Tracking people: scoping the landscape and debate across domains

Report of event one, 14th December 2016

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Programme

9.30-10.00 Refreshments

10.00-10.30 Welcome and introduction

10.30-11.15 Tracking people - an introduction

       Anthea Hucklesby (University of Leeds)

11.15-11.45 Refreshments

11.45-13.00 Scoping the landscape: medical applications

       Chair: Justin Keen (University of Leeds)

       David Hearn (Associate Head of Commissioning and Contracting, Health Education England)

       Rachel Holt (Consultant in Geriatric Medicine at Pinderfields Hospital, Mid Yorkshire NHS Trust).

13.00-13.45 Lunch

13.45-15.30 Scoping the landscape: criminal justice/immigration applications

       Chair: Anthea Hucklesby (University of Leeds)

       Marianne Kylstad Øster (Directorate of Correctional Services, Norway)

       Clive Walker (University of Leeds)

       Matthew Mitchell (SCRAM)

15.30-16.00 Mike Nellis (University of Strathclyde)

       Chair: Anthea Hucklesby (University of Leeds)

16.00-16.15 Closing remarks

Introduction

The first of four Arts and Humanities Research Council (AHRC) funded events for the newly formed network of academics and practitioners 'Tracking people' focusing on the legal, social, ethical and technical aspects of wearable tracking devices was held at the University of Leeds on 14 December 2016. The event was attended by over 50 individuals from statutory agencies including the police, public bodies including the National Health Service and NHS England, private and voluntary sector organisations and academics and research students from the Universities of Bristol, Warwick, Leeds and Strathclyde.

Defining the landscape

Anthea Hucklesby opened the event and the seminar series by introducing some of the relevant debates and controversies surrounding the use of tagging and tracking technologies. She highlighted the increasingly ubiquitous use of tracking technologies and their widespread availability. These technologies are now not only embedded into smart phones but are available *inter alia* as shoe soles, in small portable devices and as wearable devices. Colour and design are used to make devices particularly marketable and acceptable to different groups. For example, pink and blue small watch like devices for children. A crucial difference between devices is whether or not they are designed to make removal by wearers difficult. In criminal justice contexts, devices are designed specifically to alert authorities to when they have been tampered with or removed so that criminal justice agencies are aware of when individuals have non-complied with criminal justice and/or penal measures. Similar devices are also used in secure mental health settings (see below), immigration and terrorism-related cases. Legal and ethical issues are present wherever these technologies are deployed but are brought into particularly stark relief by non-removable devices being used with vulnerable groups, such as individuals with dementia or children in care, without their consent to ostensively keep them safe but also to assist the police and other agencies to save resources. The potential for trackers to be implanted or indigested was also considered using medical applications as examples. Medical technologies in many ways are well advanced and provide pointers to the potential for trackers to be designed differently in the future to make them more user-friendly and less obtrusive. However, important and unique technical, legal and ethical issues would be raised by such developments. It was also acknowledged that in some fields of application, such as criminal justice, smaller devices may not be a desired goal.

Tracking technologies and applications is a fast changing field and new technologies and applications are being devised and deployed constantly. This makes defining the parameters of the network very difficult. The network is concerned with technologies used to monitor individuals' whereabouts i.e. location monitoring and behaviour monitoring. Currently location monitoring technologies take two main forms: i) radio-frequency (RF) tags which show whether or not individuals remain in a pre-defined space; and, ii) GPS trackers which track the movements of individuals. The tracks can be scrutinised in real time or retrospectively or alerts can be set up to identify when exclusion/inclusion zones are breached. Behaviour monitors are currently restricted to alcohol monitors which measure whether or not alcohol has been consumed. Radio-frequency technologies are tried and tested over many years whereas GPS technologies are newer and questions remain around coverage, accuracy and battery life.

Tracking technologies have many different purposes which can be usefully grouped under three headings: care, control and convenience (Michael et al, 2006). It is also clear that

tracking technologies have the capacity to assist with some of the societal challenges currently being faced in the UK elsewhere. For example the number of individuals with dementia is rising rapidly whilst at the same time health service and police resources are being squeezed. The potential benefits of tracking technologies are wide-ranging for users and their significant others and statutory agencies and public bodies. However, the challenges are also considerable, many of which have not been sufficiently scrutinised or debated. The purpose of the network and its initial events is to open up a forum to examine all aspects of the deployment of tracking devices across different domains now and in the future.

Medical applications

The morning of the workshop was dedicated to applications of wearable tracking devices in medical settings. It focused on the use of these devices for individuals with dementia and with those detained in medium secure units i.e. individuals who pose a 'serious risk of harm to others' many of which have been convicted of serious criminal offences. David Hearn described the project at the South London and Maudsley NHS trust which used GPS tracking devices during the process of resettling individuals detained in a medium secure unit. The initial aim of the project was to reduce the likelihood of temporary leave failures i.e. patients who failed to return to hospital after short periods of leave during the resettlement process. The small scale project demonstrated that tracking devices could play a role in supporting the successful resettlement of patients from these units and reducing 'leave failures'.

Rachel Holt explored the issues surrounding the use of tracking devices with people with dementia. She provided a highly accessible laypersons guide to dementia and its effect focussing particularly on wandering. She explained that traditional mechanisms to prevent wandering can be highly restrictive and/or intrusive and/or time and resource intensive. For these reasons, the use of tracking devices may be useful but raised considerable issues especially relating to consent.

A central issue in the discussion on medical applications was the role of consent in making decisions regarding the use of devices. Initially this was raised in the context of informed consent for both people with dementia and secure mental health patients. In the case of the former, where consent may be impossible to obtain, this is typically managed through consultation with clinical ethics committees and seeking carers consent of carers. Even then, Rachel Holt explained, patients would be included in discussions about the use of tracking devices because they often resist wearing devices if they feel that it is being imposed on them. In cases of both individuals with dementia and those in the process of being resettled from medium secure units, concerns existed about the extent to which consent would be freely given because of the consequences of not doing so. For example, if consent was withheld, it was likely to mean that patients detained in secure mental health facilities would be held for longer and not granted temporary leave to enter or leave the grounds of the hospital. It was also noted, however, that informed consent should not be the final arbiter in determining whether a particular practice is acceptable. For example, there may be situations in which consent may not be given but competing ethical interests outweigh the would-be wearer's decision. There may also be occasions when it is right to coerce or force individuals to wear tracking devices. Finally, it was argued that wearing tracking devices may influence later decision-making by exerting a psychological impact similar to that of an authority figure being present. Devices, therefore, may exercise a panoptic effect on wearers, leading to them acting as if they are being observed whether or

not they actually are. This may have positive consequences because devices remind individuals of what they should or should not be doing which affects their choices for the better.

Concerns were raised about technologies reducing human interactions. It was also noted that marketing materials related to dementia are currently focused on carers rather than wearers. It was emphasised that technologies should be assistive and an enabler of people making better decisions through an improved understanding of their actions and environment. There was a consensus that both care and security should be borne in mind when determining whether devices should be used with individuals.

A further concern arose in relation to using the technologies to resettle mental health patients. It was suggested that wearers may experience devices as barriers to, rather than enablers of, resettlement. It was noted, however, that individuals were usually keen to wear devices because it enabled them to leave a restrictive environment. It was also noted more broadly that evidence from many fields of application suggested that the majority of consumers and users of technologies were less concerned about ethical and privacy issues involved in the deployment of devices and other technologies such as CCTV than supposed by others.

Criminal justice/immigration applications

Marianne Kylstad Øster began by describing the deployment of electronic monitoring in the context of the Norwegian Correctional system. She explained that the purpose of the programme was to provide a humane and trusting alternative to prison which increased rehabilitative potential and reduced reoffending. Clive Walker examined the use of tracking devices with individuals suspected of terrorism-related activities. Matthew Mitchell followed up by exploring the use of alcohol monitoring in the context of criminal justice.

There was some disagreement about whether tracking devices should be used with asylum seekers. On the one hand, it was argued that tracking them was unnecessary because they were likely to be compliant as they needed to be seen to abide by the regulations in order to maximise their chances of staying in the country. On the other hand, tracking was viewed as a mechanism to reduce the numbers detained in detention centres. Such institutions house individuals whose asylum applications have been unsuccessful until they were deported. Whilst many asylum seekers would be repatriated quickly others would not be for a number of reasons including the unstable situation and/or human rights record of their 'home' country. It was noted that detention centres were analogous to prisons and were often criticised publically in relation to both conditions and regimes raising considerable issues about their suitability especially for women and children.

Considerable discussion took place about the success of Norwegian scheme for offenders in terms of the low level of recorded reoffending. The reasons for its success were unclear but a study in Sweden suggested that it was linked to the reduction of the stigma of being in prison, the ability to remain in contact with friends and family while receiving additional support from probation staff. A major challenge in the use of electronic monitoring in Norway is the geography and remoteness of its rural populations. As a result, the costs of the scheme are high but still low compared with prison. In some areas, offenders could not be monitored in their own homes because of the challenging geography. In these circumstances they sometimes chose to live with family members in more accessible areas so that they are able to take advantage of being tracked. It was noted that electronic

monitoring is considerable cheaper than prison – about one third of the cost and that in Norway it provides both care and control especially given that individuals have access to support 24/7.

In terms of alcohol monitoring, questions were raised about the potential for individuals to switch from using alcohol to drugs to avoid detection. There is no evidence that this occurs although it is an area worthy of further investigation.

Summing up and moving on

Mike Nellis concluded the day by highlighting that technologies and data collected by them have become commonplace. The digitalisation of the world had resulted in ubiquitous connectedness and that electronic monitoring in criminal justice settings can be viewed as 'coercive connectedness'. He highlighted the need for a greater understanding of technologies and the ways in which data are and could be used in the future. One avenue to explore is the body of literature on the sociology of digital life.

Questions for further consideration

Several themes reoccurred throughout the day. These included:

i)   Whilst there are many critics and criticisms of the deployment of tracking devices their use is expanding in terms of quantity and areas of use;

ii)   The potential cost and resource savings available from the use of tracking technologies, especially when the alternative is detention, are driving their use;

iii)   The alternatives to the deployment of tracking technologies are often unattractive to both potential users and authorities;

iv)   Evidence about the consequences and impacts of the use of the technologies is limited and needs to be improved;

v)   Very little is known about users' reasons for consenting to be tracked and their experiences of being tracked;

vi)   There is limited knowledge and understanding about the experience of carers and significant others of tracked individuals; and

vii)   There is a lack of understanding of the importance and necessity of informed consent to the success of tracking technologies.

The next event will be held on 6 April 2017 at the University of Leeds and will focus on the ethical and legal implications of wearable tracking devices.