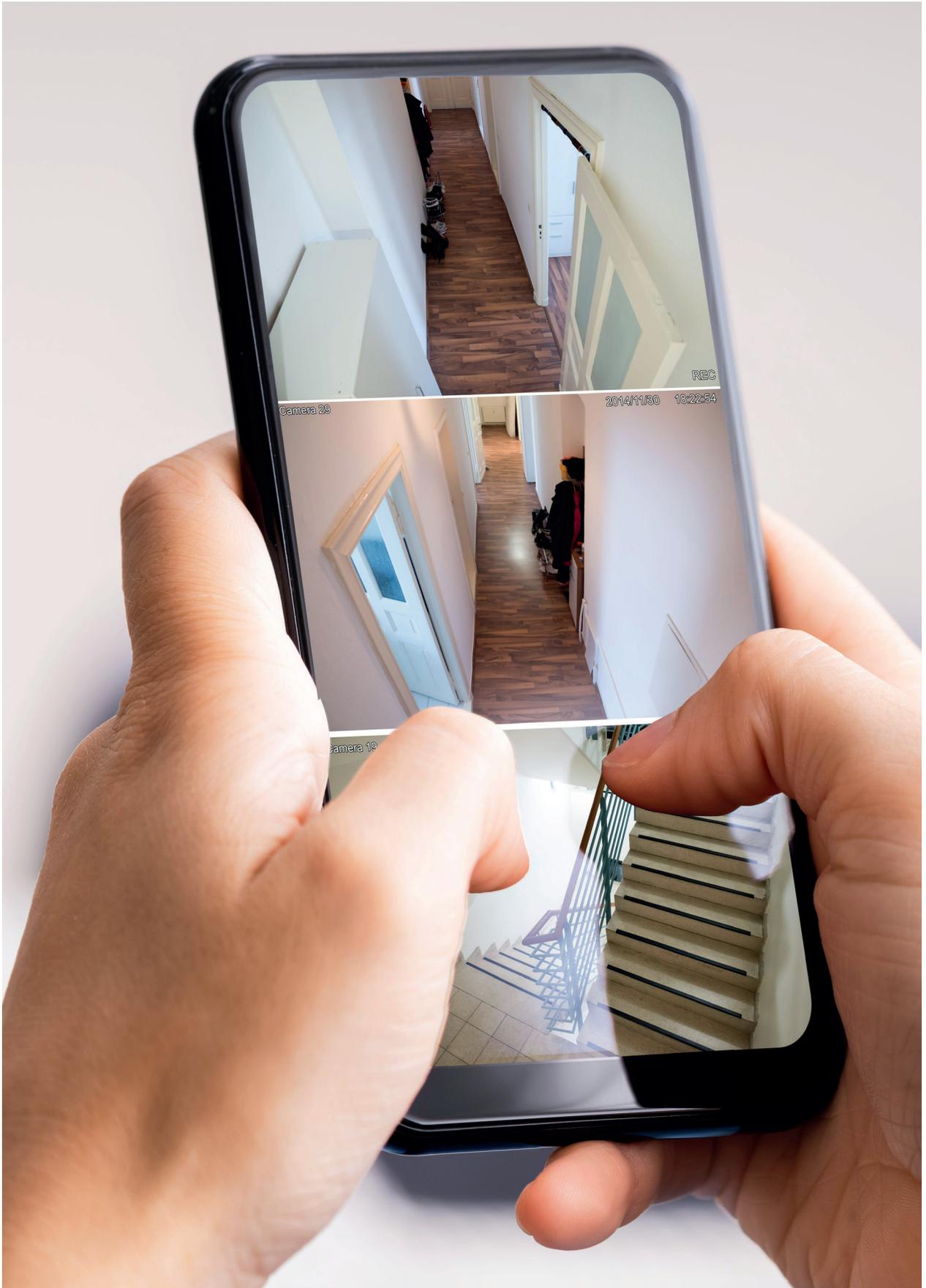




Surveillance

A restrictive practice
and human rights
issue

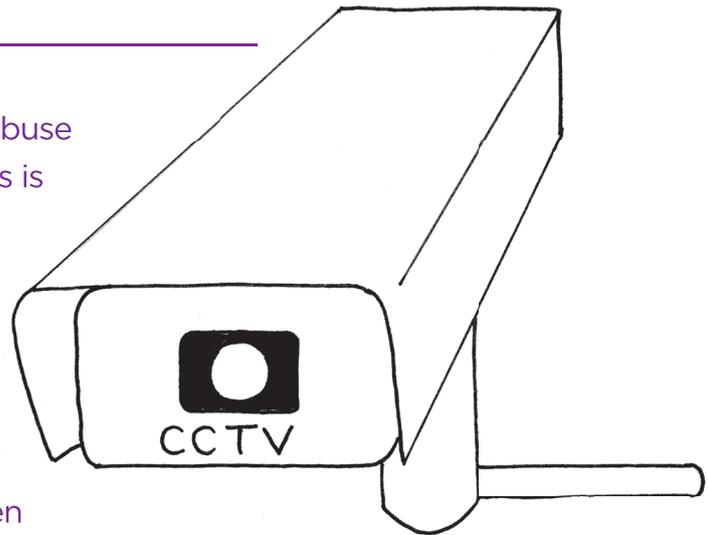




Surveillance

Introduction

Promoting quality care, preventing abuse and upholding people's human rights is what all good care settings should endeavour to achieve. In recent years, when there have been concerns raised about the quality of care and potential for abuse in care settings, covert and overt surveillance methods have often been seen as a way of monitoring and recording the quality of practice.



The use of surveillance is a complex topic. It is a restrictive practice and can be an unjustified blanket restriction. In addition to any benefits, the use of surveillance raises numerous ethical and legal questions, as well as how effective it is in achieving its stated aims. This explainer seeks to answer common questions and explore what 'good', rights respecting surveillance looks like.



There are unintended consequences and additional harms that can result from installing surveillance and these must be considered. The more surveillance threatens a person's privacy, the stronger the justification for using it must be.



What is surveillance?

Surveillance is when technology is used to record and monitor what people are doing for the purpose of information gathering, influencing, managing and/or directing. Surveillance technology can include CCTV, microphones, body worn cameras and GPS trackers.

In care settings people believe that surveillance might make people safer as their care is monitored. Regardless of whether this is true, surveillance must be used ethically and in a way that protects people's privacy and other human rights.

Why is this an ethical debate?

Think about how you would respond if the government decided that CCTV should be installed in every room in your house, including your bedroom, with the aim of promoting your health and protecting you from harm?

Certainly our right to privacy, which is fundamental to so many of us, would mean that you might not be pleased with this news. You set about trying to oppose this mandate. You might even take to the streets to protest. Surveillance is certainly an ethical and human rights issue!

However, when asked about whether CCTV should be placed in care settings, most people who do not live in these settings think it is a good idea (Niemeijer et al, 2015 in Davidson et al, 2020). The same research found that most people who live in congregate care environments were much less in favour of this restrictive practice and saw it as a breach of their privacy (Niemeijer et al, 2015 in Davidson et al, 2020).



How are our rights protected in the UK?

The Human Rights Act (HRA) is the main law in the UK which protects our human rights. Everyone in the UK has human rights which belong to them. Our rights can never be taken away, but they can sometimes be restricted in very specific circumstances.



Human Rights Act 1998

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The right to respect for private and family life, home and correspondence

This is a very broad right which protects our wellbeing, autonomy, relationships, privacy, and communication. This is a non-absolute right, which means that it can be restricted by a public body in very specific circumstances.

If a public body plans to use cameras or other recording equipment in a way which affects this right, it must make sure its decision or action is:

- 1. LAWFUL** – There must be a law allowing a restriction on this right. Mental health, mental capacity, or data protection laws could sometimes allow staff working in public bodies to limit our right to privacy by using CCTV or other recording equipment.
- 2. FOR A LEGITIMATE AIM** – There must be a good reason why cameras or other recording equipment are needed; these reasons are written in the HRA. Often a good reason to install recording equipment might be to protect our rights (for example, our right to life) or the rights of others.

Sometimes cameras or other recording equipment are installed when there is no good reason for it. For example, if they are used solely for staff training purposes, to reduce the number of staff needed or to give someone's family members peace of mind that they are safe.

It would be very difficult to argue that these reasons on their own justify restricting someone's right to privacy.

3. PROPORTIONATE – Public bodies must think about all the different ways in which they can achieve the legitimate aim (explained above) and choose the one which restricts rights the least. When cameras or other recording equipment are being used, or plans are being made to use them, staff in public bodies have to make sure they have checked that this is the least restrictive option. You can read about how they might do this below.

Are there less restrictive options?

Even if a decision to restrict a person's right to respect private and family life, home and correspondence is lawful and for a legitimate aim, all possible alternatives have to have been considered.

The Restraint Reduction Network considers that in many care settings where there is person centred, trauma informed care and good senior/practice leadership, there would be little need for CCTV surveillance technology. However, in other cases using cameras or other recording equipment might be the least restrictive option and the technology successfully aids in delivering high quality care and support.

Before implementing surveillance measures, the Restraint Reduction Network suggest that services are clear about three things:

1. The specific problem that the introduction of surveillance aims to alleviate
2. The likelihood that surveillance will succeed in alleviating the problem
3. How unintended consequences of using surveillance will be mitigated

The British Institute of Human Rights explains that because removing a person's right to a private life is such a big restriction, it may need to be authorised by a court and regularly reviewed to make sure it remains least restrictive.



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The right to be free from torture and inhuman and degrading treatment

This right protects people against serious physical or mental harm from a public body or their staff, whether that harm is intentional or not. The right to be free from inhuman and degrading treatment is an absolute right which means any treatment which is inhuman and degrading is not lawful.

When we are interacting with health and social care services, perhaps because we are unwell or going through a difficult time in our lives, surveillance technology can be extremely useful.

Ben told us,



My staff use a GPS tracker to make sure I don't get lost. This means I can go out and about and I don't have to have people with me all the time.

For Ben, surveillance increases his agency and freedom.

Yet for other people, surveillance caused feelings of worthlessness and humiliation. Some even found the experience frightening and it increased their paranoia.

Angela told us,



I have CCTV in my bedroom. It's in everyone's bedroom. I can't even get dressed or go to the toilet without someone watching me. I hate it!

It is likely that Angela's right to be free from inhuman and degrading treatment is at risk.

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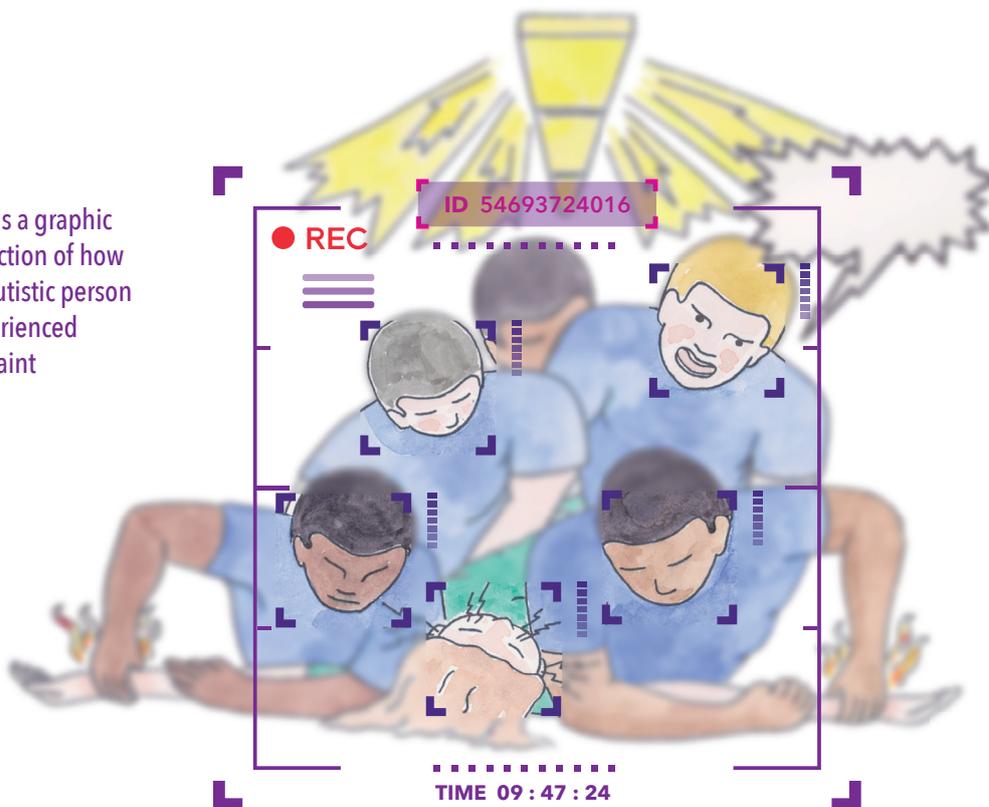
The right to be free from discrimination

We should all be able to enjoy our human rights in the same way, without discrimination.

How might this right be relevant to the use of surveillance in health and social care?

- If there is an assumption that all people with care and support needs require a higher level of supervision. For example, people experiencing mental health issues, people with learning disabilities, or autistic people.
- Where surveillance of everyone in the setting (a blanket restriction) is used without considering the impact on individuals with conditions that would experience greater harm from this restrictive practice.

This is a graphic depiction of how an autistic person experienced restraint



Surveillance and good practice considerations

In recent times there have been significant practice changes that have meant surveillance has become 'part of the furniture', yet little attention has been paid to key ethical debates.

As a restrictive practice, the Restraint Reduction Network recommends that surveillance must only be used:

- ✓ for a specific purpose
- ✓ when benefit vs harm has been explored and where potential intended and unintended effects have been mitigated
- ✓ when there has been a comprehensive assessment of the individual and the reasons that surveillance is needed. The continuing need must be regularly reviewed
- ✓ where the needs of those subject to the restrictive practice and their families/carers have been consulted and issues of consent and capacity have been addressed
- ✓ if relevant legal requirements, including possible infringements on human rights have been considered and addressed
- ✓ if staff have had human rights training and training relevant to the use of surveillance

Services must not use surveillance as an unjustified blanket restriction. For example, surveillance should not be used to overcome, alleviate or mitigate a poor organisational culture or other setting specific problem, such as staff behaviour/training. Surveillance should also not be used if it is unlikely to succeed in addressing the issue it has been installed to overcome.

There are unintended consequences and additional harms that can result from installing surveillance and these must be considered. The more surveillance threatens a person's privacy, the stronger the justification for using it must be.



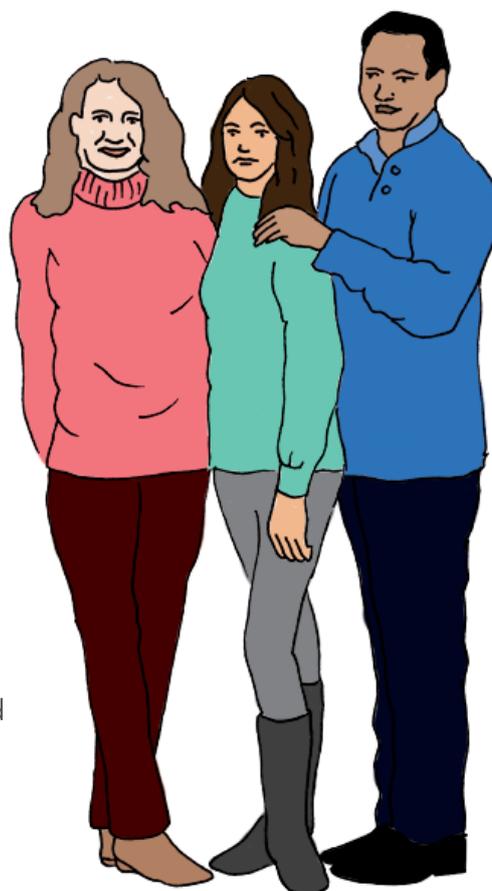
What can I do if I think my rights, or the rights of someone I care about, are at risk?

If you are worried that a public body or care provider is using cameras or other recording equipment in a way which does not respect human rights consider:

- What surveillance is being used and why do you think it is impacting on your rights or the rights of a person you care about?
- What impact is the surveillance having on you or a person you care about?
- Who has made the decision to use it?
- Which human rights are at risk? Are these absolute or non-absolute rights? If absolute, take action straight away. If non-absolute, is the decision lawful, for a legitimate aim, and proportionate?

You can then:

- Identify the issue and raise it with family and care staff
- Complain to PALS
- Contact an independent care regulator to tell them what is happening:
 - In England, this is called the **Care Quality Commission**.
 - In Wales, there is the **Care Inspectorate Wales** and the **Healthcare Inspectorate Wales**.
 - In Scotland, there is the **Care Inspectorate** and **Healthcare Improvement Scotland**.
 - In Northern Ireland, the health and social care regulator is called the **Regulation and Quality Improvement Authority**.
- Get some legal advice



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For more information

For more information on surveillance and Human Rights go to:

<https://www.bihhr.org.uk/human-rights-cameras-guide>

