept 2024)

Thank you for your instructions to review the documentation you kindly provided.

From the data protection perspective, the question which lies at the heart of these instructions is whether a Provider's (data controller's) use of CCTV with audio recording in a resident's room is capable of complying with the requirements of data protection law. We stress that, if the answer to that question is 'yes', the question of whether CCTV has, in fact, been deployed in compliance with those requirements would have to be assessed on the particular circumstances of any given case. (And of course, there are additional questions about best interests decision making / deprivation of liberty, which are dealt with later in this advice).

Firstly, we clarify that the nature of the particular system which we are considering is one which:

1. *Involves recording of images with audio*
2. *Does not involve real-time or near real-time monitoring of footage*

3. *Is controlled by a motion sensor such that it should not record when there is no movement in the field of view e.g. when the room is empty.*
4. *The footage and audio will be reviewed randomly to monitor the quality of care, but will be excluded from that process of random review – in whole or in part - if the resident so wishes.*
5. *The footage and audio will be reviewed in the context of specific concerns or complaints in order to establish the relevant facts and take any appropriate follow-up steps e.g. internal disciplinary processes, referral to the CQC or Police or safeguarding authorities.*
6. *The recording will only take place in the rooms of residents who have given their consent or where an appropriate best interests decision has been made on their behalf that CCTV use should be deployed.*

Whilst the use of CCTV without audio is relatively common in common areas in care homes the deployment of CCTV in resident's rooms and the deployment of audio in conjunction with image capture are novel developments. The expectation of privacy in common areas is diminished in communal/public areas as compared with resident's private rooms.

For present purposes we proceed on the basis that the care provider (i.e. the care home) is the Data Controller.

<u>Whose rights are impacted by the deployment of CCTV in a resident's rooms?</u>

Residents

The resident's rights are clearly impacted. It is envisaged that the resident's consent to the use of the CCTV (where they have capacity to consent) would provide the legal basis for the processing of their personal data (Article 6 and Article 9 UK GDPR).

Visitors

The CCTV system would record images of visitors in the resident's room and audio of their conversations. That would be the case both for visitors who attend in person and 'remote' visitors who speak with the resident on the telephone or iPad, for example.

It is not envisaged that the consent of visitors would be sought. There would be very significant practical difficulties in seeking to obtain and record such consent, not least when dealing with remote visitors.

Whilst it may be possible to offer an alternative CCTV free space to the resident and visitor it will be difficult to ensure that that is done on every occasion and it may not be feasible for some residents who have difficulties with mobility, for example.

Thus it would be essential for the Controller to identify an appropriate legal basis for processing the visitors' personal data. We consider the "legitimate interests" basis (Article 6(1)(f)) might arguably apply.

Reliance on Article 6(1)(f) requires consideration of whether the processing of personal data is necessary to achieve a legitimate aim of the Controller or a third party.

Employees

We note that the legal obligations white paper indicates that the care home should consider whether existing contracts of employment permit monitoring of staff. Where express contractual provisions permit monitoring, that might facilitate reliance on Article 6(1)(b) as the legal basis for processing an employee's personal data in this way.

Reliance on the consent of employees is not a workable approach to compliance with Article 6 because of the difficulties in establishing that an employee's consent is freely given. In any event, reliance on the employee's consent would place their decision-making directly in conflict with residents e.g. if the employee withdrew consent but the resident wished the use of CCTV to continue. Thus the most viable option under Article 6(1) in many cases will be legitimate interests.

Article 9 UK GDPR

Over time it is almost inevitable that deployment of CCTV in a resident's room will involve the recording of special category personal data relating to the resident and others. The use of motion sensor triggering will not prevent footage and images of personal care or discussions of health related matters or relating to sexual orientation, religious or philosophical beliefs. Nor will motion sensing prevent the capture of images which are very sensitive and constituting special category personal data, e.g. nudity, dressing, bed bathing.

Data Subject Access Requests

Any data subject whose image and/or voice is captured on the recording is entitled to make a data subject access request. That includes staff, visitors and residents.

Residents would need to understand that their withdrawal of consent to recording could not mean disposal of the footage already held in the event that the footage which is stored at the time is the subject of a DSAR.

Necessity

The data controller must be able to demonstrate that the processing is necessary, that there is no less restrictive alternative. This imports concepts of proportionality.

In the context of the purposes identified for the use of CCTV in this scenario, the assessment of necessity would need to flow from a reasoned needs assessment. A resident's expressed preference for the use of CCTV might be one factor which requires consideration, but it would not be determinative.

We would advise any controller contemplating deployment of the system to conduct a Data Protection Impact Assessment (DPIA) which covers the lawful basis for processing the personal data of staff and visitors and explores the risks to their rights and available mitigations, and considers less intrusive alternatives and assesses the extent to which they are capable of achieving the stated purposes.

The DPIA should also set out a needs assessment which describes the nature of the risk to which the technology is a proposed solution, and an assessment of relevant evidence or analysis of the technology's likely contribution to mitigating or controlling that risk. That assessment will be required in order to consider the necessity threshold in the Article 6 (and Article 9) provisions relied upon for processing.

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Further Advice

Consent

Subject to data protection, the consent of a resident with capacity to make the relevant decisions is sufficient authority for use of the System in relation to that resident with no breach of their individual rights.

In particular, we would otherwise obviously be concerned about Article 8 of the European Convention of Human Rights, incorporated into domestic law through the Human Rights Act 1998, which sets out a right to privacy, and is largely reflected in the data protection legislation.

As regards the resident's consent, the consent form seems comprehensive and detailed, and the guidance is appropriate.

In particular, it is right that if consent is the basis, then withdrawal means stopping (per para 5.4 of the CCTV policy).

It is good that the "no consent form" is clear that reasons for refusal of consent are not required.

And it is good to see that consent to the use of the System is understood to be contingent on capacity to make that particular decision, and that capacity is referred to in that context and not as if it were generic (e.g. in the guidance notes for consent form), as is too common a mistake in this context.

Capacity and best interests

It is right to say that consent given before loss of capacity should be weighed in best interests decisions, but an alternative would be to see this as ongoing consent having already been given, and continuing to be valid beyond the loss of capacity, where the circumstances have not materially changed since the consent was given.

The capacity assessment and best interests decision form sets out the functional test accurately. The essential second part of the test for capacity – that the functional inability must be because of an impairment or disturbance in the mind or brain. A diagnostic part of the test for capacity and the functional inability must have a "causative nexus" with that mental disorder. (MCA s2,3).

It is relevant to note whether there is a DoLS authorisation in place or not, asking for confirmation that there is a DoLS authorisation and that the supervisory body will be told of this change in the care plan, or for consideration whether this change in the care plan should prompt a DoLS referral.

Subject to that point, I think that the "consent flowchart for bedrooms document" fairly sets out the position, and reflects that sometimes it may be in a resident's best interests, and sometimes it may not.

For those who lack capacity to make a decision about the use of the System, it is right to say that an EPA / property and finances LPA (or deputyship) cannot consent to this, and that a health and welfare LPA (or deputy) can.

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But they are only able to "consent" if it is in P's best interests. The LPA (or the deputyship) makes them the best interests decision maker, and they are making a best interests decision, which brings with it the same obligations as for any other best interests decision maker to stay within the MCA, i.e. to put proper weight on the person's wishes and feelings, values and beliefs, and to consult as far as appropriate with "those engaged in caring for P or interested in their welfare".
The capacity assessment and best interests decision form effectively helpfully sets out the information that is relevant to making a decision about use of the System (i.e. the information by reference to which the function test of capacity can be assessed) and some of the key factors in making a best interests decision per MCA s4.

The rationale for System is set out in para 2.3 of the CCTV policy document. There are, of course, respectable arguments in favour of use of the System being in the resident's own best interests, as set out in the form. That will need to be assessed case by case, and in particular taking proper account of the resident's own wishes and feelings, values and beliefs, for example how important their privacy is to them individually.

In addition, no best interests decision should be made without consideration whether there is a way to meet their best interests that is less restrictive of their rights (including their right to privacy).

A local authority opposing your System is quite insistent about the use of "less restrictive" approaches. It is important to understand this properly. The law is not that you must do the least restrictive thing, where someone cannot make the relevant decision for themselves, but that we must do what is in their best interests. The absolutely least restrictive thing (to allow someone with dementia to wander freely regardless of their lack of road sense) might not be in their best interests. It is best interests that is the guiding principle when someone cannot make their own decision – but in making a best interests decision for them, we must consider if there is a less restrictive way to meet their best interests. It is not the same thing as an obligation to provide their care in the least restrictive way full stop, but in the least restrictive way that meets their best interests. There will always be things that are less restrictive, but that does not mean that they are in the person's best interests.

This must be individual decision for P – the local authority cannot reasonably say it would never be in the best interests of an individual to have the Care Protect system in use, any more than it would be reasonable to insist that it would always be in any resident's best interests, regardless of the circumstances.

I was interested to see the reference to the need for the System to be "solving a problem", and that it must be "proportionate and effective solution to a problem". In MCA terms, it is likely that such an intrusion would need justification instead as necessary to prevent harm and proportionate to the likelihood and seriousness of that harm (per MCA s6). Policy s6

Deprivation of liberty

As you appreciate, in making decisions for someone who lacks capacity to make those particular decisions for themselves, when the interventions reach a certain threshold of intrusiveness (however well intentioned, and however much they are in the person's best interests) there must be a due legal process to scrutinise and authorise them, to meet the person's rights under Article 5 of the ECHR – the right to liberty.

The question is whether the resident might be deprived of their liberty – i.e. they lack the capacity to consent to the care arrangements, which amount in total to confinement for a more than negligible period (defined as being "under continuous supervision and control and not free to leave"); and that it is imputable to the state.

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In CQC registered care, it will certainly be imputable to the state, and as we discussed any resident who has capacity to consent, and does consent, to any care package, including Care Protect services, cannot be regarded as deprived of their liberty, and is no business of the DoLS team.

As such, we are most concerned with the objective element of the definition of DoL. It is well established that being under "surveillance" 24/7 is not necessary to establish that someone is under continuous supervision and control for the purpose of defining a DoL, (you should ignore the case studies published in chapter 12 of the draft Code of Practice for the proposed Liberty Protection Safeguards reforms in 2022 which might suggest otherwise. That Code of Practice has not been enacted, and bears no relationship to the actual case law on this).

My impression is that in many cases the resident is likely to be regarded as DoL whether or not the System is in use for them.

Article 5 is not an absolute right, but is qualified, to allow people to be deprived of their liberty in certain situations (including for those of "unsound mind") if procedural safeguards are met. The DoLS process itself is part of meeting someone's Article 5 rights.

And, of course, you might refer to the other rights of the resident that also need to be protected – Article 2 (right to life) and 3 (right not to suffer inhuman or degrading treatment).

If there is a deprivation of liberty, then the purpose of the DoLS process is to meet the resident's Article 5 rights by ensuring that there is a due process of law to scrutinise and authorise this (including a right to a prompt legal process to challenge / appeal), asking whether the care that amounts to a DoL is:

- *In their best interests; and*
- *Meets their best interests in the least restrictive way (as above); and is*
- *Necessary and proportionate to the harm it prevents.*

Looking at the documentation, on the flowchart / guidance notes for consent form, it is right to consider whether someone is already under a DoLS authorisation (in which case the implementation of the System should be notified to the local authority as the supervisory body, so they can consider whether it is still in the person's best interests, necessary and proportionate for the overall care plan to be implemented, despite the DoL); and for someone not under a DoLS authorisation already, that implementation of the System should prompt reconsideration whether a DoLS referral is appropriate if there may now be a potential DoL.

I cannot see a scenario where a DoLS authorisation is granted but only if, as a condition, the Care Protect System is being used.

Instead, implementation of the System is effectively a variation in the care plan that ought to be drawn to the attention of the supervisory body (and the RPR) to ensure that they still consider the overall restrictions to be in P's best interests, necessary and proportionate. This is reflected in the "authorisation activation form" method of consent box.

<u>Conclusion</u>

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Our initial discussions were framed in terms of a local authority DoLS team objections to the proposed approach, and it may be that their apparently entrenched position - that the System cannot be in a resident's best interests and its use cannot be authorised as part of a lawful deprivation of their liberty – is unduly black and white.

Thank you again for your instructions

Yours faithfully
Weightmans LLP