

Department of Health
Adult Mental Health Unit
Room D4.26
Castle Buildings
Stormont
Belfast
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By email only

01 October 2021

Dear Sirs

RE: Draft Regional Policy on the Use of Restrictive Practices in Health and Social Care Settings and Regional Operational Procedure for the Use of Seclusion

Thank you for inviting the Information Commissioner's Office (ICO) to respond to the above Consultation.

As you will be aware, the Information Commissioner's role includes the regulation of the Data Protection Act 2018 (DPA18), the UK General Data Protection Regulation (UK GDPR) and the Freedom of Information Act 2000. Given our role as an independent Regulator, it would not be appropriate for us to respond in detail to the practical application of the draft regional policy outlined in the consultation document.

However, we acknowledge the importance of fair and transparent policies and procedures within the health and social care sector and its subsequent impact on public trust and confidence. To maintain this trust and confidence, any such processing of personal data must be in accordance with data protection legislation. With respect to this, we have provided general comments for your consideration below.

Use of personal data within reporting

The consultation makes reference to the importance of clear recording, reporting, monitoring and governance arrangements to support the implementation of the regional policy. Where the reported data contains information that could be used to identify an individual directly, or indirectly, such processing will fall under the UK GDPR. Only if the data is truly anonymised will data protection legislation not apply.

If the data used within reporting is determined to be personal data, the relevant data controller will need to adhere fully to UK data protection law.

In particular, consideration should be given to ensuring compliance with Article 5(1)(c) which outlines the data minimisation principle. It is important for organisation's not to process more information than is required to achieve the purpose of the processing. The ICO acknowledges section 10.5 of the consultation which states that an appointed Health and Social Care Board (HSCB) Director will be responsible for agreeing the detail of data to be collected for reporting purposes. The HSCB Director may wish to engage with the HSC Data Protection Officer to ensure compliance with all data protection law and principles.

CCTV

Sections 11.59 and 11.96 outline the use of CCTV in observing patients within seclusion rooms.

As per ICO [guidance](#), CCTV should not typically be used in areas or rooms where individuals receive personal care or where they could reasonably expect relative privacy. This is likely to include areas such as bedrooms, treatments rooms and bathrooms/sanitary accommodation.

Any positive determination on the use of CCTV in spaces where individuals could reasonably expect privacy, must be supported by a strong justification for doing so. The data controller should be in a position to outline the necessity, fairness and proportionality of any such decision. This should be evidenced in the form of a Data Protection Impact Assessment (DPIA).

The DPIA should include the lawful basis for processing, noting that in a healthcare setting this will most likely include the processing of special category data and therefore the requirement for a separate condition for the processing under Article 9. The purpose of the processing, and a fulsome consideration of the risks and any potential harm that may be incurred by an individual from the recording should also be documented. A DPIA should also acknowledge the potential intrusiveness of such recording and clearly clarify how the live or recorded footage will be used. Further guidance on DPIAs can be found [here](#) on our website.

In addition to the above, the Department should consider and outline how the proposed processing meets the seven key principles under the UK GDPR, including, but not limited to the retention and security of the footage, as well as address how the rights of the individual are being met.

This should include the rights of anyone captured on the footage, including HSC staff and patients. In particular, you should consider how the right of access will be exercised and how an individual's right to be informed is communicated. This will typically require signs that outline if video and/or audio recording is taking place within a certain space. Particular care should be taken to ensure that the information you provide is appropriately written, using clear and plain language and suitable for the intended audience.

The Department may wish to consider considering the guidance issued by the [Surveillance Camera Commissioner](#).

Data sharing between organisations

The ICO acknowledges the multitude of organisations involved in delivering a health and social care service across Northern Ireland and the requirement to share personal data to deliver a high standard of care. The consultation outlines a number of agencies beyond the HSC that data may be shared with. It is important to note that UK data protection law does not prohibit the sharing of personal data between organisations. However you may wish to consult the ICO's [Data Sharing Code of Practice](#) to ensure compliance with data protection law prior to undertaking multi disciplinary data sharing.

Data sharing with next of kin/significant others

It is apparent that section 11.49 of the consultation recommends that next of kin/significant others should be informed in a timely manner of the necessity for seclusion. It is important to ensure that the disclosure of personal data to an individual's next of kin is undertaken in a manner that is compliant with UK data protection law and existing policies and procedures on disclosure.

Staff Training

Encouragingly, the consultation paper makes multiple references to staff training. Given the potential scope for personal data processing, the use of CCTV and the sharing of personal information, consideration should be given to ensuring that staff members are provided with practical data protection training that is specific to their role. Such training should be refreshed on a regular basis.

In addition, it will be important that supporting guidance accompanies this policy and regional procedure prior to it being made operational. This will help staff within Health and Social Care settings to understand not only how to implement it, but importantly the data protection implications for them.

To conclude, while the ICO cannot endorse the implementation of the draft regional policy, we take this opportunity to stress the importance of incorporating appropriate systems to ensure compliance with data protection legislation. You may find it helpful to consult our website and in particular the information that is contained within the [Guide to the UK GDPR](#).

We hope you find the above comments helpful as you move forward with your proposals. Please do not hesitate to contact our office should you wish to discuss this further.