

Olegis

NHS Security Info

Free Download #3

Video Recording on NHS Premises



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Video recording in NHS Hospitals



Healthcare Security Officers are videoed at work more frequently these days than ever before.

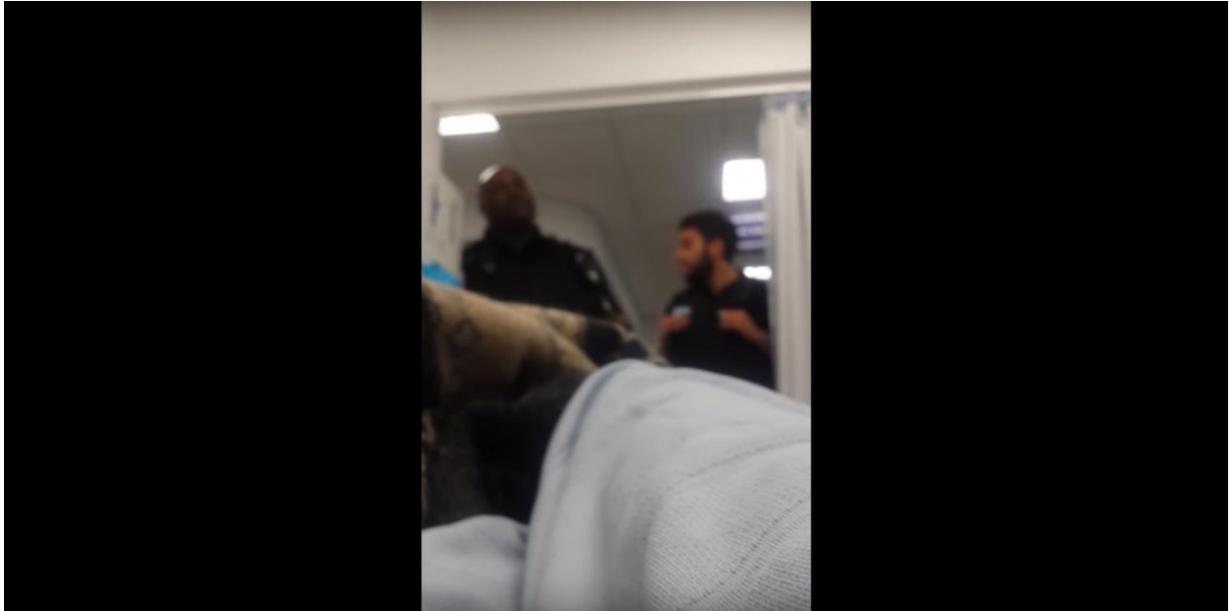
Most NHS Trusts have CCTV cameras covering ‘high risk’ areas of their sites and increasing numbers of NHS Trusts are also investing in Body Worn Video for security staff.

By acting as an independent, impartial and reliable ‘third-party’ witness to events, this kind of video footage of incidents can help, not only to improve transparency, (i.e. show the way things are done), but also to reduce the incidence of malicious complaints against Healthcare Security Officers.

Video is powerful evidence (especially when coupled with audio), that can help to secure a conviction where criminal offences have been committed. In addition, by providing clarity of the circumstances and context of the offences, it can also help to gain the most severe penalty for offenders.

Note: Video recordings of incidents can provide valuable help in developing and improving Staff training.

Healthcare Security Officers can also be video recorded at work by patients, visitors or colleagues.



Practically everyone has a mobile phone these days and nearly every mobile phone has a camera capable of recording audio and video. Some NHS Trusts encourage the use of mobile phones by patients and visitors by providing free WIFI.

It is now quite common for 'security incidents' in hospitals to be filmed either by the subject of the security action or by onlookers. It's also more likely than not for videos to go viral on the internet wherever security have behaved less than impeccably. So, it's vital that Healthcare Security Officers know how to respond when called to deal with complaints from staff about someone filming onsite.

Do people have a legal right to video record at a Hospital?

The Metropolitan Police has [confirmed](#) that: "Members of the public and the media do not need a permit to film or photograph in **public places** and police have no power to stop them filming or photographing incidents or police personnel."

However, hospitals are not strictly 'Public Places' per se. They are 'places to which the public have access.' The significant difference is that permission to access and remain on hospital premises is not unconditional i.e. an absolute right. Instead, it is subject to compliance with **any** terms and conditions imposed by the NHS Trust as owner/occupier i.e. including behaviour standards like 'no photographs or filming allowed'.

NHS Trust Policy

NHS Trusts have a duty to protect the rights of patients to privacy and confidentiality and most, if not all, will have a policy based on [NHS Digital's recommended guidance](#) on the [Use of Mobile Devices in Hospitals \(e.g. Phones, Tablets and Cameras\)](#) produced by the Information Governance Alliance (IGA).

The guidance recognises that communication with family and friends is important when someone is in hospital. In line with the principles of patient choice, the guidance says the use of mobile phones in NHS hospitals should be allowed, as long as their use does not affect:

- the safety of patients or other people
- patients' privacy and dignity
- the operation of medical equipment (dialysis machines; defibrillators; ventilators; monitors; pumps)

Note: The Medicines and Healthcare products Regulatory Agency (MHRA) has said that in certain circumstances the electromagnetic interference from mobile devices can interfere with some medical devices, particularly if used within 2 metres of such devices. However, there is little evidence of detriment having been caused by mobile devices and the MHRA does not advise NHS Trusts to operate a hospital-wide ban on mobile phones.

The [IGA guidance](#) recommends hospitals display signs to show where mobile phones can be used.

For example:

- the hospital entrance or reception
- communal areas such as cafés and lift lobbies
- day rooms
- non-clinical areas on wards where direct medical care is not given

However, NHS Trust policies will usually incorporate a blanket prohibition on taking photographs or video recording anywhere on the hospital premises.

Information to patients that appears on [NHS Digital's web site](#) says: “... if your phone has a camera, it's unlikely you'll be allowed to take photographs.”

Below, is an excerpt from the IGA Guidance document. It clearly confirms:

“VIDEO / PHOTOGRAPHS OF PATIENTS MUST NOT BE TAKEN ON PHONES BY PATIENTS OR VISITORS WITHOUT NURSE IN CHARGE AGREEMENT.”



THE USE OF MOBILE DEVICES SHOULD BE KEPT TO A MINIMUM AND MUST ONLY BE USED WHERE ALLOWED. USERS OF MOBILE DEVICES MUST BE CONSIDERATE OF PATIENT PRIVACY, DIGNITY AND NEED FOR QUIET

Area	Designation	Staff	Patients	Visitors
Intensive Care / High Dependency Units Operating Theatres and Recovery Areas Neonatal Units Emergency/ Resuscitation Areas Renal Dialysis Units Delivery Rooms	Prohibited	Mobile device cameras can only be used for urgent clinical photographs. Phones can be used for work purposes or during breaks in a permitted area. Staff with carer responsibilities should agree a landline contact with their line manager	Not allowed The Nurse in Charge can agree exceptional patient use for those with specific communication or carer needs or for those confined to bed areas. Care should be taken to avoid	Not allowed Visitors should leave the area. Calls must only be made from a permitted area or outside the building. The Nurse in Charge can agree exceptional use.
Other clinical areas (not in prohibited list) that the Trust has designated as restricted due to risks outweighing the benefits to patients and visitors.	Restricted	Mobile device cameras can only be used for urgent clinical photographs. Phones can be used for work purposes or during breaks in a permitted area. Staff with carer responsibilities should agree a landline contact with their line manager	Not allowed The Nurse in charge can agree exceptional patient use as above but this should avoid proximity electronic Medical Device e.g. on Maternity Units pictures can be taken of new born babies if this is the ONLY method of taking the picture.	Not allowed Visitors should leave the area. Calls must only be made from a permitted area or outside the building The Nurse in Charge can agree exceptional use.
Other areas e.g. waiting areas	Permitted	Allowed , but no personal use when on duty (Phones can be used in breaks).	Allowed but please have regard to others and try to keep a distance from electronic medical devices. Phones should not be used between 23:00 and 07:00. If using video chat the camera must be facing you and you need to be aware that you may pick up other peoples conversations and other people may hear both sides of your conversation. Please Respect staff and service user privacy and dignity when updating your status on any social media sites / apps.	

VIDEO / PHOTOGRAPHS OF PATIENTS MUST NOT BE TAKEN ON PHONES BY PATIENTS OR VISITORS WITHOUT NURSE IN CHARGE AGREEMENT. KEEPING A RECORD OF YOUR OWN CARE IS PERMITTED BUT PLEASE INFORM STAFF IN ADVANCE AND HAVE REGARD TO THE PRIVACY AND DIGNITY OF OTHERS.

V 1.0 15/10/2015

So, what kind of recording would be permissible?

Recordings made to keep a ‘personal record’ of what happened during a consultation or treatment constitutes ‘note taking’ and, when undertaken for this legitimate purpose, can be authorised/permitted by the Nurse in Charge, i.e. where it is deemed absolutely necessary.

Note: Guidance produced by NHS Protect in 2016 titled [‘Patients recording NHS staff in health and social care settings’](#) recommended that patients **should be discouraged** from undertaking recordings of consultation or treatment and permitted only where it is ‘deemed absolutely necessary’.

The Nurse in Charge at an NHS Trust could authorise a professional film crew to record inside a hospital, i.e. subject to appropriate provisions (including supervision) that safeguard against filming/recording anyone who has not consented to the filming/recording.

The Nurse in Charge could also, in exceptional circumstances, permit individuals to take photos and make video recordings (e.g. of a new born baby or an immobile patient) to share with relatives, on condition that staff or other patients are not captured in the image or recording.

Note: The facility to 'livestream' video footage on social media (e.g. Facebook Messenger, Facebook Live, YouTube, Instagram) using a mobile phone means NHS Trusts need to highlight to patients and visitors the need to avoid accidentally filming others in the process. NHS Staff need to be vigilant, monitor compliance and enforce the 'No Filming' policy consistently.

Is it legally necessary to get permission from the Nurse in Charge?

NHS Trust policy will usually invite patients and visitors to formally request permission to make any kind of recording.

However, there is no legal requirement to get permission from the NHS Trust or the NHS professionals involved prior to recording their consultation or treatment or, any event that they are a party to at the hospital.

Is video recording in a hospital without permission a criminal offence?

Whilst it would be against the NHS Trust's rules (policy), taking photographs or video recording at a hospital premises without permission from hospital staff is not, in itself, a criminal offence.

However, if a patient makes a recording that records other individuals (i.e. other than of family or friends) whether a patient, visitor, volunteer or member of staff, not directly related to their own care, then, unless consent has been gained from the other recorded parties, any **subsequent disclosure** (e.g. published on social media) **could be unlawful**.

Note: [Section 170 of the Data Protection Act 2018](#) makes unauthorised disclosure of personal data a criminal offence.

Guidance produced by NHS Protect in 2016 titled [‘Patients recording NHS staff in health and social care settings’](#) advised:

“Criminal offences that could arise from unauthorised disclosure include an offence contrary to section 1 of the Protection from Harassment Act 1997, an offence contrary to section 4, 4A or 5 of the Public Order Act 1986, an offence contrary to section 1 of the Malicious Communications Act 1988 or an offence contrary to section 127 of the Communications Act 2003.”

What about covert recordings?

As above, there is no law constraining a person from covertly (i.e. secretly) recording audio/video of events they are involved in at a hospital.

Increasing numbers of people have been resorting to secretly filming the circumstances of ‘care’ being delivered to themselves or loved ones, based on concerns that it is not appropriate.

The CQC has published guidance to the public on using hidden cameras to monitor care titled “Thinking about using a hidden camera or other equipment to monitor someone’s care” which (at page 6) invites people to:

*“Please contact us if your recording shows poor care or abuse and you are worried about sharing it with the service. We want you to tell us about poor care and you should share with us what you have gathered **using hidden cameras or recording equipment.**”*

And, at page 8, of the Guidance, CQC confirm:

“We are not aware of any instances where recording equipment used by family members has been challenged legally.”

What action can be taken when people refuse to stop recording?

The action options open to Healthcare Security Officers in the event that a person refuses to stop recording in a hospital premises after being asked to desist, will largely be defined by the circumstances, the context (who is recording, who/what is being recorded and why) and, in particular, the gravity of the harm likely to be caused if no action is taken.

Is the filming taking place likely to provoke imminent violence?

If, the nature of the filming taking place is likely to provoke a breach of the peace, (i.e. cause others present to become violent), Common Law (Breach of the Peace) would authorise 'arrest' of the person doing the filming; and the Common Law Doctrine of Necessity could support action taken to stop them continuing to film including, seizing the recording device, i.e. justified as action 'reasonably necessary' in order to prevent a breach of the peace.

Note: In the circumstances describe above, the threat of violence if the filming were to continue would have to come from members of the public, not NHS Staff or Security Officers.

Note: This is the same 'legal authority' NHS Staff working in Mental Health settings rely on in order to be able to prevent in-patients causing a nuisance or disturbance to the care and treatment of other patients i.e. by, where necessary, taking the recording device away from the patient.

Is the filming terrorism related?

It is possible that a person taking photographs/filming in an NHS hospital could be doing so as hostile terrorist reconnaissance in preparation for a terrorist attack.

The [UK national threat level](#), set by the independent Joint Terrorism Analysis Centre, has been set at SEVERE or higher since 29 August 2014, meaning that a terrorist attack is 'highly likely'.

The NHS is recognised as being a potential target of terrorists.

NHS Staff have been warned to be vigilant to the potential for terrorists to visit healthcare sites for hostile reconnaissance purposes – and filming/recording could evidence that offence.

[Section 58 of the Terrorism Act 2000](#) makes it an offence to collect or make a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or to possess a document or record containing information of that kind. The maximum sentence in respect of s58 is 10 years' imprisonment.

So, if there were grounds to suspect a person of committing an offence under the Terrorism Act 2000, the person(s) could be challenged and arrested by Security, detained and handed over to police.

Note: [Section 3 of the Counter-Terrorism and Border Security Act 2019](#) updated the offence in section 58 of the Terrorism Act 2000 to cover material that is either just viewed or else streamed over the internet, rather than downloaded to form a permanent record.

Note: Recording devices seized upon arrest should be stored safely as 'evidence' and presented to the police as soon as practicable, for forensic examination.

Note: The person arrested should not be asked (or allowed) to turn the recording device on or off because of the danger of evidence being lost or damaged.

For 'reasonable grounds for suspicion' to exist, (i.e. that an offence under the Terrorism Act 2000 has been committed), there must be an objective basis for the suspicion that the person is a terrorist.

Reasonable grounds for suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in terrorist activity.

Photography/filming on its own cannot automatically be considered 'suspicious behaviour'.

Neither should the size of the camera/video equipment be considered as a risk indicator.

Whilst, 'reasonable grounds for suspicion' that would justify a citizen's arrest could arise based solely on a person's behaviour (e.g. at or near a location which has been identified as a potential target for terrorists), more usually it would be founded on additional information/intelligence.

If terrorism is genuinely suspected, it would, if practicable, usually be best not to directly challenge suspects or alert them that they've been rumbled and instead keep the suspects under surveillance and call the police.

Note: If a person's behaviour arouses suspicion of terrorism, the police should be informed immediately using the 999 (or 112) Emergency System.

Is the filming taking place indecent?

Recording another person doing a private act, without their consent, for the purpose of obtaining sexual gratification, is an offence of Voyeurism, ([S67 Sexual Offences Act 2003](#)) and taking (or permitting) indecent images of children is a separate criminal offence under [section 1\(1\)\(a\) of the Protection of Children Act 1978](#). Both are indictable offences.

It should be noted that offenders do not have to be present at the scene of the filming in order to commit the offences. The recording can be done remotely, i.e. by installing a hidden camera activated by movement detection.

Sadly, the NHS is not immune to the risk of this kind of secret (covert) recording taking place.

For example, the [case of Andrew Hutchinson](#), an A&E nurse at John Radcliffe Hospital in Oxford, who between 2011 and 2013, used his mobile phone to film himself raping two female patients while they were unconscious under general anaesthetic.

A police investigation found that Hutchinson had also stolen an endoscope camera from the hospital where he worked, which he had then used to take 'up-skirt' images of up to 50 different women and also, while working as a volunteer paramedic at the Wilderness Music Festival, he had used the stolen camera to film himself assaulting two young women who had passed out and were unconscious in the medical tent. (Hutchinson was subsequently jailed for 18 years.)



Image above shows the type of medical camera Hutchinson stole from John Radcliffe Hospital to film up women's skirts

Note: The [Voyeurism \(Offences\) Act 2019](#) made 'up-skirting' an indictable, criminal offence. Up-skirting is a term to describe the act of taking sexually intrusive photographs up someone's skirt without their permission.

Then, there is [the case of Dr Lam Hoe Yeoh](#) who, in 2014, was jailed for eight years, for secretly filming hundreds of patients, colleagues and friends as they used toilets at hospitals across the country. Some of the victims were people he had known and worked with for years. His crimes were discovered after one of his cameras fell out of position at St Anthony's Hospital, in North Cheam, south London. He had inadvertently filmed himself securing it into position!

A police investigation revealed the offending had been going on since at least 2011 and that Dr Lam Hoe Yeoh had used a sophisticated, hidden cameras, a 'spy pen camera' and a 'watch camera' to commit offences.

It also transpired Dr Lam Hoe Yeoh had stored some of the videos on his NHS work computer. At the time, Dr Yeoh was an honorary senior lecturer at St George's medical school in Tooting. He ran a regular clinic at NHS St Helier Hospital in Carshalton, Surrey and, in addition to St Anthony's, Dr Lam Hoe Yeoh had worked at two other private hospitals, the Cromwell in Chelsea and the Portland in Central London.

If there are reasonable grounds to suspect a person has committed an offence of voyeurism or taking indecent images of children in a hospital premises, the law provides for them to be arrested (i.e. citizen's arrest) and detained pending the arrival of police.

Note: The facility to 'Livestream' of video images these days means that when a camera is rolling, images are transmitted live. It also leaves no trace on the phone i.e. no evidence of offence. So, in the circumstances described above, it may also be justifiable to seize (i.e. take possession of) the recording device to prevent the offender continuing to commit the offence.

Note: If seized, the phone should be safely secured as 'evidence' and presented to the police as soon as practicable. Security Officers should not inspect or request to see any recordings or demand that the images be deleted. There are no circumstances when a camera's contents should be deleted or destroyed.

Is there a 'real risk' that indecent photographs or videos could be taken in a hospital?



The Independent report on the [‘Themes and lessons learnt from NHS investigations into matters relating to Jimmy Savile’](#), published in 2015, confirms that the risk of indecent filming taking place in NHS Hospitals is indeed a real risk - see page 96.

What action can be taken if there is no applicable power of arrest?

In the absence of any applicable power of arrest, it would still be open to an NHS Trust to remove from the premises any person who breaches the ‘no filming’ policy, using reasonable force if necessary, i.e. as provided for in the Common Law Trespass and s119/120 CJIA 2008 (Nuisance or disorderly conduct and refusing to leave). **Unless, of course, the person needs medical advice, care or treatment, or if removal would endanger their physical or mental health, in which case it would be both immoral and unwise to remove them.**

A problem here is that the ‘powers of removal’, whether under Common Law Trespass or the CJIA 2008, cannot be applied to everyone. So, not a complete solution, in so far as, it would still leave it open to patients to remain onsite and continue filming.

Note: If no criminal offences have been committed, there would be no legal authority to stop the recording taking place or to seize the recording device and certainly no ‘legal right’ to view, copy or delete any recordings. (i.e. including any images, audio, video files), without the owner’s consent.

Another consideration is the army of ‘carers’ who accompany and support some people who are in hospital for treatment, some of whom are recognised to be so vitally important to the patient’s well-being that they could not ‘reasonably’ be removed from the premises simply for breaching an NHS Trusts ‘no filming’ policy. So, that is another group that could, in theory, carry on recording.

Then, there's the parents of young children, or babies, or people with severe learning difficulties. Would separating these parties ever be justified to prevent further filming taking place?

On top of all that, there's the risk that someone gets hurt in the removal process.

Something else worth factoring into the decision-making process and dynamic risk assessment is the very real prospects of adverse publicity resulting from a removal and particularly if it is forceful or results in injury to any party.

Could taking all these risks ever be justified as proportionate, given the gravity of the 'harm' being prevented? Or, would it best to default to the Trust's 'Unacceptable Behaviour' policy – which will define a process to be followed in the event that a person's behaviour falls short of expectations?

Find out why they are recording

Depending on the circumstances, the person making the recording could be asked to explain why they are recording. They are not obliged to say, but it could be they believe they have good reasons for doing so and when elicited it may be possible to re-assure the person that there is really no necessity to make a recording.

Provide information about NHS Trust Policy

If it hasn't been possible to convince the person making the recording to stop, the next step could be to inform them the NHS Trust has a statutory obligation to protect the privacy and confidentiality of persons at the premises and that making a recording:

- Is strictly prohibited – to protect against any breach of privacy/confidentiality.
- Constitutes a significant breach of the NHS Trust's 'Behaviour Standards'.
- May result in delay or withdrawal of any treatment they may need.
- Could result in their immediate removal and exclusion from the site.
- Could result in the recording device being seized and retained as evidence of an offence.
- May result in costly civil proceedings by the Trust and/or other parties involved.
- Could result in involvement of the police.
- May lead to criminal charges if the recording is subsequently disclosed to unauthorised parties without appropriate consent from all the parties it features.
- 'Disclosed to unauthorised parties' includes any kind of publication on the internet.

It's preferable, of course, if the NHS Trust's policy clearly sets out what is expected in relation to recording on the premises and what will/could happen in the event of a deliberate breach.

Referencing the 'Terms and Conditions' in the NHS Trust's Policy can be helpful when dealing with such situations. Even better is, if a summary of the relevant information is produced in leaflet form that can be handed to the person making the recording. Being able to hand a person an official document which confirms the legitimacy of the action you are proposing/requesting can really help to de-escalate and defuse conflict situations.

If the identity of the person doing the recording is known, they could be asked to confirm the details, including their home address. This confirmation of identity and address process sends a powerful message that they are not anonymous and if action is going to be taken by the NHS Trust, they will know who and where to write to.

If the identity of the person doing the filming is unknown, they can be asked to identify themselves, but they are not obliged to disclose it. (They can always be traced afterwards, if necessary.)

More often than not, the low degree of harm associated with recording audio/video on NHS premises will mean the appropriate course of action will be to revert to the Trust's 'Unacceptable Behaviour' policy and report the occurrence accordingly.

So, how should Healthcare Security Officers react if they are the target of filming by a patient or a member of the public?



If, whilst on hospital premises, Healthcare Security Officers become aware they, or an incident they are involved in, is being filmed, they should:

- Remain cool, calm, courteous and professional
- Evaluate (and keep in mind) the likely (comparatively low) risk of harm if the filming continues
- Consider applicable legal powers
- Assess the risks associated with preventing the filming continuing
- Consider all available options.

Unless cogent and legitimate reasons exist for preventing the recording from continuing (e.g. mobile phone is being used to commit a criminal offence), Healthcare Security Officers should:

- Not try to prevent or stop filming taking place
- Not put their hand up to cover the camera or their face
- Keep focussed on managing the incident they are dealing with.

If the positioning of the person doing the recording is materially interfering with security action or, by their proximity, they are putting themselves in harm's way, the person should be instructed to move further away from the scene. However, the instruction should be more precise than just 'Get back' or 'Go away' and should prescribe a (reasonable) distance e.g. 'Step back at least 10 feet please'.

If the original incident being dealt with is ongoing, the person recording could also be tasked to perform a useful function like "Please call police and let me know when you've done it." Giving a person a 'duty' responsibility which they don't carry out would show them in a poor light in any subsequent proceedings.

If the person doing the recording is still present at the scene after the original incident has been safely managed, they could be invited to provide their name and address; the reason why they were recording; and their intentions in relation to the recording. However, as previously stated, they are not obliged to answer and so the information should not be 'demanded'. If practicable, the person should be informed about the NHS Trust's Policy on Recording (see above).

It would also always be open to Healthcare Security Officers to request a copy of any recording made. The person is not obliged to provide one, but there's no harm in asking and you never know, they might just agree to do so!

Thereafter, Healthcare Security Officers should deal with the 'recording' incident as per the NHS Trust's 'Unacceptable Behaviour' policy and report the facts accordingly.

More info

If you would like to discuss any aspect of Healthcare Security, please contact the author:



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