



**HEREFORD AND WORCESTER AMBULANCE
SERVICE NHS TRUST**

Regulation of Investigatory Powers Act Policy

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1. Introduction

The purpose of this policy is to provide guidance in relation to the Regulation of Investigatory Powers Act (RIPA) and the use of surveillance activities within the NHS.

It is imperative that management and staff are aware of and comply with the requirements of this legislation in order that the Trust exercises its statutory responsibilities and avoids penalty or litigation that may be forthcoming if inappropriate activities are undertaken. Compliance with this legislation will be the subject of independent inspection by the Office of Surveillance Commissioners

2. Regulation Of Investigatory Powers Act 2000

The Act received Royal Assent on 28 July 2000 and was enacted to ensure compliance with the Human Rights Act of 1998.

The purpose of the Act is to ensure that public authorities comply with human rights legislation when exercising certain investigative powers.

The Act requires that covert surveillance activities (surveillance of someone without their knowledge) undertaken by public authorities (or anyone else acting as an agent of a public health authority) are properly regulated and fully compliant with human rights legislation.

The legislation covers: -

Interception of external communications e.g. telephones, mail		NHS Bodies are NOT Authorised to undertake this
Acquisition of communications data e.g. billing data		NHS Bodies are NOT Authorised to undertake this
Intrusive surveillance (on residential premises/in private vehicles)	1) Intrusive surveillance is defined by the Act as covert surveillance which is carried out in relation to anything taking place in any residential premises or in any vehicle and involves the presence of an individual, or surveillance device, on those premises or in the vehicle. Under the legislation, only the Police, Customs & Excise and the Security Services can complete intrusive surveillance. NHS bodies cannot therefore undertake intrusive surveillance.	NHS Bodies are NOT Authorised to undertake this
The use of covert human intelligence sources (agents, informants, undercover officers)		NHS Bodies are NOT Authorised to undertake this
Access to encrypted data		NHS Bodies are NOT Authorised to undertake this
Covert (i.e. under cover) surveillance in the course of specific operations	2) Directed surveillance which is covert but which is not intrusive, and is undertaken for a specific investigation, in a manner likely to obtain private information about a person and is otherwise than by way of immediate response.	NHS Bodies are permitted to carry out directed surveillance, provided certain conditions are met and it is properly authorised. These conditions are outlined in sections 3 and 4 below.

For each of these powers the law though not necessarily within this Act, clearly covers: -

- The purposes for which they may be used
- Which authorities can use the power
- Who should authorise each use of the power
- The use which can be made of the material gained
- Independent judicial oversight
- A means of redress for the individual

Directed Surveillance

3. Investigation Into Matters Involving Fraud and Corruption

Arrangements are already in place within the NHS for the authorisation of covert surveillance activities arising as a result of the investigation of fraud and corruption. When the Trust's Counter Fraud Specialist considers that directed surveillance might be appropriate within the framework of the Secretary of State directions on counter fraud arrangements, authorisation will be provided by officers within the NHS Counter Fraud & Security Management Service.

4. Investigation Into Matters Not Involving Fraud and Corruption

A more obvious example where management may wish to investigate non-fraud related matters is that of thefts. It may be that evidence could be obtained by the use of video recording or personal observation undertaken covertly. (It must be appreciated, however, that a wide range of activities could be considered to breach powers available and caution must be exercised as indicated at Section 3 above.)

THE CHIEF EXECUTIVE ALONE MUST AUTHORISE SUCH DIRECTED SURVEILLANCE. FAILURE TO DO SO MAY PLACE THE TRUST'S STAFF OUTSIDE THE LAW. THIS RESPONSIBILITY CANNOT BE DELEGATED.

Before authorisation is given, a number of matters are required to be considered. These include: -

- That the surveillance is required in the interests of public safety, public health or to prevent or detect crime;
- Whether the surveillance activity is proportionate to the matter under consideration;
- Whether the activity is necessary;
- The impact that the activity may have on third parties.

Chief Executives may, at a later date, be required to justify decisions to approve surveillance. Documents relating to surveillance authorisation should thus be retained.

Summary

- The purpose of this policy is to provide guidance to the Trust's staff on the implications of the Regulation of Investigatory Powers Act 2000 and to indicate policy regarding the appropriate approval of any surveillance activity.
- Trust staff cannot authorise or undertake intrusive surveillance.
- Non-fraud related directed surveillance (e.g. in relation to the investigation of thefts etc) must be authorised in advance by the Trust's Chief Executive.
- Directed surveillance for the purposes of investigating fraud may be authorised in advance via the NHS Counter Fraud and Security Management Service.
- The Trust's response to the various legislative requirements will be subject to independent inspection by the Office of Surveillance Commissioners.
- Any failures to comply with the Act by the Trust's staff could result in individuals whose rights have been breached bringing an action against the Trust potentially resulting in the award of damages.
- For further information, contact Angela Morris, Local Counter Fraud Specialist, Tel: (01905) 760272.