POLICY FOR CLINICAL PHOTOGRAPHY AND VIDEO RECORDINGS OF PATIENTS: CONFIDENTIALITY, CONSENT, COPYRIGHT AND STORAGE

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Equality Impact

Bolton NHS Foundation Trust strives to ensure equality of opportunity for all service users, local people and the workforce. As an employer and a provider of healthcare Bolton NHS FT aims to ensure that none are placed at a disadvantage as a result of its policies and procedures. This document has therefore been equality impact assessed by the [insert name of ratifying Committee] to ensure fairness and consistency for all those covered by it regardless of their individuality. The results are shown in the Equality Impact Assessment (EIA).
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1 Introduction

Members of staff at Bolton NHS Foundation Trust frequently make records of patients which include photographs, digital images, artwork as well as video (digital and analogue) and audio recordings (for the purposes of this document, all such material – originals and copies - will subsequently be referred to as ‘photographs’).

These records can be made for the purposes of informing and delivering clinical care (including diagnosis and treatment planning) or other purposes such as medical teaching and publication. They may also be used to inform governance and auditing as well as being used for the purposes of public relations, and providing evidence in cases of interest to the police.

All such records are the subject of this policy the breach of which can lead to disciplinary action.

It is the duty and obligation of all staff to keep all records confidential and secure and be aware that such records are protected under the Data Protection Act 1998.

The Medical Illustration Team is available to answer any enquiries about this policy on 01204 390671 (internal extension 5671).

1.1 Definitions

The following definitions apply:

Recording: the taking of a photograph (which should only be taken by a member of the Medical Illustration Team or by a Trust clinical or nursing employee).

Storage: the retention of the photograph within the patient’s electronic records (Picture Archiving Communication System [PACS]).

Use: the intended purpose for which the photograph was taken. Four purposes are envisaged regarding clinical photographs:

1) The provision of clinical care and treatment (“clinical use”) and its recording for medical records only
2) Teaching medical, allied health professionals, nursing and other professional staff;
3) Any other single, specified purpose (usually publication within a specified journal or teaching purposes usually other patients).

2 Purpose

It is the policy of Bolton NHS Foundation Trust that the recording, storage and use of photographs (as defined above) complies with the requirements of the Data Protection Act 1998, professional code(s) of conduct (including that of the Institute of Medical Illustrators and General Medical Council guidance on the making and use of visual and audio recordings of patients) and the Caldicott Guardian Standards. All members of staff are required to comply with this Bolton NHS Foundation Trust policy.

As far as possible, staff should ensure that the photographs they capture are of adequate quality (Appendix G). If they are in doubt, they should seek professional assistance from the Medical Illustration Department.
It must be recognised that digital photographs are relatively easy to copy and therefore at risk of inappropriate distribution. Particular care must be taken to protect these images and control their storage and as a result this policy has been introduced to protect both patients and visitors to our Trust as well as our staff.

All photographs taken on site, regardless of who has taken them, remain the property of Bolton NHS Foundation Trust and copyright of these images are retained by the Trust.

In all photographs, care must be taken to respect the dignity, ethnicity and religious beliefs of the patient.

3 Duties Within the Organisation

The Chief Executive has ultimate responsibility for ensuring the Trust complies with its legislative requirements.

The Senior Information Risk Owner is responsible for managing Information Risk within the Trust.

The Caldicott Guardian is responsible for the Information Governance Agenda.

The Head of IT is responsible for advising the Trust on all aspects of Information Security, and providing support where necessary to the above roles.

The Information Governance Committee will ratify this policy and subsequently monitor its effectiveness.

The Information Governance Lead and Director of IT has delegated responsibility for the co-ordination and management of information governance.

Senior Managers are accountable for the communication about compliance with Trust policy.

The Medical Illustration Manager is responsible for overseeing the implementation of this policy through appropriate local processes within the Medical Illustration Department. This individual will also be responsible for monitoring and auditing Trust adherence to the policy.

The Medical Illustration Team is responsible for providing day-to-day support and guidance in order to implement this policy.

All staff are responsible for ensuring that they comply with the provisions of this policy.

Students of all disciplines must not take or store photographs of patients under any circumstances.

4 Images and Recordings

Staff should be cautious regarding the appropriateness of any photograph they might take which should only occur when there is an agreed clinical or educational need and this decision should be made by the patient’s consultant or senior healthcare professional providing the care. Patient consent should be obtained, where possible, prior to any images/recordings being taken.
Photographic and video recordings made for clinical purposes form part of a patient's record. Health professionals should always ensure that they make clear in advance if any photographic or video recording will take place. There must be a fully justifiable purpose for photography to be carried out.

Wherever possible, clinical recordings must be undertaken by a Medical Photographer from the Medical Illustration Department. However any clinical recordings undertaken by non-clinical photography staff should be made available to the Medical Illustration Department along with the completed ‘Informed patient consent for clinical photography/recording’ form for upload to our secure database. All images will then be deleted from the 3rd party recording device.

**UNDER NO CIRCUMSTANCES SHOULD STAFF USE MOBILE DEVICES OTHER THAN TRUST REGISTERED CAMERAS TO CAPTURE CLINICAL OR NON CLINICAL IMAGES**

Please ensure that when viewing recordings, computers must be located in such a way that the images of patients displayed on screen cannot be seen by passers-by.

Patients must not be coerced to give permission for the recording to be made. Patients must be given sufficient time to evaluate their decision.

Medical staff can contact Medical Illustration to book a photographer **Monday – Thursday 8.30 – 4:45 Friday 8.30am – 4.15pm** on telephone **01204 390671**.

Both Male and Female photographers are usually available, if required. Please ask when booking photography.

**5 Consent**

Confidentiality is a patient’s legal right and staff are therefore reminded that breach of confidentiality may well amount to serious professional misconduct with inevitable disciplinary consequences that could result in substantial financial damages to the Trust.

Photographs of adults or children should only be taken in three circumstances:

1. If there are specific features that need recording for clinical reasons (e.g. assessing the progression of a skin lesion or suspected child abuse);
2. Teaching (e.g. an important clinical condition that might only be seen rarely);
3. Publication (e.g. medical journal) or for use in Trust publicity material.

Photographs should only include the specific areas of clinical concern. Whole body shots should only be taken if absolutely necessary for justifiable reasons and with patient consent.

**Photographs to be taken in exceptional circumstances**

Photographs of genital areas, or of the chest in peri or post pubescent girls, should only be taken in very exceptional circumstances, clearly defined by clinical need and this should be recorded in detail in the patient record justifying why the photographs are necessary.

Such images can only be used for the medical record or closely controlled clinical teaching provided that consent of the patient (if Fraser competent) or the person with parental responsibility has been obtained (however, please also see Section 5.3 “Recording Without Consent” regarding when it may not be required to seek consent of the person with parental responsibility).
Extreme caution should be taken where any such photographs are to be presented at clinical conferences or venues external to the Trust premises. Under no circumstances should such images be e-mailed or sent in electronic presentations in advance of the event – or included in conference hand-outs or websites.

5.1 Duty to Obtain Consent

This policy must be read in conjunction with the Trust’s policies regarding consent and confidentiality and Consent to Examination or Treatment.

Photographs must only be taken once the appropriate, informed consent has been given or where you have a valid legal authority for doing so (for example, photographs that are taken in the best interests of the patient (see below)).

Consent must be sought, as far as possible, for all photography undertaken by any employees of the Trust. See Section 10 of this policy document (“Confidentiality”) regarding how consent must be obtained. The relevant consent forms to be used can be found in Appendix C to this policy.

Consent to the taking of clinical photography should be obtained before the image is taken.

The person (typically the patient) must have a clear appreciation and understanding of the facts, implications and future consequences of the proposed action. This must include a full explanation regarding the purposes for which the photographs are being taken.

Patients should be advised that they can refuse and withdraw consent at any time.

In the case of photographs taken for publication purposes, the patient must also be advised that once published it is no longer possible to withdraw consent.

To give informed consent, the person must have adequate reasoning faculties and be in possession of all of the relevant facts at the time consent is given. Please refer to the Trust’s “Consent to Examination or Treatment” policy for further information regarding valid and informed consent. You should also explain (where relevant) how the photograph will assist their care and the form in which the recording will take.

The patient will also have to be informed that the images will be available on PACS and be viewed by the professionals involved in their care and that the images will be stored securely.

Patients must not be pressurised to give consent for the recording of photographs. Staff must not make, or participate in the making of, recordings against a patient’s wishes or where a recording may cause the patient harm. Where practicable, recording must stop where the patient requests this.

Clinical Photographs/videos must not be used for any purpose other than that for which the original consent was granted, unless further consent is obtained.

A failure to obtain the appropriate consent may be deemed a breach of the patient’s right to a private life under Article 8 of the Human Rights Act 1998.

The practice of obtaining the patient’s written consent only in the case of full length or facial recording, from which the patient can easily be identified, is not sufficient. Nor is it sufficient to rely on the photographer’s or consultant’s judgement that a particular patient is unlikely to be identified from a photograph. It must also be borne in mind that people can be identified from other views, e.g. showing a tattoo or other distinguishing features.
The responsibility of obtaining informed consent rests with the clinician treating the patient. However, it is the responsibility of the clinical photographer to ensure that such consent has been obtained and evidenced before the photograph is taken or, where circumstances require (i.e. out of hours / images not taken by Medical Illustration staff), prior to its release from the Medical Illustration Department. In such circumstances, Medical Illustration will not be able to release or upload the photographs onto PACS until consent has been evidenced.

a. Photographic and video recordings which are made for treating or assessing a patient must not be used for any purpose other than the patient’s care or the audit of that care, without the express consent of the patient or a person with parental responsibility for the patient. If you wish to use such a recording for education, publication or research purposes, you must seek consent in writing, ensuring that the person giving consent is fully aware of the possible uses of the material. In particular, the person must be aware that you may not be able to control future use of the material once it has been placed in the public domain. If a child is not willing for a recording to be used, you must not use it, even if a person with parental responsibility consents.

b. If you wish to make a photographic or video recording of a patient specifically for education, publication or research purposes, you must first seek their written consent (or where appropriate that of a person with parental responsibility) to make the recording, and then seek their consent to use it. Patients must know that they are free to stop the recording at any time and that they are entitled to view it if they wish, before deciding whether to give consent to its use. If the patient decides that they are not happy for any recording to be used, it must be sealed and stored within the medical record with a full explanation. As with recordings made with therapeutic intent, patients must receive full information on the possible future uses of the recording, including the fact that it may not be possible to withdraw it once it is in the public domain.

c. The situation may sometimes arise where you wish to make a recording specifically for education, publication or research purposes, but the patient is temporarily unable to give or withhold consent because, for example, they are unconscious. In such cases, you may make such a recording, but you must seek consent as soon as the patient regains capacity. You must not use the recording until you have received consent for its use, and if the patient does not consent to any form of use, it must be sealed and stored within the medical record with a full explanation.

d. If the patient is likely to be permanently unable to give consent for a recording to be made, you should seek the agreement of someone close to the patient. You must not make any use of the recording which might be against the interests of the patient. You should also not make, or use, any such recording if the purpose of the recording could equally well be met by recording patients who are able to give or withhold consent.

e. Where clinical photography and digital recordings form part of the patient record they constitute personal data and are subject to the Data Protection act. Patients are entitled to ask for copies under the Trust Data Protection Policy.

In all other circumstances of clinical care, however, you must obtain the patient’s consent to make a recording that forms part of the investigation or treatment or a condition, or contributes to the patient’s care.

Separate consent is also required for recordings that are to be used in teaching and other single specified purposes such as publication.

A suitable location will be used to protect the patients’ dignity and where appropriate, a chaperone will be used. The recording must not compromise patients’ privacy or dignity. All
parties and projects undertaking patient photography/videography shall respect the religion, nationality and individual sensibilities of the patient.

Copies of the Consent documentation will be held within Medical Illustration under secure storage.

5.2 Retrospective Consent

Consent should always be obtained prior to a photograph being taken. This should take place at the same time where a patient is being consented for a procedure. However, circumstances can arise where this is not always possible and retrospective consent is required for example, a photograph taken during anaesthesia where the patient is expected to regain capacity thereafter.

Where a photograph of a patient has been taken for later clinical use but without their consent, then retrospective consent must be obtained from the patient at the earliest practicable moment (for example, as soon as they regain capacity to provide consent to photography for clinical purposes). The patient should be advised that the images have been taken and the reasons why they were taken. For example, a photograph may be taken to record an unexpected development during a procedure when the patient was temporarily unconscious.

Retrospective consent to the photography must be obtained at the earliest point at which the patient regains capacity to give valid consent.

Where a patient refuses to provide retrospective consent for the release of images to be used for clinical purposes, the clinician should discuss with the patient the implications of the refusal for future care. A full note of all decision-making must be made within the patient’s medical record.

Images taken solely for teaching or publishing purposes should not be taken without the patient’s consent being obtained first. If such images are taken (for example, whilst a patient is unconscious under anaesthesia) then retrospective consent must be obtained. A full note of all discussions between the patient and clinician must be recorded on the patient’s medical record.

Recordings should not be used for any purpose if the patient's written consent is not obtained. Images should be stored in the usual way but not released. If retrospective consent is obtained, the photographs will be released.

Regarding ‘out of hours’ photography, the Medical Illustration Department should receive a completed ‘Informed patient consent for clinical photography/video’ Form (see Appendix C). However, if consent has not been obtained, Medical Illustration will not be able to upload the photographs onto PACS until retrospective consent has been sought.

5.3 Recording Without Consent

Photographs must not be taken without obtaining prior consent or, where appropriate, the correct application of the provisions of the Mental Capacity Act 2005. Retrospective consent must also be sought where a patient has regained capacity before Medical Illustration can upload the photographs onto the Trust’s PACS system.

Photographs without consent may be obtained in certain circumstances such as, for example, suspected non-accidental injury of a child or abuse against a vulnerable adult, where it is unlikely that the parent or guardian or next of kin will give consent and the
recording of injuries can be demonstrated to be in the patient’s best interests. Written consultant authority is required in such cases and immediate reference should be made to the Trusts ‘Safeguarding Children, Roles and Responsibilities Policy’, “Safeguarding of Vulnerable Adults Policy”.

5.4 The Withdrawal of Consent

If a patient decides to withdraw consent for whatever purpose, the images cannot be used thereafter. A note should accompany the image indicating the patient’s views.

Recordings made as part of the patient's care form part of the medical record and should be treated in the same way as written material regarding security, disclosure and removal from the patient's medical record. Once an image has been used for clinical purposes, it should not be destroyed but should be retained on the patient’s medical record.

The treatment of an image following any withdrawal or refusal of consent to its use should be subject to a risk assessment and consultation with the patient. The clinician must consider the importance of maintaining a complete record and how this can be preserved whilst complying with the patient's wishes. For example, where an image is to be retained on the file, it may be appropriate to put a note on it indicating that it is to be viewed only to understand previous treatment; alternatively, it may be suitable to retain the paper copy within a suitably marked envelope in the medical record. All options should be discussed with the patient. A full record of all decision-making must be made in the patient’s medical record including a note of where extraneous images are kept if not retained on the file.

With regard to the images stored on PACS, patients should be made aware, as part of the consenting process that the electronic copy of their photograph will never be deleted from their clinical records, just as, for example, blood test results would never be expunged from a clinical record.

5.5 Section 10 Notices

Patients may also use Section 10 of the Data Protection Act 1998 to restrict how images are processed by the Trust (for example, their retention on their medical records, their storage, distribution to other healthcare professionals and destruction).

Patients may issue a notice requesting the Trust to stop or not begin processing data (images) where it is causing or likely to cause unwarranted and substantial damage (such as financial loss or physical harm) or distress to the person. Substantial distress refers to a level of upset, or emotional or mental pain that goes beyond annoyance or irritation such as a strong dislike or a feeling that the processing is morally abhorrent.

The subject does not have a right to object to processing where:

1) consent has been provided (although this can be withdrawn);

2) the processing is necessary - in relation to a contract that the individual has entered into; or - because the individual has asked for something to be done so they can enter into a contract;

3) the processing is necessary because of a legal obligation that applies to the Trust (other than a contractual obligation); or

4) the processing is necessary to protect the individual’s “vital interests” (i.e. life or death)
There is no set format for the notice and the Trust and clinicians should be aware when a patient is invoking the Section 10 provision. The notice should be in writing and must specify how the processing is causing the effect required under Section 10.

The Trust must respond within 21 days calendar days of receiving the notice, stating what it intends to do and, if it does not intend to comply with the request, setting out reasons for its decision. A record of the decision should be kept, including a note within the patient’s medical records.

Where it is thought that a Section 10 notice has been received, the matter should be referred to the Trust’s Caldicott Guardian.

5.6 If a Patient Dies

The duty of confidentiality survives the death of a patient.

Upon the death of a patient, a third party (including next of kin or personal representatives) cannot provide consent on their behalf to the use of photographs taken.

Under the provisions of the Access to Health Records Act 1990, a personal representative and a person who may have a claim arising from the death has a right to access the records (although this is subject to any express wish by the patient that information is not to be disclosed).

Where the Police request the use of photographs, relating to deceased patients, reasons for the request must be established as per the Trust’s Guidance regarding requests for the disclosure of medical records.

Where the Coroner requests the disclosure of medical photographs, they should also be provided in line with the Trust’s Guidance on the “Health Records Policy” and the “Legal Services Policy” (ensuring that that Data Protection Act 1998 is complied with regarding third party personal information recorded on the file).

5.7 Who can give consent

A child aged 16 or 17 is presumed to be capable of consenting to medical treatment as if they were an adult by virtue of section 8 of the Family Law Reform Act 1969. (Please see section 5.8 – Photography/videography of Minors) You should refer to the Trust’s Policy for Consent to Examination or Treatment for more information.

Patients have the right to withdraw consent or alter the level for the use of their images at any time. However, photographs/videos that were consented for Level D (Publication) (and have already been published or used in the public domain cannot be withdrawn.

All parties and projects undertaking patient photography/ videography shall be aware of and act appropriately upon the need for chaperones.

Consent is required even when the patient is incidental to the main picture, but identifiable e.g. documentation of equipment or procedures.

Physical disability: If a patient is mentally competent to give consent but is physically unable to sign a form, you should complete this form as usual, and ask an independent witness to confirm that the patient has given consent orally or non-verbally.
Mental disability: No-one (not even a spouse, or others close to the person) can give consent on behalf of adults who are not capable of giving consent for themselves. Although, legally, the health professional responsible for the person’s care is responsible for deciding whether or not particular treatment is in that person’s best interests, ideally decisions will reflect an agreement between professional carers and those close to the patient. If the health professional responsible for the person’s care believes it is in the best interests of the patient to have photographs taken, the health professional must sign level E on the standard ‘Informed consent for clinical photography and video’ form (Appendix C).

5.8 Photography/ videography of minors

If a child under the age of 16 has “sufficient understanding and intelligence to enable him or her to understand fully what is proposed”, then he or she will be competent to give consent for himself or herself. Young people aged 16 and 17, and younger children, with the capacity to understand may therefore sign this form for themselves if they wish. You should refer to the Trust’s policy for Consent to Examination or Treatment for more information.

Even where a child is able to give consent for him or herself, you should always involve those with parental responsibility in the child’s care, and ask both the child and their parent to sign, unless the child specifically asks you not to do so.

Where children who lack the understanding to give their permission are to be recorded, you must get consent from a parent or guardian. If a child is not willing for an image/ recording to be subsequently used, you must not use it even if a person with parental responsibility consents.

In child protection cases the interests of the child must be safeguarded. It may be necessary to pass on information without the consent of the parent or guardian. In these cases the information must only be released by the consultant most recently responsible for the child’s care or, in his absence, the consultant on call for the specialty. Parents do not have the automatic right to receive information about their child regardless of age.

- Photography/videography of minors (under 16) must only ever be requested by the following members of staff:

  - Senior Nursing/Midwifery Staff, Consultants, Senior Clinicians and members of the Safeguarding team.

It is strongly advised that, where possible Clinical photography / video of minors are undertaken by:

1. Medical Illustration Staff
2. Scene of Crime Officers (Police Officers)

Clinical Photography/videography may be requested by junior members of staff with the permission of the patients’ consultant.

Where ‘intimate’ photographs of children are required, it is strongly recommended that only professional, registered, Medical photographers or Scene of Crime Officers are used, in order to protect the integrity of the images taken in support of the clinician in any potential medico-legal situation. (Contact the Medical Illustration Department on 01204 390671).

Photographs of still-births and neonatal deaths for grieving purposes must have parental or next of kin consent. It is ideal to gain this prior to any photographs being taken, but as this is such a distressing time, it may be gained retrospectively. It must also be remembered that in such circumstances the situation must be handled with sensitivity and respect.
Permission must be sought for any recordings made during post mortem examination.

5.9 The unconscious patient

In the case of an unconscious patient, photographs/videos may be taken but **should not be used until signed consent has been obtained**. The patient must be aware that video/photographs have already been taken and told the reason why they were taken. If informed consent is not subsequently forthcoming, the images will not be released and stored on the server with notes that they are to remain closed due to consent being withheld.

If the patient is likely to be permanently unable to give or withhold consent for a recording to be made, you should seek the agreement of next of kin / guardian. Where an adult patient does not have the capacity to give or withhold consent (i.e. the patient is unable to comprehend and retain information material to make the decision or the patient is unable to use and weigh this information in the decision-making process or the patient is unconscious), this fact should be documented on the ‘Informed patient consent for clinical photography/recording’ form, Level E (signature of health professional proposing photography/video recording) (Appendix C) along with the name, signature and department of the health professional who has assessed the patient and spoken with the relatives with regards to the assessment of the patient’s capacity and why the health professional believes the treatment to be in the patient’s best interests.

5.10 Best interests

In deciding what options may be reasonably considered as being in the best interests of a patient who lacks capacity to decide, you should take into account the following:

- options for treatment or investigation which are clinically indicated;
- any evidence of the patient's previously expressed preferences, including an advance statement;
- your own and the health care team's knowledge of the patient's background, such as cultural, religious, or employment considerations;
- views about the patient's preferences given by a third party who may have other knowledge of the patient, for example the patient's partner, family, carer, tutor-dative (Scotland), or a person with parental responsibility;
- Which option least restricts the patient's future choices, where more than one option (including non-treatment) seems reasonable in the patient's best interest.

Where a patient dies before consent is obtained, appropriate retrospective consent must be obtained from next of kin or near relative. Where pursuance of consent from grieving relatives is inappropriate, the image should only be used for the patient record and will not be available on PACS.

Confidentiality should be respected after a patient’s death. If images are taken during Post Mortem examinations, permission must be sought from a close relative or carer before making any recording from which the deceased may be identifiable. If the death is the subject of a medico-legal investigation, the proposed recording should be discussed with the coroner who has authorised the investigation.

In exceptional circumstances, it may be judged that it is in the patient’s best interests to take an identifiable photograph/video of a patient without first seeking permission, and to disclose the recording to others without their knowledge. Before proceeding the recording should be discussed with an experienced colleague.
In these circumstances the appropriate person taking the photograph/video and disclosing the same must be prepared to justify their decision to the patient and, if necessary, to others. If the recording will involve covert video surveillance of a patient, it is likely to be within the scope of the Regulation of Investigatory Powers Act 2000 and advice should be sought before proceeding.

A decision to use covert video surveillance, for example in cases of suspected induced illness in children, will normally be based on discussions amongst all the agencies involved, and the surveillance itself should be undertaken by the police.

**Where photographic evidence can be demonstrated to be beneficial to a patient's welfare or are required for legal documentation, consent authorised by the patient’s consultant is acceptable.** *Examples of such instances are:*

- Suspected non-accidental injury
- Visual evidence for legal reasons
- Persons obtaining treatment under false pretences
- Deceased patients whose next of kin is not known.

This list is not exhaustive but it must be remembered that in all cases, photography/videography must be documented in the same fashion as previously specified.

**5.11 Photography for the training or assessment of doctors, audit, research or medico-legal reasons**

Regardless of the circumstances you must obtain permission and gain consent to make or use any photograph, video or sound recording of a patient or staff member.

No recordings should be made of any patient who lacks the capacity to give consent, if a suitable alternative patient who has this capacity is available and willing to consent.

Before the recording, you must ensure that patients or staff:

- Understand the purpose of the recording.
- The circumstances in which it will be used.
- Understand that withholding permission for the recording to be made, or withdrawing permission during the recording, will not affect the quality of care they receive
- Are given time to consider the implications of giving their written permission. They should be written in language that is easily understood. If necessary, translations should be provided.

After the recording, you must ensure that:

- Recordings are used only for the purpose for which patients have given consent
- Patients are given the chance, if they wish to see the recording in the form in which it will be shown.
- Recordings are given the same level of protection as medical records against improper disclosure.
- If a patient withdraws or fails to confirm consent for the use of the recording, then the recording will not be used and will be sealed within the medical records. The patients consultant would be notified accordingly.
5.12 Existing collections used for teaching purposes

Photographic material for which there is no record of consent (e.g. material already in the teaching domain prior to the enactment of this policy) may be used for restricted teaching purposes. Where possible this material should be replaced with more current images with the appropriate consent. The use of black bands across the eyes in facial views is regarded as an insufficient means to conceal identity. Other clues to the patient's identity (e.g. dates, birth marks, scars and tattoos) should be removed from images where they are not necessary.

5.13 Photographs/video for Non Clinical purposes

For all requests requiring Non Clinical Photography/video please contact Medical Illustration on: 01204 390671 for information and guidance.

A sample of the Non Clinical Photography release form can be found at Appendix D for staff and Appendix E for public. These forms are available from the Medical Illustration department.

6 Copyright

All recordings originating within the Trust are the sole copyright of Bolton NHS Foundation Trust and as such this copyright cannot be passed on to any third party.

Copyright of all recordings undertaken by staff in the course of their employment is vested in Bolton NHS Foundation Trust irrespective of who owns the recording device.

6.1 Recordings for use in public media (television, radio, internet and print)

Before making any arrangements for external individuals or organisations to film patients in a health care setting, you must inform the Head of Communications and follow the 'Policy for using photographs or film for non-clinical purposes'.

7 Storage of material

To ensure an effective audit trail, all photographs and videos must be stored safely within the Trust to prevent accidental loss, unauthorised viewing or damage.

In the case of photographic negatives, these must be securely stored and catalogued in the originating department. In this respect, all parties must be aware that digital recordings must be treated with the same level of security and confidentiality as traditional medical images. It must also be documented where the images are stored in medical notes of the particular patient so that they are accessible.

Patient data should be stored in a secure locked environment. If there is a need for data/images to be stored on to a laptop or removable device such as a CD/memory stick, this should be encrypted and the device stored in a secure, lockable place.

Images must not be left on the camera or digital card. All removable digital media must be reformatted / images erased so that no patient images are kept. Staff sharing digital equipment are accountable for storing and erasing their images from the camera before passing it to colleagues.
All Medico Legal and NAI (Non Accidental injury) digital images should be stored in their original RAW format without manipulation as proof of the integrity of the original may be needed where photographic evidence is required in a court case. A copy of the original image may be manipulated for presentation purposes only.

All personal data associated with photographic images/videos must be kept so that it conforms to the standards stipulated by the Data Protection Act 1998.

Printing of any clinical images should only be undertaken by Medical Illustration, providing the correct level of consent has been gained.

All parties and projects undertaking photography/video on Trust premises in Trust-employed time should be aware that, since the Copyright, Designs and Patents Act of 1988, full copyright and reproduction rights have been assigned to the Trust and permission must be obtained if images are to be used after leaving the Trust.

Photographs on cameras should be downloaded and stored on Medical Illustration’s secure server as a matter of priority, as soon as practical after the image has been taken.

Patient identifiable information (name, date of birth, distinguishing features) must not be stored on any non-Trust owned laptops or PCs under any circumstances.

The Trust’s Department of Medical Illustration offers a safe and secure storage service for all photographs. Only staff within this department will have access to the images on this server. However, once consent has been obtained, the images will then be uploaded onto PACS. This enables images to be viewed by clinicians anywhere in the Trust (with suitable security and access rights).

Photographs stored by Medical Illustration will be subject to standard Trust retention policies.

Photographs not submitted to Medical Illustration remain the responsibility of the clinician who obtained them and they must abide by the requirements of this policy.

Images must be stored securely in accordance with the seventh data protection principle.

### 7.1 Laptops and Personal Computers

Photographs must only be stored on the Medical Illustration server, the Trust PACS system or on Trust-owned, encrypted equipment.

When disposing of computers that have previously contained patient photographs, staff must be aware that most deleted files can be retrieved quite easily from the hard drive. The IT Department will advise how to completely erase files so they cannot be retrieved.

Negatives, original digital camera files and videotapes must be logged and stored appropriately and securely on Trust premises in accordance with legislative requirements.

Since any medical record has to be available for disclosure if required, it is essential that every image is properly logged in the case notes.

### 7.2 Trust Approved Digital Equipment

In some areas the Trust will allow digital recording equipment for registered staff to use in their department. This is likely to be in areas where the recording of a patient’s condition,
progress or recovery is an integral part of the care pathway and takes place out of office hours.

In these areas staff must follow this policy and only record photographs using registered, approved equipment.

Registered equipment used to capture photographs as outlined above must not contain memory that is greater than 4 GB. This is to reduce the amount of data that could potentially be lost or stolen. Such equipment must be kept locked within the relevant department at all times. Memory cards containing the patient's images must not be removed from the Trust premises. However, it is understood that photographs will be taken by Trust staff in the community e.g. Tissue Viability they should ensure that their memory card is empty before leaving the Trust. Whilst away from the Trust, the memory card should be removed from the camera and stored separately and securely when there is any risk of the camera being stolen (e.g. a 'break in' to a house or car).

Photographs should only be captured using the highest quality settings that the individual camera allows. If staff are unsure how to achieve this, they should contact Medical Illustration for assistance.

Staff must satisfy themselves that any photographs they take are of the necessary quality for clinical purposes.

Staff must not use personal mobile phones, PDAs or other portable media devices to take recordings of patients under any circumstances.

8 Other Media – Including Mobile Phones and other Mobile Devices

On NO occasion should a staff member use a personal mobile phone to take, send or receive clinical images.

Under NO circumstances should a staff member store clinical images/videos on personal computers, mobile phones or any other personal removal storage device.

Text messages are not secure and should not contain any patient identifiable information.

The Department of Health and the Medicines and Healthcare Products Regulatory Agency (MHRA) warn that picture-messaging technology used in a Clinical setting cannot be assured to be safe, suitable or effective as it has not been subject to the usual medical devices regulations and there is also the potential for legal action to be taken against an individual doctor or hospital, if a patient comes to harm.

In exceptional circumstances patients / relatives found to be utilising mobile phones or similar recording devices for unauthorised recording of telephone discussions or a patient's treatment may be requested to leave the premises.

Please note, although staff are unable to confiscate recording devices, the Trust could in exceptional circumstances instigate civil proceedings.

For further information please read the Trusts’ Mobile Communication Device Policy

There are some circumstances where mobile telephones are permitted for capturing images for domestic purposes i.e. non-clinical images. An example of this might be where parents
are permitted to take photographs of their own children using mobile phones, as in maternity, neonatal and paediatric unit(s), taking safeguarding into consideration. Such domestic images are exempt under section 36 of the Data Protection Act (please see link below) which states that “personal data processed by an individual only for the purposes of that individual’s personal, family or household affairs are exempt from the data protection principles and provisions of Parts I and II”. However, care should be taken to ensure that recordings do not include accidental inclusion of patients and staff.

By agreeing to be in a photograph/video taken by a patient or member of the public (such as a new parent), you are consenting to a picture being taken of yourself which is then in the public domain and may be used on social media sites.

9 Transfers of Personal Identifiable Information

All patient identifiable data to be transferred on electronic media to recipients outside the Trust must be encrypted.

All new bulk transfers of personal identifiable information (20 patients or more), whether on paper or on electronic media (including but not restricted to CDs, DVDs, USB mass storage devices, and floppy disks) must be registered with and approved by the Information Governance Manager.

Where patient identifiable data has to be sent by registered post/courier unencrypted, including images, there must be no alternative means of sending the data. It must be justified and documented on the basis that by not sending this data it would prejudice patient care.

All equipment including PCs and laptops must be password protected/encrypted and located in secure areas /and or secured to protect from theft.

Equipment and media shall only be taken off-site with management approval. Staff who have laptops or other mobile equipment shall pay particular attention to its security and the confidentiality of the information held thereon. Printed data must be transported in a lockable case and any electronic equipment must be stored securely.

Further reading: Information Security Policy

9.1 Disposal of any digital medium

Prior to the disposal of any digital medium (e.g. hard disk, flash card etc) containing patient information, the data must be erased or the disk totally destroyed. Hard disks must not be handed over to suppliers in part exchange for new disks. (Departmental managers must ensure conformity within their departments).

9.2 Security Incidents

A record of computer systems malfunctions will be maintained by the IT Service Desk together with a record of the remedial action taken.

Breaches of information security will be reported as quickly as possible using the Safeguard system, in accordance with the Trusts “Investigation and Reporting of Investigation and
Breaches of security confidentiality shall, as appropriate, be dealt with in accordance with the Trusts disciplinary procedures.

Regular analysis of malfunctions and breaches of security shall be undertaken as a security analysis aid and as a means of learning from incidents. Where appropriate lessons can be disseminated via the Clinical Governance and Information Governance Committees.

Investigations of incidents will be carried out by appropriately qualified staff. Incidents should be reported via the Safeguard system. Where it is deemed sufficiently serious, the Serious Untoward Incident procedure will be invoked.

For more information on this please see:

The Information Security Policy
Mobile Device Communication Policy
Email and Internet Usage Policy
Information Security Policy
Data Protection Policy
Social Media Policy

It is prohibited to lend, sell or hire any photographic image/video to external bodies without permission of the Trust, as is a breach of copyright. In this respect, all staff are reminded that breach of copyright materials is punishable by law.

Note that passing of material to colleagues for internal use is permitted (e.g. for use in seminars, presentations and the Trust Intranet). They may also be used for external use, providing the files are either sent in encrypted format or via an NHS.Net email account. In either instance, the correct level of consent must be obtained and the Patient images must have all patient information removed. However, If the patient images need to be identifiable (e.g., as a specific patient case study, or treatment pathway), then the said images must only be referred to by RMC number.

Misuse of a photographic image/video may be considered a breach of confidentiality. ref: Trust Intranet site:“Confidentiality Policy”. It is important to remember that simply being in possession of material that has been reproduced without consent is against Trust Policy.

If you are going to use an image or video from the internet, for any purpose, please ensure it has the correct licence and is available for use.

Failure to comply with current UK legislation with regard to data protection is an offence and is punishable by law.

9.3 Social Media

Under no circumstances should clinical or non clinical photographs or videos be posted onto social network sites, as confidentiality is a person’s legal right, and you are therefore reminded that breach of confidentiality may well amount to serious professional misconduct with inevitable disciplinary consequences for the offender and possible substantial financial damages to the Trust.
10 Confidentiality

Confidentiality is the patient’s right and may be waived by the patient or by someone legally entitled to do so, on their behalf. Breach of confidentiality may well amount to serious professional misconduct with inevitable disciplinary consequences. Additionally, such a breach could result in unlimited financial damages for the Trust and criminal proceedings.

In order to ensure that the patient’s right to confidentiality is preserved, Bolton NHS Foundation Trust requires that:

- The patient’s informed consent is obtained in writing for the original photograph to be taken, used and stored.
- Separate written consent must always be sought for the photographs to be used for teaching or for publication.
- Only where written consent cannot be obtained from the patient or their family/carer and it is deemed as in the patient best interests then the senior consultant in charge of the patients treatment can sign for consent on behalf of the patient. This must be recorded on the consent giving a clear explanation and signature of the consultant. Images will be released for medical records only.
- Only authorised copies are made.
- Prior to publication in journals, books, on the internet or elsewhere or for any use other than described above, the subject’s permission for the specific use must be sought and written consent obtained. The subject must be advised that consent for publication cannot be withdrawn once publication has taken place.

The consent form must be photographed and uploaded together with the patient’s photographs onto PACS. The specific level of consent will also be indicated on the frame of each image on PACS. Where only consent has not been obtained, then a full note should be made within the patient’s medical records and the images should not be uploaded to PACS. Where images are used for publication the consent should be stored with the recording.

11 Obtaining Photographs During Office Hours

During office hours (Mon-Thurs 8.30am to 4.45, Fri 8:30 to 4:15), only registered photographers are permitted to take clinical photographs at Bolton NHS Foundation Trust (see Appendix A – Camera Registration Form). Staff should call Medical Illustration (01204 390671, internal 5671) during office hours to request a photographer. It is advisable, where possible, to book a photographer in advance.

A photographer will attend the relevant ward or theatre and take photographs as directed. These will then be saved by the photographer to the Medical Illustration server. Photographs for clinical records will be uploaded onto PACS. Any additional provision of the photographs will only be undertaken when the appropriate consent has been obtained.

12 Obtaining Photographs Out of Hours

This policy allows for clinicians (who may ask nursing staff to do this) to take their own clinical photographs outside office hours when the Medical Illustration service is not
available and it would be detrimental to the patient to delay photography. In the interests of any patient of the Trust and of the Trust itself it has been agreed that a registration policy should be adopted. Any person who wishes to take clinical photographs out of hours on Trust premises must register to do so before undertaking any form of photography.

Registration forms can be obtained from Medical Illustration and must be completed and returned to the Medical Illustration Manager for authorisation. The approved registration form can be found in Appendix A.

Photographs may only be taken using approved equipment following completion and submission of the registration form (see Appendix A). Approved cameras will be pre-set to the correct settings in order to facilitate the best results, Medical Illustration can offer advice on the correct settings to use.

Once the images have been obtained, Medical Illustration should be informed as soon as possible by phone or by email (medical.photographers@boltonft.nhs.uk). An ‘Informed patient consent for clinical photography/recording’ form should be completed with the patient’s details and the consent section signed by the patient where possible (see Appendix B explaining how to complete the form and Appendix C for a sample of the form). The form should be photographed before and after the patient to prevent misidentification. The form should be returned to Medical Illustration along with the digital card. The electronic images will then be stored onto the Medical Illustration server. For further instructions please contact the Medical Illustration Department. The images should under no circumstances be included as part of an email. Medical Illustration will not receive any images without a signed consent form.

All images taken will then be archived and logged with a serial number as well as uploaded onto PACS (providing the quality of the images is sufficient). Medical Illustration reserves the right to exclude recordings which are deemed to be unsuitable due to poor quality. A copy of the form will be sent back to the person taking the photographs to be filled in the patient notes as a record that they were taken.

Images should not be edited or manipulated other than the brightness/contrast levels, sharpening where needed and cropping. No other manipulation is permitted under any circumstances. It is therefore the responsibility of the person taking the photographs to ensure that the images are of sufficient quality for the intended purpose.

It is the responsibility of the person taking the photographs to fill in the ‘Informed patient consent for clinical photography/recording’ form correctly. It is essential that they clearly state their name, date, number of images taken, jpg numbers and which registered camera they were taken on. This is essential especially if it is anticipated that the photographs will be needed by the police.

13 Copies of Photographs

External emails containing images should only be sent where there is genuine clinical need and via NHS.net encrypted addresses or via encrypted email (see the Trust’s “Information Security Policy”). Images can also be sent safely and securely between Trusts via PACS. Information relating to this function can be obtained from the PACS office.

Requests for copies of such images held by Medical Illustration should be made in writing by letter, fax (01204 390672) or email directly to the department at medical.photographers@boltonft.nhs.uk
Patients requesting copies of their photographs held in their case notes should do so in writing to Health Records, where their request will be treated as a subject access request under Data Protection Act 1998 and will be subject to a fee.

13.1 Release of Photographs to External Parties

With the appropriate consent or legislative authority, Medical Illustration will release encrypted CDs or under special circumstances prints of images (which must be collected and signed for), charged at an appropriately set rate, to entitled parties (e.g. patient DPA 1998 requests, requests from solicitors etc.) provided evidence of written consent from the patient is given. All requests must be made to Health Records in the first instance and will be subject to a fee.

13.2 Release of Photographs to Internal Parties

If the images are required for teaching purposes and the appropriate level of consent has been obtained from the patient, users will be able to download the photographs directly from PACS. However, it is the personal responsibility of the users to ensure that the photographs are used only as authorised, are stored appropriately on the Trust server or on encrypted Trust-owned equipment and that the electronic file(s) is deleted once it has been used.

If images are required for publication, it is the responsibility of the clinician to obtain consent level D from the patient using the Medical Illustration Consent Form. On receipt of this completed form, Medical Illustration will release a high resolution jpg image to the requesting clinician which will be suitable for publication purposes. If the image is required for other publications then express consent from the patient will be expected for each publication. Again, it is the personal responsibility of the user to ensure that the photographs are used only as authorised, are stored appropriately on the Trust server or on encrypted Trust-owned equipment and that the electronic file(s) is deleted once it has been used.

14 Non-compliance

Non-compliance with this policy by any person working for the Trust may result in disciplinary action being taken in accordance with the Trust’s disciplinary procedure.

15 Process for Monitoring the Effectiveness of the Policy

Members of staff throughout the Trust may report incidents on the Safeguarding Reporting System where they feel that this policy has been breached. The Risk Register will be regularly reviewed for any such incidents and any breaches of this policy will be reported to the Information Governance Group. Should breaches of the policy be occurring on a regular basis there may be a need for this aspect of the policy to be reviewed.

The Medical Illustration Manager will conduct an audit of a statistically significant number of images to ensure that; in the case of photographs taken outside office hours, the audit will assess compliance with the requirement that the request/consent form has been correctly completed and a copy filed in the patients’ notes.

It is possible to audit the access to individual images by individual users and such an audit will be undertaken from time to time or as and when needed.
16 Dissemination, Implementation and Access to this Document

Responsibility for the dissemination of this policy rests with the Medical Illustration Manager.

All staff must attend mandatory training on Information Governance annually. In this forum they are made aware of all policies, procedures and guidance, surrounding information and its security.

This policy will be made available on the Intranet to all staff.

The launch of this policy will be highlighted through Team brief, global email and staff bulletins directing readers to the full version on the Intranet.

17 Review, Updating and Archiving of this Document

This policy will be reviewed every two years or sooner where there are significant changes to Data Protection legislation or following Department of Health guidance.

18 Bibliography


NHS Information Governance Toolkit (http://www.connectingforhealth.nhs.uk/).

North Bristol NHS Trust Photography Policy and Procedure.

South Manchester NHS Foundation Trust Photography and Video Recordings of Patients: Confidentiality and Consent, Copyright and Storage.


19 Associated Trust Policies

There are a number of associated Trust policies that support this documentation, and should be read and followed in conjunction with this policy:

Consent to Examination and Treatment Policy
Data Protection Policy
Deprivation of Liberty Safeguards Policy
Disciplinary Policy and Procedure
Email and Internet Usage Policy
Freedom of Information Act 2000
Information Risk Management Policy
Information Security Policy
Mobile Device Communication Policy
Records Management Policy
Safeguarding Children, Roles and Responsibilities Policy
Safeguarding Clinical Supervision Policy
Social Media Policy

All Trust policies are available via the Intranet, and all staff are responsible for keeping themselves up to date with the requirements of all Trust policies.
Camera Registration Form

I request to add my camera equipment to the Trust register and to adhere to the ‘Clinical Photography and Video Recordings of Patients: Confidentiality, Consent, Copyright and Storage’ Policy.

Please use block capitals and print clearly

<table>
<thead>
<tr>
<th>Title:</th>
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<tbody>
<tr>
<td>First Name:</td>
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<td>Last Name:</td>
<td>...................................................................................................................</td>
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<tr>
<td>Department:</td>
<td>..................................................................................................................</td>
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<tr>
<td>Camera Make:</td>
<td>...............................................................................................................</td>
</tr>
<tr>
<td>Camera Model:</td>
<td>.............................................................................................................</td>
</tr>
<tr>
<td>Camera Serial Number:</td>
<td>..........................................................................................................</td>
</tr>
</tbody>
</table>

Please give details of where the camera will be stored so that Medical Illustration can access memory cards etc: Please give as much detail as possible:

| ........................................................................................................................................ |
| ........................................................................................................................................ |
| ........................................................................................................................................ |
| ........................................................................................................................................ |

How many memory cards do you have?: .............................................................................

| Memory card 1 serial number: | ........................................................................................................... |
| Memory card 2 serial number: | ........................................................................................................... |
| Memory card 3 serial number: | ........................................................................................................... |

I have read, understood and agree to adhere to the Clinical Photography and Video Recordings of Patients: Confidentiality, Consent, Copyright and Storage’ policy.

Signed: ...................................... (Print name) ........................................................

Date: ...............................................................................................................................
Appendix B  How to complete the consent form

The Consent forms are available on every ward

1. Complete the patient details or affix a patient label on each of the 3 copies

2. Clinician - name of the patient's consultant
   Department - ward or dept requesting the photos
   Signature - Doctor on duty completing the consent form

3. PACS OTHER PLEASE STATE
   Tick PACS. All images are automatically put onto PACS to be viewed. If you have further requirements please state, however we are unable to produce prints for the patient’s notes or CDs for teaching if the appropriate consent level has not been signed.

4. Special Instructions - e.g. with scale, standing and sitting

5. Diagnosis - e.g. naevus, pressure sore

6. Circle the areas on the diagrams to be photographed.

7. The patient needs to sign one of the 4 consent levels. If it is not needed for teaching, sign medical records only. It is the patients’ choice if they do not wish to sign for anything else.

All three sections of the consent form must be given to the photographer. On completion of the job, the photographer will give the yellow copy to the patient. The white copy will be returned to the requesting person to be filed in the patient notes once the images are on PACS. Medical Illustration will keep the blue copy.
Appendix C

Sample of the consent form available on wards

<table>
<thead>
<tr>
<th>Medical Illustration, Royal Bolton Hospital, Minerva Road, Farnworth, Bolton, BL4 0JR</th>
<th>Job Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Informed Patient Consent for Clinical Photography / Video</td>
<td></td>
</tr>
<tr>
<td>Consultant</td>
<td></td>
</tr>
<tr>
<td>Department</td>
<td></td>
</tr>
<tr>
<td>Clinician Name</td>
<td></td>
</tr>
<tr>
<td>Clinician Signature</td>
<td></td>
</tr>
<tr>
<td>PACS - OTHER PLEASE STATE:</td>
<td></td>
</tr>
</tbody>
</table>

I have the right to withdraw consent at any time by writing to the Trust, and understand this will not affect my treatment in any way. The images may be stored electronically to be viewed by the clinician on the hospital PACS system. Please ask if you require more information. Please note anonymity will be retained where possible. Consent covers this occasion only.

**Consent A: Medical Records ONLY:** I consent to clinical images/video being taken for my confidential treatment records.

*Signature (Patient/Guardian/Other)*

*Please state relation to patient:*

**Date**

**Consent B: Restricted Educational Use by Medical Staff:** I consent to the above and to these clinical images/video being used for medical teaching.

*Signature (Patient/Guardian/Other)*

*Please state relation to patient:*

**Date**

**Consent C: To educate new patients who may have a similar condition:** I consent to the above and to these clinical images/video being used to show other patients.

*Signature (Patient/Guardian/Other)*

*Please state relation to patient:*

**Date**

**Consent D: Publication:** I consent to the above and to these clinical images/video being used for publication in a journal, textbook, website or other open access medium.

*Signature (Patient/Guardian/Other)*

*Please state relation to patient:*

**Date**

**Consent E: Signature of health professional proposing photography / video recording:** The procedure is, in my clinical judgement, in the best interests of the patient, who lacks capacity to consent for him/herself. Where possible and appropriate I have discussed the patient’s condition with those close to him or her, and taken knowledge of the patient’s views and beliefs into account in determining his or her best interests.

<table>
<thead>
<tr>
<th>Name (print)</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Job title</td>
<td>Department</td>
<td></td>
</tr>
</tbody>
</table>

**Please indicate area to be Photographed**

**Special Instructions / Diagnosis**

Close ups/specific views

Name of person taking photographs (please print)

Number of images: 

Jpegs no’s: 

Registered camera no:

Ref: 27718 © Bolton NHS Foundation Trust 2013. All rights reserved. Not to be reproduced in whole or in part without the permission of the copyright owner. EPG008
Appendix D
Copy of the staff photographic release form available from the Medical Illustration department

I have understood and explained to the members of staff appearing in the photograph(s) / video recording that the images may be used for publicity and promotional purposes, and may be shown in the public domain. You have the right to withdraw consent at any time by writing to the Trust. **If images have been released it may not be possible to control their future use and the images may be seen by the general population.**

Date ..................................................  Name ........................................................................................................
Signature ...........................................  Dept / Contact Details ...............................................................
Staff Role .............................................
Description of photos ..............................................................

Date ..................................................  Name ........................................................................................................
Signature ...........................................  Dept / Contact Details ...............................................................
Staff Role .............................................
Description of photos ..............................................................

Date ..................................................  Name ........................................................................................................
Signature ...........................................  Dept / Contact Details ...............................................................
Staff Role .............................................
Description of photos ..............................................................

Date ..................................................  Name ........................................................................................................
Signature ...........................................  Dept / Contact Details ...............................................................
Staff Role .............................................
Description of photos ..............................................................

Date ..................................................  Name ........................................................................................................
Signature ...........................................  Dept / Contact Details ...............................................................
Staff Role .............................................
Description of photos ..............................................................

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Appendix E
Copy of the public photographic release form available from the Medical Illustration department
Appendix F

‘Out of hours’ Photography Flow Chart

Complete the Medical Illustration form ‘Informed Consent for Clinical Photography / Video’ (Appendix C) ensuring that the name of the person taking the photographs is clearly stated (this is essential for legal purposes). Consent (prior / retrospective or best interests situations) must be clearly indicated on the form to assist Medical Illustration and allow swift release of the images onto PACS. It should be noted that images cannot be uploaded onto PACS until consent is obtained. Forms are available on wards, do not photocopy under any circumstances.

Take pictures ensuring that you photograph the request form immediately before and after the patient’s clinical images using Trust approved cameras only. This helps to identify the correct images and details are matched and stored.

The consent form consists of three layers:

- White and blue copies – send to Medical Illustration
- Yellow – give to the patient or file in the notes

*NB the white copy will be filed in the notes once the images are on PACS*

Take the SD card to the Medical Illustration department (Mon – Fri) who will download and process the images providing they are of sufficient quality and upload to PACS.
Appendix G

Top tips for photographing patients

- Try to make sure the background is clutter free

- Move anything that distracts from the area

- Use the flash setting on the camera

- Always make sure there is an overall view, close up and one with a measure to show the size of the lesion

- For raised lesions; take images from various angles

- Make sure the area you are photographing is in the centre of the image and an appropriate angle.
Appendix H
Associated Legislation
Data Protection Act 1998 (DPA)

The DPA regulates the processing of personal data relating to individuals, including obtaining, recording or holding the information or data or carrying out any operation, or set of operations, on the information or data including:-

organisation, adaptation or alteration of the information or data;
retrieval consultation or use of the information or data (which, in relation to personal data, includes using the information contained in the data);
disclosure of the information or data (which, in relation to personal data, includes disclosing the information contained in the data) by transmission, dissemination or otherwise making available or;
alignment, combination, blocking, erasure or destruction of the information or data.

‘Personal data’ refers to data relating to a living individual who can be identified either:

1) from those data, or

2) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.
The DPA applies to both computerised and paper records. The Trust is required to comply with the requirements of the DPA and any relevant guidance.
The DPA has two key intentions: to safeguard personal information from loss or misuse, and to allow people to access information that is being stored on them. The DPA requires that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data (principle 7).
The DPA contains eight data protection principles that must be complied with.
The 8 principles listed in Schedule 1 to the DPA are: Version 2, March 2013 29 Review date: March 2015

1) Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:-

i. at least one of the condition in Schedule 2 is met, and

ii. in the case of sensitive personal data (which includes medical records), at least one of the conditions in Schedule 3 is also met.

2) Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

3) Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4) Personal data shall be accurate and, where necessary, kept up to date.

5) Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or purposes.

6) Personal data shall be processed in accordance with the rights of the data subjects under the DPA.

7) Appropriate technical and organisational measures shall be taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

8) Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

The consideration of any information under the provisions of the DPA should be made in accordance with the Trust’s “Data Protection Policy” which can be found on the Trust Intranet.


This Act states that it is illegal to copy or use software without the copyright owners consent or the appropriate licence to prove the software was legally required. All staff are individually responsible for ensuring no unauthorised software is used within the organisation, and each manager is responsible for ensuring that all items of software in their department are purchased through or sanctioned by the Information Technology Department. As a basis of the Act the copyright owners reserve the right to prosecute any individual or organisation found to breach their copyright, and this may be the basis for disciplinary action. Version 2, March 2013 30 Review date: March 2015

Computer Misuse Act 1990

This Act states that it is a criminal offence to attempt to gain access to computer information for which you have no authorisation. If it is suspected that any unauthorised access is made to a computer system then disciplinary action may be taken under the hospital “Disciplinary Policy”. All staff should be familiar with the “Registration Authority (RA) Policy”, offering instruction for the correct registration and use of RA cards throughout the Trust. All managers are responsible for ensuring that all new members of staff obtain an authorised RA card on the day employment commences and the RA Department is notified on termination. The “Registration Authority Policy” can be found on the Trust Intranet.

Freedom of Information Act 2000

The Freedom of Information Act 2000 (“FOIA”) provides a general right to access information held by public authorities. The aim is to make public authorities more transparent and accountable to the public. There are a number of exemptions available under the FOIA, absolute exemptions and qualified exemptions (which are subject to the public interest test). It is important to consider whether any exemptions apply to the information requested.

Consideration of requests made under the Freedom of Information Act 2000 should be addressed in accordance with the Trust’s Information Governance Policy which is
entitled “Information Governance Policy and Framework” and can be found on the Trust Intranet.

Caldicott Report 1997

The Department of Health issued the Caldicott report which dictates levels and standards for securing information and computer systems. The increased emphasis on the Electronic Patient Record and Clinical Governance has combined to heighten security awareness. The main objective of the report was to outline measures to maintain the security of patient identifiable information. It is the responsibility of all staff to ensure that they adhere to Caldicott Guidance, further information surrounding confidentiality of patient identifiable data and best practice can be found in the Confidentiality Code of Practice available via the Intranet. The report defined 6 principles:

1) Justify the purposes of accessing confidential information Version 2, March 2013 31 Review date: March 2015

2) Do not use patient-identifiable information unless absolutely necessary

3) Use the minimum amount of patient-identification

4) Access to patient-identifiable information should be on a strictly need-to-know basis

5) Everyone should be aware of their responsibilities

6) Understand and comply with the law (specifically Data Protection Act 1998)

BS ISO/IEC 27002:2005

BS ISO/IEC 27002:2005 is the International Standard on Information Security Management initially developed by the British Standards Institute and the Department of Trade and Industry with the co-operation of various private and public sector organisations, including Healthcare. There are two parts of the application of this standard:

Part 1 is a Code of Practice for Information Security Management and provides a comprehensive set of security objectives as well as controls 17 requirements for those organisations seeking to demonstrate compliance with the British Standard.

Part 2 is a specification for Information Security Management, suitable for certification of an organisations information security system.

The NHS Information Governance Toolkit, a requirement for all NHS organisations is designed with this standard in mind, and covers many of the requirements laid out by the standard. A more detailed summary is available on the Internet at http://www.connectingforhealth.nhs.uk/.

Human Rights Act

The part of the Act most relevant to Information Security refers to Article 8 of the European Convention of Human Rights. Personal data is part of an individuals “private life” and as such they are afforded protections from interference and surveillance:

Everyone has the right to respect for his private and family life, his home and his correspondence.
There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
Appendix I

Equality Impact Assessment Tool

To be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

<table>
<thead>
<tr>
<th></th>
<th>Yes/No</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Does the document/guidance affect one group less or more favourably than another on the basis of:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Race</td>
<td>NO</td>
</tr>
<tr>
<td></td>
<td>Ethnic origins (including gypsies and travellers)</td>
<td>NO</td>
</tr>
<tr>
<td></td>
<td>Nationality</td>
<td>NO</td>
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<tr>
<td></td>
<td>Gender (including gender reassignment)</td>
<td>NO</td>
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<tr>
<td></td>
<td>Culture</td>
<td>NO</td>
</tr>
<tr>
<td></td>
<td>Religion or belief</td>
<td>NO</td>
</tr>
<tr>
<td></td>
<td>Sexual orientation</td>
<td>NO</td>
</tr>
<tr>
<td></td>
<td>Age</td>
<td>NO</td>
</tr>
<tr>
<td></td>
<td>Disability - learning disabilities, physical disability, sensory impairment and mental health problems</td>
<td>NO</td>
</tr>
<tr>
<td>2. <strong>Is there any evidence that some groups are affected differently?</strong></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>3. <strong>If you have identified potential discrimination, are there any valid exceptions, legal and/or justifiable?</strong></td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>4. <strong>Is the impact of the document/guidance likely to be negative?</strong></td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>5. <strong>If so, can the impact be avoided?</strong></td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>6. <strong>What alternative is there to achieving the document/guidance without the impact?</strong></td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>7. <strong>Can we reduce the impact by taking different action?</strong></td>
<td>NA</td>
<td></td>
</tr>
</tbody>
</table>

If you have identified a potential discriminatory impact of this procedural document, please refer it to your Divisional E&D Lead, together with any suggestions as to the action required to avoid/reduce this impact.

For advice in respect of answering the above questions, please contact Divisional E&D Lead.