

Number 48

Re: E-mail Regulations and the Healthcare Sector

The Government has announced that it will give staff within the NHS desktop access to a number of standard computer packages, including e-mail, by March of this year. However, the NHS has no central guidelines governing the use of e-mails by their employees and there is also an absence of guidance on the circumstances in which staff communications by e-mail can be intercepted. At present it is therefore a decision that will have to be made by each individual NHS organisation.

Similarly, private healthcare organisations should ensure that policies on the use of e-mail systems are in place. Readers will be aware that there has already been several high profile employment law cases arising from a lack of proper internal guidance on the use of e-mail.

The NHS and private healthcare organisations are in a similar position to all other employers in that they may wish, or be legally obliged, to undertake monitoring of e-mails. Reasons for monitoring may include the following:

- To avoid misuse of employees' time
- To avoid running up telephone costs on personal e-mail usage
- To prevent harassment of colleagues and outsiders
- To prevent disclosure of confidential information about the NHS or private healthcare organisation, including patient information
- To prevent introduction of pornography to the workplace
- To prevent transmission of viruses
- To avoid the inadvertent formation of contracts
- To avoid defamation
- To prevent a failure to comply with professional obligations
- To avoid breach of copyright and licence transgression

Organisations within the NHS and the private healthcare sector are therefore advised to ensure that they have a **policy** in place to establish the organisation's right to monitor all aspects of its computer system, including monitoring sites visited by employees on the internet, monitoring chat groups and news groups, reviewing material downloaded and reviewing e-mail sent and received.

However, a potential problem with the use of any such policy arises from the right to privacy which has been introduced into English Law by Article 8 of the Human Rights Act 1998, since e-mail monitoring might constitute a breach of employees' Article 8 rights. Whilst there have been very few cases on Article 8 brought before the Courts to date, organisations within the NHS and private healthcare sector should consider appointing an individual within the organisation to act as a privacy arbiter.

MENTAL HEALTH LAW

RadcliffesLeBrasseur
5 Great College Street
Westminster
London SW1P 3SJ

Tel +44 (0)20 7222 7040
Fax +44 (0)20 7222 6208
LDE 113

6-7 Park Place
Leeds LS1 2RU

Tel +44 (0)113 234 1220
Fax +44 (0)113 234 1573
DX 14086 Leeds Park Square

25 Park Place
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035
Fax +44 (0)29 2034 3045
DX 33063 Cardiff 1

info@rlb-law.com
www.rlb-law.com

Another issue that arises from the use of e-mail concerns the **confidentiality** of patient information. Several NHS Trusts extend their e-mail systems from hospitals to smaller clinics and GPs' surgeries. The use of the e-mail system in this context raises considerable concerns about ensuring the confidentiality of medical data. The Information Commissioner, whose position was established under the Data Protection legislation, has issued a draft paper dealing with data protection issues in respect of the collection, use and disclosure of medical data. The paper emphasises the requirements of both confidentiality and privacy in relation to medical data and states that such data must be kept secure.

Healthcare providers in the Mental Health Sector will have particular issues to be wary of. Multi-disciplinary working is a key part of the provision of mental healthcare and in many cases this will involve organisations outside the healthcare provider, be they Social Services, the Probation Service, GPs, therapists, etc.

It is therefore important for all organisations within the healthcare sector to have established policies in force within their organisation to deal with the range of potential legal difficulties that might arise from the use of e-mail systems.

RadcliffesLeBrasseur can provide further advice on this subject, including advice on drafting the relevant policies.

RadcliffesLeBrasseur

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For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: andrew.parsons@rlb-law.com.

Out of office emergency advice available 24hrs on 07802 506 306.
Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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