

Healthcare Matters

For Private Hospitals



Control & survive

No organisation can survive without data, and the healthcare industry is no exception. There must be appropriate controls in place to cover the confidentiality of data (so that it is only seen and used by those authorised to do so); its integrity (so that the data is completely reliable); and its availability (so that it may be used when required).

Some of these controls are mandatory. Thus, for example, the Data Protection Act 1998 (DPA) defines information relating to a person's "physical or mental health or condition" as "sensitive personal data", and correspondingly mandates an enhanced level of control. Consideration must be given to how you acquire the data, how you use it, where and how you store it, how long you keep it, who has access to it, etc.

Any processing of credit or debit card payments immediately makes an organisation contractually obliged to abide by each of the 288 controls of the Payment Card Industry Data Security Standard (DSS). These cover many aspects of security, from having an adequate policy and awareness framework to proper systems access controls and monitoring.



What are the associated risks? Potentially there might be a heavy financial penalty for breaching the DPA; or sanctions ranging from raised transaction charges to withdrawal of card processing facilities for non-compliance with the DSS. But these consequences can pale into insignificance compared with the severe reputational impact which may be associated with a lack of adequate control.

The road to insolvency is littered with organisations whose reputation suffered irreparable damage as a result of some control failure.

The lack of appropriate availability of reliable data may well be literally the difference between life and death in the healthcare industry. It is thus absolutely vital that data backups are taken regularly, and they must be tested just as regularly.

THE ROAD TO INSOLVENCY IS LITTERED WITH ORGANISATIONS WHOSE REPUTATION SUFFERED IRREPARABLE DAMAGE AS A RESULT OF SOME CONTROL FAILURE.

You don't want to wait until you need to restore some backed up data to discover that the particular folder in question wasn't being backed up at all, or that the backup data has been corrupted in some way. Similarly, fit-for-purpose disaster recovery and business continuity plans need to be devised and put in place.

CONSIDERATION MUST BE GIVEN TO HOW YOU ACQUIRE THE DATA, HOW YOU USE IT, WHERE AND HOW YOU STORE IT, HOW LONG YOU KEEP IT, WHO HAS ACCESS TO IT.

These are not just templates which you can simply download from the internet and use, but must be prepared according to the specific needs of your organisation. Again, these plans need to be regularly tested to ensure that they will work when you need them.

IF YOUR ORGANISATION DOES NOT EMPLOY A SPECIALIST IN INFORMATION SECURITY CONSIDER EMPLOYING EXTERNAL HELP ON AN AS-NEEDED BASIS.

Good practice in continuity terms suggests that planning should focus on outcomes rather than particular events (fire, flood, pandemic etc). The outcomes would normally fall into one of four generic categories: (a) denial of access to, or loss of, a building; (b) failure of IT or telephony; (c) failure of a critical third party (e.g. supplier); or (d) unavailability of key or sufficient staff. If your plans cater for each of these eventualities, the actual cause of the problem becomes irrelevant.

Properly produced plans will cater for any emergency, and help to ensure that your organisation survives. In order to ensure cost-effectiveness of information security controls such as those mentioned above, it is essential that they are designed at the outset when new solutions are being put in place. This is a much more likely route to success than bolting on controls as an afterthought, which also is invariably more expensive and often not as effective. If your organisation does not employ a specialist in information security (and in many cases it might not be worthwhile to have a full-time role of this type), consider employing external help on an as-needed basis.

These specialists will be able to analyse your processes and infrastructure, and advise on those policies, standards and procedures which need introduction or amendment. They can assist in the implementation of controls which will work effectively within your organisation, taking into consideration existing culture and compliance framework. Employing specialists like this may seem an expensive way forward; but when you consider the alternatives, it is likely to prove a wise investment.

Even if you outsource your IT – or part of it, for example using “cloud” services to store your data – you cannot outsource your responsibility for having an adequate governance and control framework in place. It is extremely important to ensure that your suppliers are contractually obliged to operate and monitor appropriate security measures which you specify. This should form part of the regular reporting which takes place as part of the ongoing relationship management.

Consideration of emerging technologies, such as the cloud mentioned above or use of mobile devices – iPads and the like, should be informed by a proper understanding of the associated risks. What impact could there be on the confidentiality, integrity or availability of your data? If you cannot answer these questions satisfactorily and confidently, maybe you should be going down a different path.

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Agency workers regulations

The new Agency Workers Regulations (AWR) came into force on 1 October. Employers who traditionally use temporary workers, such as those in the healthcare sector, will have to take care to ensure they are not exposed as these workers get new rights to the same basic pay and employment conditions as employees hired to do the job directly.

Who does it cover?

It covers those working temporarily for an agency; under the direction of a hirer; or on a contract to perform work personally for the agency. This includes ‘umbrella companies’ providing the PAYE service for those working as free-lancers, contractors or temps. The rights are not retrospective, so only apply from 1 October, and apply to all agency workers.

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What's changing?

From Day 1, the worker is entitled to access information on internal vacancies and to certain on site facilities (i.e. canteen, childcare, staff room, transport services and car parking) as a comparable permanent worker.

After 12 weeks (the qualifying period) in a role with the same organisation, the worker is entitled to the same basic pay and working conditions as permanent employees, including:

Working hours (including length of night work, rest periods and break periods – lunch hour, etc);

- Annual leave or payments for leave;
- Basic pay, overtime and allowances;
- Bonuses or commission linked to the amount or quality of work, not corporate performance; and
- Protective rights when pregnant, including paid time off for ante-natal appointments and workplace assessments.

Pay does not include:-

- Expenses;
- Company Pension Schemes;
- Health or Life Insurance/Assurance schemes;
- Share Option Schemes;
- Occupational Maternity/Paternity/Adoption pay;
- Redundancy Pay; or
- Notice Pay.

AFTER 12 WEEKS IN A ROLE WITH THE SAME ORGANISATION, THE WORKER IS ENTITLED TO THE SAME BASIC PAY AND WORKING CONDITIONS AS PERMANENT EMPLOYEES...

Adding up the weeks

Watch this carefully. Continuity is only broken when the worker starts with a new hirer, or they take on a substantially different role in your organisation or there is a break of more than 6 weeks. Continuity is not broken, but the weeks don't count, when there is a break for leave, sickness, shutdown or a strike. Continuity continues to accrue for the likely duration of the assignment when a break is due to maternity, adoption or paternity leave. Using different agencies to appoint the same worker does not affect continuity. If there is a gap of less than 6 weeks between the worker leaving and becoming re-engaged, the working weeks need to be added together.

What should private hospital proprietors do? Although there are no firm requirements, it makes sense for those using healthcare workers covered by the Regulations to identify a "comparable employee" to enable a direct comparison of the basic terms. The healthcare sector in the United Kingdom engages roughly 10% of the total 1.3 million agency workers estimated across the UK, with this in mind, it makes sense to do this now for all workers who are currently working in your business.

USING DIFFERENT AGENCIES TO APPOINT THE SAME WORKER DOES NOT AFFECT CONTINUITY.

Cost of getting it wrong?

Express anti-avoidance measures have been put in place to address concerns that businesses might rotate agency workers to avoid the provisions. Tribunals will be able to make awards of up to £5,000 if a hirer is found to be in breach of the provisions.

Agency workers will be able to present a claim (ET1) to the employment tribunal if they believe they have not received rights in accordance with the Agency Workers Regulations. The claim will normally be made jointly against the Agency and the hirer. If the Regulations have been breached, the employment tribunal will award compensation to the agency worker (no cap has been set on this, so it is potentially unlimited). The Agency/hirer will be jointly liable, with the employment tribunal apportioning 'blame' as they see fit. It is anticipated that there will be a large number of claims by agency workers.

To find out more about how the new Agency Workers Regulations may affect your care home business, please contact our HR specialist Eric Burrow on 01708 758958 or email eburrow@hrinsight.co.uk. Eric Burrow is a principal consultant at HR Insight, part of the Kingston Smith group.



Contact us

More information about Kingston Smith LLP and our services can be found at www.kingstonsmith.co.uk

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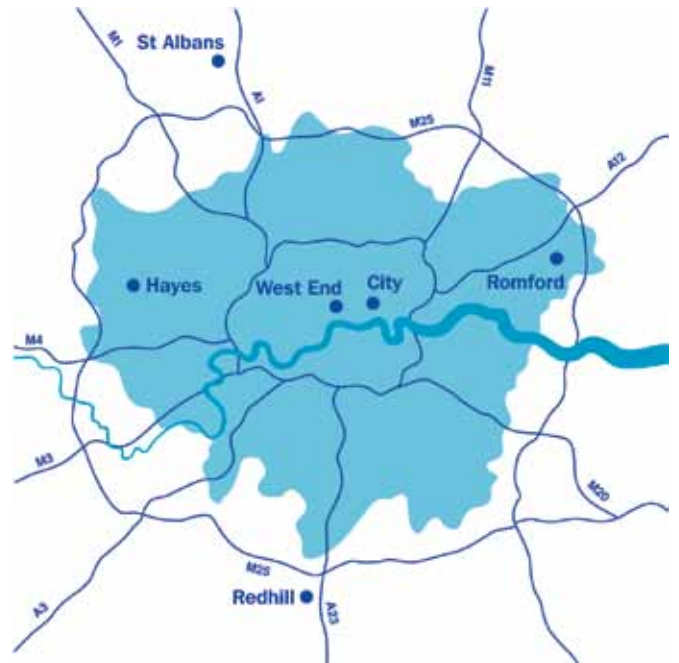
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