

Brandon Lewis MP
Minister for Policing and the Fire Service
[By email]

2 November 2016

Dear Brandon

National Surveillance Camera Strategy for England and Wales and Review of the Surveillance Camera Code of Practice

Thank you for our recent meeting. I appreciated the opportunity to discuss the Review of the Impact of the Code (2016) and the consultation on the draft National Surveillance Camera Strategy for England and Wales in more detail.

Your recognition of the progress we have made to help organisations show compliance to the Code was much appreciated by my Office. For a small team, we have extended our reach and achieved much to drive up compliance across the relevant authorities and voluntary adopters via the tools we have developed such as self-assessment and third party certification.

As your response to my Review of the Impact of the Code (2016) only arrived immediately before we met, we were unable to discuss that response in detail. I have now had an opportunity to consider the response more fully. Much of that response points to the successes we are having in certain quarters. This success, e.g. 'a sharp increase in compliance' being part of the rationale for not amending the Code. I understand the argument inherent in that approach but am therefore compelled to raise an issue where I have singularly failed to have the desired impact. This failure, in my opinion, supports an issue that I want to explore further, namely, the expansion of the list of relevant authorities in the Protection of Freedoms Act.

Whilst I understand the Government's position regarding recommendation 6 of the Review – that all public bodies that are publicly funded or in receipt of public monies are listed as relevant authorities in the legislation might be too broad, I would like to revisit my concerns regarding the NHS. This issue has come into sharp focus with the introduction of body worn video cameras in hospitals (which is getting national media attention) which are becoming more and more prevalent. As discussed at our meeting we recognised it was important to leave the door open for further discussion on these matters.

I believe that consideration should be given to making the NHS Trusts a relevant authority for the reasons I outline below. This is in line with government's commitment to incremental legislation, informed by my advice as outlined in paragraph 1.8 of the Code.

The NHS Trusts are complex organisations that use surveillance camera systems in public areas where people under surveillance are likely to be vulnerable and distressed and where the privacy requirements and burden on those conducting transparent, legitimate and proportionate surveillance is surely at its highest. I have provided some statistics¹ below to highlight the issue:

- The total annual attendances at Accident & Emergency departments was 22.9m in 2015/16, 22 per cent higher than a decade earlier (18.8m).
- There were 15.9m total hospital admissions in 2014/15, 31 per cent more than a decade earlier (12.1m).
- The total number of outpatient attendances in 2014/15 was 85.6m, an increase of 4.4 per cent on the previous year (82.1m).
- There were 1.836m people in contact with specialist mental health services in 2014/15. 103,840 (5.7 per cent) spent time in hospital
- There were 67,864 physical assaults on staff reported to NHS Protect in 2014/15².

We have worked with physical security leads within NHS Protect over the last 3 years to elevate the awareness and value of complying with the Code – from more transparent, efficient and effective surveillance to a reduction in costs through the removal of obsolete or ill thought through surveillance camera schemes. Cost should not be an inhibitor as effectively complying with the Code will drive down costs and improve surveillance provision. Compliance is not heavily reliant upon expensive consultants either – we have enjoyed much success through engagement with management of other organisations (Transport for London being a major such organisation) and supporting in house approaches to compliance and voluntary adoption.

NHS Protect have on two separate occasions, presented to their annual security standards review group, a proposal to amend their standards to include the requirement, at the very least, to require each body to complete the self assessment tool and to derive an action plan for improvement based on the findings. It has been rejected twice on the grounds that they could not enforce compliance with guidance that was not mandatory. Despite our best attempts, voluntary adoption has not worked here and with the changing remit of NHS Protect, it will be difficult without government intervention.

The introduction of body worn video cameras at several hospitals has increased my concerns. Body worn video cameras are a particularly intrusive device as they capture audio and video simultaneously without the option of switching either off whilst recording. We have liaised with policing colleagues over the last 18-24 months to ensure that there is appropriate guidance and awareness over its use. Indeed, as I write, I am pleased to advise you that several police forces are engaging with independent assessment bodies to ensure their systems are managed in accordance with the Code and independently certified. With calls for greater surveillance use in hospitals only increasing, the absence of strategic engagement with my office or the Information Commissioner's Office (ICO) to

¹ <http://www.nhsconfed.org/resources/key-statistics-on-the-nhs>

² [http://www.nhsbsa.nhs.uk/Documents/SecurityManagement/Reported_Physical_Assaults_2014-15 - FINAL_Published_Figures\(1\).pdf](http://www.nhsbsa.nhs.uk/Documents/SecurityManagement/Reported_Physical_Assaults_2014-15_-_FINAL_Published_Figures(1).pdf)

understand the challenges of the use of the devices, to promote best practice and ensure compliance with the regulatory framework is a concern. Indeed during the consultation for the passage of the Bill the ICO did recommend that the NHS should be considered as a Relevant Authority for the very reasons outlined above.

During our meeting, you agreed to write to the Secretary of State for Health to promote the Code. Given my concerns as outlined above, I believe that there is a compelling case to advance the recommendation that the NHS Trusts become relevant authorities under 33(5) of the Protection of Freedoms Act. I would be happy to work with your officials and Department of Health officials to explore making the NHS Trusts relevant authorities within the Protection of Freedoms Act legislation.

I will of course endeavour to continue to work with and alongside the NHS communities to encourage voluntary adoption in the meantime and will keep you abreast of any developments in this regard.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Porter'. The signature is written in a cursive style with a large 'P' and 'T'.

Tony Porter
Surveillance Camera Commissioner