

PHOTOGRAPHING, VIDEO AND AUDIO RECORDING PROCEDURE

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Author/Lead Job Title	Karen Robinson Information Governance Officer
Lead Director name	Hilary Gledhill, Director of Nursing
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VALIDITY – Procedures should be accessed via the Trust intranet to ensure the current version is used.

CHANGE RECORD

Version	Date	Change details
1.00	02/03/2009	<i>Ratified at Governance Committee</i>
2.07	14/10/2009	<i>Approved at Information Governance Committee</i>
2.08	01/08/2010	<i>Changes made to name of Trust and logo</i>
3.00	11/06/2012	<i>Reviewed</i>
4.00	10/2016	<i>Reviewed and adapted into a procedure</i>
1.00	02/2017	<i>New Procedure to replace Policy 007</i>
1.01	09/2018	<i>Update references to Data Protection Act 2018 and General Data Protection Regulation.</i>
2.0	01/2020	<i>Update 3.1 to anonymise records for secondary purposes where possible. Update 3.2 to add in the legal basis for holding the recording under GDPR. Expand 3.3 for patients who lack capacity. Add in 3.6 Recording of Trust Meetings. Add in 3.7 Recording of Telephone calls. Remove link to the NHS Protect guidance as this is no longer available. Add a link to the patient privacy notice on all consent forms. .</i>
2.1	October 2022	<i>Updated 3.6 in relation to recording meetings in MS Team for minute taking purposes. Formatted in to Trust procedure template. Approved at EMT (3 October 2022).</i>
2.2	November 2022	<i>Updated 3.8 in relation to recordings made by patients/public and the process for staff to follow if recordings are made outside of the guidelines. Consent form in Appendix 2 reviewed and updated. Approved at Information Governance Group (16 November 2022).</i>
3.0	November 2023	<i>Full Review. 3.2 and 3.8 updated to latest MCA policy. 3.4 updated in relation to the storage of recordings for clinical purposes and to add further guidance about the retention of recordings only needed short-term only and not for ongoing clinical care. Reference to the Mobile Phone Use in In Patient Units removed as this is no longer available. Reference added to the Community – Clinical Digital Photography SOP. Minor amend to the consent forms.</i>
3.1	March 2024	<i>Additional section added in relation to non-personal data photography for internal use such as displays/newsletters. Approved at Information Governance Group (19 March 2024).</i>

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1. INTRODUCTION

Photographic images, audio and video recordings play an essential role within the Trust and are used for a variety of purposes. This procedure has been developed to ensure that all image recording undertaken by staff complies with the requirements of the Data Protection legislation and safeguards the confidentiality of personal information.

2. SCOPE

This policy applies to all employees of the Trust, including all staff who are seconded to the Trust, contract, temporary and agency staff and other people working on Trust premises. This includes members of staff with an honorary contract or paid an honorarium.

A “recording” means any visual or audio image of the patient, carer or member of staff, produced during the course of the interaction with Trust staff and in any professional capacity. The recordings may be drawings, photographs, video or sound and may be stored on paper, film, magnetic media (disc or video tape) or digital media (DC-ROM or DVD).

This procedure does not cover the use of CCTV and the Trust’s CCTV policy should be referred to.

3. PROCEDURES

3.1 General Principles

When undertaking any patient recordings, particular care must be taken to respect patients’ dignity and privacy. There must be a fully justifiable purpose for a visual image to be carried out. The following general principles apply to the undertaking of recordings covered by this procedure.

- Seek consent to make the recording and for any use or disclosure.
- Give patients adequate information about the purpose of the recording when seeking their consent.
- Stop the recording if the patient asks you to, is against their wishes or if it is having an adverse effect on the consultation or treatment.
- Anonymise or code the recording before using or disclosing them for a secondary purpose, if this is practicable and will serve the purpose.
- Ensure that the recording does not compromise patients’ privacy and dignity.
- Do not use the recording for purposes outside the scope of the original consent for use, without obtaining further consent.
- Make appropriate, secure arrangements for storage of the recording.
- Consent documentation must be held within the appropriate health/corporate record.
- All Trust staff undertaking recordings on behalf of the Trust should be aware that full copyright and reproduction rights are assigned to the Trust.
- Only equipment owned by the Trust may be used for undertaking recordings.
- All recording equipment must have the date and time set correctly.
- Photographic negatives and slide film are not a permissible form of capturing images due to the confidentiality risk encountered during the processing and printing process by third parties.
- Ensure that the quality of the image or recording is adequate for the purpose.

3.2 Consent

Consent must be obtained from each person who is to be recorded, before the recording is made, using the form in Appendix 1. Specific consent forms have been developed for recordings made for training programme purposes (Appendix 2) and recordings made for wound care (Appendix 3).

Each person involved in the recording should consent unless they are involved in the procedure in the facilitative capacity in their work for or on behalf of Humber Teaching NHS Foundation Trust.

The information given when obtaining consent must include the reason for the recording, how the recording is to be made, the use that the recording will be put to, its storage and retention, and how and when the recording will be destroyed if it is temporary. This information must be provided in written form and explained to the subject, with a signed copy being placed in the appropriate health/corporate record.

Consent relating to recordings that form part of the health/professional record can be withdrawn at any time prior to the recording being made. Once the recording is part of the health record consent cannot be withdrawn. Under the General Data Protection Regulation, the legal basis for holding the data in the health record is Article 6(1)(e) public task and Article 9(2)(h) health care.

Consent relating to recordings that are not part of the health/professional record can be withdrawn at any time.

Recordings must only be used for the purposes for which consent has been gained.

Children and Young People

Where children who lack the understanding to consent are to be recorded, you must get permission from a parent or person with parental responsibility. Parents agreeing to recordings on behalf of children must be given the same rights and information as patients acting on their own behalf.

Children under 16 who have the capacity and understanding to consent to recording may do so. You should make a note in the health record of the factors taken into account in assessing the child's capacity.

If a child is not willing for recording to be carried out, you must respect their wishes, even if a person with parental responsibility consents.

Adults who lack capacity to consent

If an adult patient is unable to consent and the recording is for care and treatment, agreement should be sought from someone with the lawful authority to consent on their behalf e.g. a registered power of attorney for health and welfare or a court appointment deputy. Where no individual has legal authority to make the decision on a patient's behalf, the Mental Capacity Act (2005) Best Interest process must be applied and the best interests decision documented on the patient record, following the [Mental Capacity Act and Best Interest Decision Making Policy M-001.pdf \(humber.nhs.uk\)](https://www.humber.nhs.uk/001.pdf).

3.3 Choice of Recording Media

Careful consideration must be given to the choice of recording media, bearing in mind the type of recording to be made, its clarity, its storage, its durability and the availability of the technology needed to read the recording.

Only Trust encrypted equipment may be used to make recordings. This includes Trust encrypted smartphones and laptops.

The only exception is if it's is an older Trust device that does not have the capacity to be encrypted. The recording must be transferred to the Trust encrypted media as soon as possible and deleted from the unencrypted device. The equipment must be held in a locked drawer/cabinet. Unencrypted media must not be sent through the internal or external post. When in transit, the recordings must be carried in person in a secure locked case.

Personal equipment must not be used for recordings. There is no assurance about the security of the device and the data becomes beyond the Trust's control.

Only media and hardware as approved by the Trust IT Operations Manager is to be used.

Destruction of images should take place by deleting files on magnetic or solid state discs (computer discs, memory sticks or memory cards), overwriting material on video or audio tape and by destroying CDs and DVDs in line with the Trust's Safe Haven Procedure.

3.4 Storage of Recordings made for Care and Treatment

As soon as the recording started, any data collected forms part of the health record. No permanent audio-visual file that forms parts of the health record may be erased.

Clinical photographs must be stored in the patient's electronic patient record. All audio and video recordings must be securely stored on the Trust's network as soon as possible. Recordings must be clearly identifiable and be cross referenced to the electronic patient record and stored where access is restricted to the clinical team only.

If the recording is not required for ongoing clinical care and treatment but is used in the short-term to support clinical evaluation, documentation or reflection purposes, the recording can be deleted once the clinical entry/report is recorded on the electronic patient record.

Recordings should be uploaded/stored daily and deleted immediately from the recording device. If this is not possible, the recording must be held on encrypted temporary secure storage such as a Trust encrypted laptop or encrypted memory stick. Whilst Trust smartphones are encrypted, the recording must not remain on the handset any longer than 72 hours.

All recordings will be named with the NHS number, patient name and date of the recording.

All original recordings without any modification must be stored and care taken to maintain its integrity.

A dated and signed entry must be made in the health record or professional record of the file names of recordings produced, together with a summary of the file contents and any editing that has been carried out.

An entry should be made in the record each time the recording is accessed, printed, copied or transferred.

All media must be stored and retained in the health or professional record in compliance with the [Records Management Code of Practice](#).

If more than one subject appears in the image then a copy of the image/recording must be placed in each subject's health or professional record.

3.5 Recordings for Non-Care Purposes, e.g. Training, Research

Recordings for non-clinical purposes must not be kept for longer than is necessary for the purpose.

If the recording is to be preserved, on completion of the recording, the media/file will be named with the date of recording and a unique identifier that maintains the subject's anonymity.

Consent for future use of the material can be withdrawn at any time.

For research use, the ethical approval process must ensure that the collection, use, storage and destruction of the material complies with best current practice.

For training or illustration purposes the subject must be given full written details about the intended use of the material and whether they are identifiable in the material.

Images for non-clinical use **must not** be stored as part of the health record. Secure storage arrangements that comply to the same standards as storage of health records must be used. Recordings should be stored on an access restricted folder on the Trust's corporate file servers.

3.6 Recordings of Trust Meetings

It may be useful to record lengthy meetings where the accuracy of minutes or note taking can become difficult over a long period. Such recordings do not replace the formal record of any meeting but may assist with the accuracy of minutes.

At the meeting, the Chair must notify all attendees that recording will take place on Trust encrypted equipment or MS Teams, prior to commencement of the recording. The recording must stop at the formal close of the meeting. Attendees who were not present at the start of the meeting must also be notified that recording is taking place. Any objections to the recording must be considered by the Chair who will decide whether the recording is appropriate in light of any objection.

The recording must be made on Trust encrypted equipment and where necessary, stored on a Trust server, with access restricted to those who need access to the recording. MS Teams Recordings are stored in the One Drive account of the meeting organiser (Files > OneDrive>Recordings).

The recording should be deleted once the minutes have been approved. To delete, go to the recording in OneDrive, right click the recording and press delete.

Meeting organisers must ensure that the recording is stopped immediately at the end of the meeting to avoid capturing conversations not linked to the meeting. Please note that all recordings and transcripts of the meeting are available to all attendees unless they have joined as a guest.

3.7 Recording telephone calls

Calls to some Trust services are recorded for medico-legal reasons. These calls can contain particularly sensitive information and callers must be informed that their call may be recorded. Such recordings are available to patients following the Access to Records Policy. The SOP for Recording Patient Calls should be followed.

3.8 Recordings made by patients or Members of the public

To protect the confidentiality of patients, photographing and recording is prohibited by individuals attending Trust sites. However, occasions may arise when the patient themselves wishes to make an audio or video recording of a consultation or conversation with a health professional.

There should be no restrictions on the patient doing this, providing that:

- the recording is done openly and honestly.
- the recording process itself does not interfere with the consultation process or the treatment or care being administered.
- the patient is aware that the misuse of a recording may result in criminal or civil proceedings.
- any recording is made for personal use only.
- the patient understands that a note will be made in their health record stating that they have recorded the consultation or care provided.
- the patient is reminded of the private and confidential nature of the recording and that it is their responsibility to keep it safe and secure.

The health professional must discuss and explain the above parameters for making such recordings and document the discussion in the patient's health record.

A recording may also be made by a parent with parental responsibility. If the child has capacity and understanding, they must agree to the recording being made. This must be documented in the notes.

A recording may also be made by a carer/family member on behalf of the patient, providing that the patient agrees to this. This must be documented in the notes.

If the patient lacks capacity the Mental Capacity Act (2005) Best Interest process must be applied and the best interests decision documented on the patient record, following the [Mental Capacity Act and Best Interest Decision Making Policy M-001.pdf \(humber.nhs.uk\)](#).

A note should be made in the patient's health record that a particular consultation or conversation was recorded.

The Trust discourages patients/carers from covertly recording consultations/care and treatment by:-

- taking proactive steps to investigate and address any issues regarding the patient's care and treatment.
- providing patients with extracts from their health record or full health record if requested by following the Access to Records Policy.
- advising patient's on how to complain if they have an issue with their care and treatment.
- directing carers/families members to the CQC guidance "Thinking about using a hidden camera or other equipment to monitor someone's care"

Under the Data Protection Act 2018 and General Data Protection Regulation recordings made for personal and household activities are exempt from the data protection principles. However, further processing must comply with the Act. If staff are concerned about a patient's recording that is published or distributed, for example via social media, they should contact Information Governance in the first instance. If a vulnerable patient is at risk, contact will also be made with the Safeguarding Team.

If a member of staff feels they have been recorded outside of these guidelines or have been the victim of a social media attack from a patient or a member of the public in connection with their employment at the Trust, as soon as possible they should: -

- ask the individual to stop and delete the recording, explaining that it is against Trust policy.
- capture as much detail and evidence as possible including screenshots, recordings, links and send to their Line Manager, Communications Team and the Local Security Management Specialist (LSMS).
- report the incident on Datix.
- not respond or reply the social media post.

Line Managers should escalate to the General Manager and Clinical Lead. The General Manager will act as a point of liaison between the Communications Team and LSMS.

The Communications Team will advise the staff member on the best course of action.

The LSMS will agree next steps with the General Manager, Communications Team and staff member and, if appropriate, make contact with the individual advising them of the implications and further action that could be taken.

3.9 Non-personal data photography for Trust use

Images of items e.g. patient art works, food, displays can be taken on a Trust device (mobile/tablet) and stored on the Trust network for the minimum time necessary for the purpose. Once stored on the network, the photographs must be deleted from the device. These photographs can be printed and used for display/in communications e.g. ward noticeboards/newsletters. Photographs must be removed from the Trust network when no longer required for the purpose.

When taking images is important that no personal data e.g. patient names are captured. Images must be checked prior to storage to ensure that there is no personal data is included e.g. patients/staff in the background of photographs, patient names on artwork, notice boards with

personal information on. Once stored on the network, This will be the responsibility of the Trust device owner.

If there is a requirement to capture the images of patient, carers, or families for these purposes, then the image must be taken and stored in line with the [Media Policy C-001.pdf \(humber.nhs.uk\)](#). All consent forms (service user over 18, service user under 18 and staff) are available on the Trust intranet and must be completed and sent to the Marketing and Communications Team. Please inform the Communications team if you wish to gain consent for personal photography to ensure all Trust processes and policies are followed. Email HNF-TR.communications@nhs.net

3.10 Security

All recordings made by staff must be held and transferred in line with Trust's Safe Haven Procedure.

Any photographs/images sent by email for specialist advice must be sent securely from an nhs.net email account to an nhs.net email account, ensuring that the correct recipient is selected and minimum necessary patient identifiable information is used.

Recordings that are sent externally by post must be sent in an encrypted format using Recorded Delivery.

3 REFERENCES/DEFINITIONS

[Records Management Code of Practice](#) – NHS England

[Confidentiality Toolkit](#) – BMA

[Making and using visual and audio recordings of patients](#) – GMC

[Using cameras or other recording equipment to check somebody's care](#) – CQC

4 RELATED TRUST POLICIES

- Caldicott and Data Protection Policy
- Confidentiality Code of Conduct
- Information Security and Risk Policy
- Health and Social Care Records Policy
- Safe Haven Procedure
- Records Management and Information Lifecycle Policy
- SOP for recording patient calls
- CCTV Policy
- [Community - Clinical Digital Photography SOP.pdf \(humber.nhs.uk\)](#)

Appendix 1: Consent for Clinical Photography, Video or Audio Recording



Humber Teaching
NHS Foundation Trust

CONSENT FOR CLINICAL PHOTOGRAPHY, VIDEO OR AUDIO RECORDING

First name: **Surname:**.....

Date of Birth: **NHS No**

I give permission to the taking of a photograph* /video* /audio* (*delete as appropriate*) recording of me on (*date:*).....or between (*date:*)..... and (*date:*).....

For the purposes of assessment* / examination* / treatment* / display* / publication* / training* / research* (* *Please delete as appropriate*).

The use of this photograph/recording has been fully explained to me.

I consent for this photograph/recording to be used indefinitely* / or until expiry date

..... (* *Please delete as appropriate*).

I understand that when the photograph/recording reaches its expiry date it will be destroyed and no longer used. However, I understand that it may not be possible to destroy or withdraw those recordings that I have consented to be used and held in the public domain.

I also understand that once a photograph/recording is part of a health record it must be held securely in accordance with NHS Records Management Code of Practice. Please see <https://www.humber.nhs.uk/data-protection.htm> for further information on how we process your personal data.

I am the patient* / person with parental responsibility* (**Please delete as appropriate*)

Signed: Date:

Name (PRINT)

Statement of health professional photographing/recording the patient

This consent process was explained to the above-named patient and I confirm that to the best of my knowledge and belief, that the patient understands the above, is able to consent and gives that consent willingly and on an informed basis.

Signed: Date:

Name: Position:.....

To be retained in the patient's health record.

Appendix 2: Consent to record for training purposes

It has been explained to me the recorded session will be used as part of the

..... training programme with

.....(name of training provider e.g. *University of x*)

I am aware the recorded session will be stored securely by the Trainee in keeping with the Trust policy.

I am aware the recording will not be shared with any other person than those detailed below:

- Clinical supervisor employed by the Humber Teaching NHS Foundation Trust.

-

.....
(title of the training supervisor e.g. *University Clinical Supervisor*)

- University External Examiner.

-

.....
(name of any other forum e.g. *University Clinical Supervisor Development group*)

I am aware I can withdraw my consent to the recording session at any time and this will in no way affect the care I can expect to receive from Humber Teaching NHS Foundation Trust.

I also understand that the recording will be stored securely and deleted by all parties once the training needs are met.

Please see <https://www.humber.nhs.uk/data-protection.htm> for further information on how we process your personal data.

I agree to the recording and sharing of my sessions.

Signed: Date:

Name (PRINT)

Statement of health professional photographing/recording the patient

This consent process was explained to the above-named patient and I confirm that to the best of my knowledge and belief, that the patient understands the above, is able to consent and gives that consent willingly and on an informed basis.

Signed: Date:

Name: Position:.....

To be retained in the patient's health record.

Appendix 3: Wound Photography Consent Form

First name: **Surname:**.....

Date of Birth: **NHS No**

(To be completed prior to photographing each wound care episode)

Wound site(s)	
Statement of Patient	
The reason for taking a photograph has been explained:	Yes <input type="checkbox"/> / No <input type="checkbox"/>
I agree to a photographic record as part of the Nursing Care Plan:	Yes <input type="checkbox"/> / No <input type="checkbox"/>
I give permission for the photographs to be used for educational purposes and understand my name will not be used	Yes <input type="checkbox"/> / No <input type="checkbox"/>
I am aware that the photographs are the property of Humber Teaching NHS Foundation Trust	Yes <input type="checkbox"/> / No <input type="checkbox"/>
I am the patient* / person with parental responsibility* (*Please delete as appropriate)	
Signature:	Date:
Name: (PRINT)	
Statement of health professional photographing/recording the patient	
I have explained the reason for taking a photograph of the wound(s) and that this will be shared with healthcare professionals involved in the care of the patient.	
Signature:	Date:
Name: (PRINT)	Position:

Copy to be retained in the patient’s health record.

Please see <https://www.humber.nhs.uk/data-protection.htm> for further information on how we process your personal data.

Appendix 4: Equality Impact Assessment (EIA)

For strategies, policies, procedures, processes, guidelines, protocols, tenders, services

1. Document or Process or Service Name: Photography, Video and audio recording procedure.
2. EIA Reviewer (name, job title, base and contact details): Karen Robinson, Information Governance Officer, Mary Seacole Building, Willerby Hill. Tel. 01482 477856.
Karen.robinson1@nhs.net
3. Is it a Policy, Strategy, Procedure, Process, Tender, Service or Other? Procedure

Main Aims of the Document, Process or Service
Photographic images, audio and video recordings play an essential role within the Trust and are used for a variety of purposes. This procedure has been developed to ensure that all image recording undertaken by staff complies with the requirements of the Data Protection legislation and safeguards the confidentiality of personal information.
Please indicate in the table that follows whether the document or process has the potential to impact adversely, intentionally or unwittingly on the equality target groups contained in the pro forma

Equality Target Group	Is the document or process likely to have a potential or actual differential impact with regards to the equality target groups listed?	How have you arrived at the equality impact score?
1. Age 2. Disability 3. Sex 4. Marriage/Civil Partnership 5. Pregnancy/Maternity 6. Race 7. Religion/Belief 8. Sexual Orientation 9. Gender reassignment	Equality Impact Score Low = Little or No evidence or concern (Green) Medium = some evidence or concern (Amber) High = significant evidence or concern (Red)	a) who have you consulted with b) what have they said c) what information or data have you used d) where are the gaps in your analysis e) how will your document/process or service promote equality and diversity good practice

Equality Target Group	Definitions	Equality Impact Score	Evidence to support Equality Impact Score
Age	Including specific ages and age groups: Older people Young people Children Early years	Low	The procedure has specific clauses and supporting documentation designed to ensure consent from persons with parental responsibility for the photographing of children. If a child has capacity, that child may provide consent.
Disability	Where the impairment has a substantial and long term adverse effect on the ability of the person to carry out their day to day activities: Sensory Physical Learning Mental Health (including cancer, HIV, multiple sclerosis)	Low	The procedure has specific clauses for adults who lack capacity ensure that any decisions are in the person's best interest.
Sex	Men/Male Women/Female	Low	No issues identified
Marriage/Civil Partnership		Low	No issues identified
Pregnancy/Maternity		Low	No issues identified
Race	Colour Nationality Ethnic/national origins	Low	This procedure will follow the Trust's policies for communicating with service users who are unable to understand English, are non-literate or lack capacity.

Equality Target Group	Definitions	Equality Impact Score	Evidence to support Equality Impact Score
Religion or Belief	All religions Including lack of religion or belief and where belief includes any religious or philosophical belief	Low	There may be groups who would have objections on cultural or religious grounds to being photographed or filmed. However, the procedure only allows the recording to take place with explicit consent and objections would be respected.
Sexual Orientation	Lesbian Gay Men Bisexual	Low	No issues identified.
Gender reassignment	Where people are proposing to undergo, or have undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attribute of sex	Low	No issues identified.

Summary

<p>Please describe the main points/actions arising from your assessment that supports your decision above</p> <p>The procedure addresses those who may not be able to consent due to age or their mental capacity.</p> <p>There may be groups who would have objections on cultural or religious grounds to being photographed or filmed. However, the procedure only allows the recording to take place with explicit consent and objections would be respected.</p>	
EIA Reviewer: Karen Robinson	
Date completed: November 2023	Signature: K Robinson