

The logo for Anderson Strathern, featuring a stylized orange 'AS' monogram to the left of the company name. The background is a dark grey-blue with large, flowing, organic shapes in a vibrant orange-red color.

Anderson
Strathern

GPS Tracking and Ethics

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Who has the right to decide?

Who has the right to decide when a person with dementia should wear a GPS tracker?

A number of people could be involved in this:

- Individuals with dementia
- Their families
- Attorney under Power of Attorney
- Guardian under Adults with Incapacity (Scotland) Act 2000
- Police and rescue organisations
- Professionals (e.g. medical, social work)

Freedom to roam safely

The balance to be struck in a lawful and proportionate way:

- Risk aversion

and

- Risk enablement

Risk aversion may be a contributing factor for people with dementia being kept in their homes. Since quality of life invariably entails taking risks, use of GPS trackers also requires consideration of a *risk enablement* process for both professionals and dementia families.

Ethics and the Law

Consideration must be given to the ethical and legal aspects, in particular;

- European Convention of Human Rights
- Power of Attorney
- Adults with Incapacity (Scotland) Act 2000
- Consent

European Convention of Human Rights

Main rights affecting those with dementia and the question of GPS devices

- Right to life (Article 2)
- Right to a private and family life (Article 8)
- Right to liberty (Article 5)
- Right not to be subjected to degrading treatment (Article 3)
- Right to assembly and association (Article 11)

Consent

Consent is a key issue:

- If an individual still has sufficient capacity to consent then they must consent and that requires them to have an informed understanding of what they are consenting to
- If the individual granted a Power of Attorney (PoA) when they had capacity and now no longer have capacity, then, depending on the terms of the PoA, the Attorney may consent on behalf of the person with dementia
- Likely that a carer or Attorney will be a family member or someone with whom the Adult had a special bond which should preclude risks of abuse.
- Essential to consider the Adult's best interests.
- If the device is used for the care of the Adult and if it is in the Adult's best interests to use such a device, then it's use is likely to be deemed lawful.

Adults with Incapacity (Scotland) Act 2000

Decision-making for those lacking capacity is governed by the 2000 Act

- Power of Attorney is covered by the 2000 Act
- When the Adult does not have capacity to choose and there is no PoA/Attorney, then in Scotland the power for this should be sought by way of a welfare guardianship, in terms of the 2000 Act.
- A court must be satisfied that it is in the best interests of the Adult and the least restrictive option.
- Welfare guardianship protects the Adult's human rights and the reasons for seeking a welfare guardianship are properly scrutinised.
- Consideration should be given to the level of risk of harm, or even death, if nothing is done.
- If a court is satisfied that a power to insist on the wearing of a GPS tracker is necessary to safeguard the well-being of the Adult, then the welfare guardian would have this power conferred on them

Adults with Incapacity (Scotland) Act 2000

Five key principles in Section 1:

- Benefit
- Least restrictive option
- Taking account of the wishes of the person
- Consultation with relevant others
- Encouraging existing and new skills

Guidance

It would be important to ensure:

- A protocol which reflects Section 1 principles of the 2000 Act is in place.
- A tracker is only used in the least restrictive manner
- Once Adult is located and considered safe, no further enquires needed.
- The Adult's right of assembly and association is respected.
- A balance is struck between control and monitoring with the Adult's right to live and decide.

“If people with dementia do use tracking devices they should be aware that their use is for their own safety and not to check up on them. It is also key that carers adhere to this.”

Conclusion

Final thoughts:

- An individual with dementia should be entitled to live their life freely and safely.
- Balance their wish to go where they choose and associate with whom they choose with the risk of harm associated with this.
- An individual's location should only be given to a carer or guardian when the balance has moved to risk of harm and there is an issue of safety
- Where an adult lacks capacity to consent, it has to be considered by the Attorney or the court to be in the best interests of the individual with dementia.

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