



Photography and Video Policy: to Govern Clinical and Non-clinical Recordings

This procedural document supersedes: PAT/PA 14 v.4 – Photography and Video Policy: to Govern Clinical and Non-clinical Recordings



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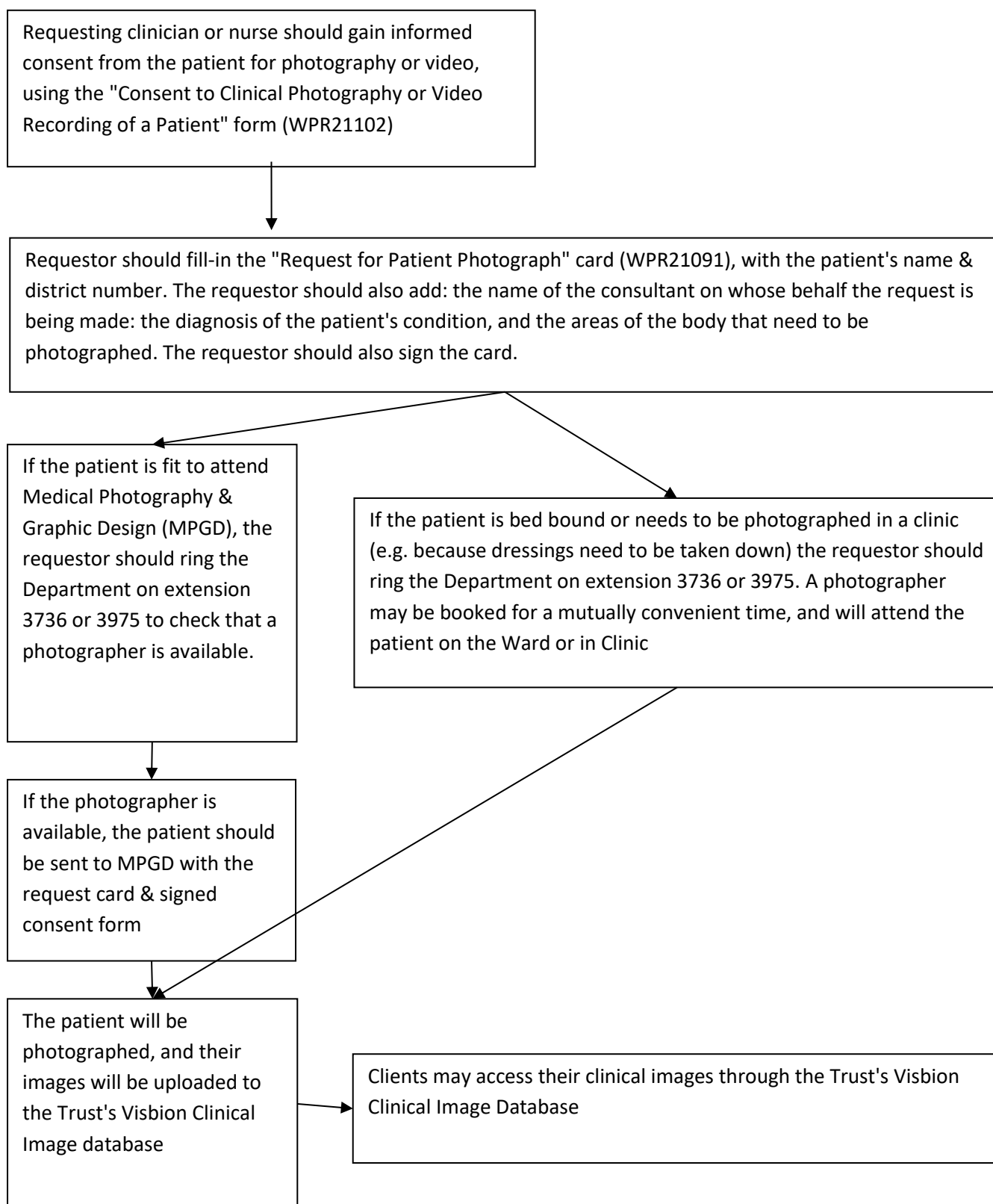
Amendment Form

Please record brief details of the changes made alongside the next version number. If the procedural document has been reviewed **without change**, this information will still need to be recorded although the version number will remain the same.

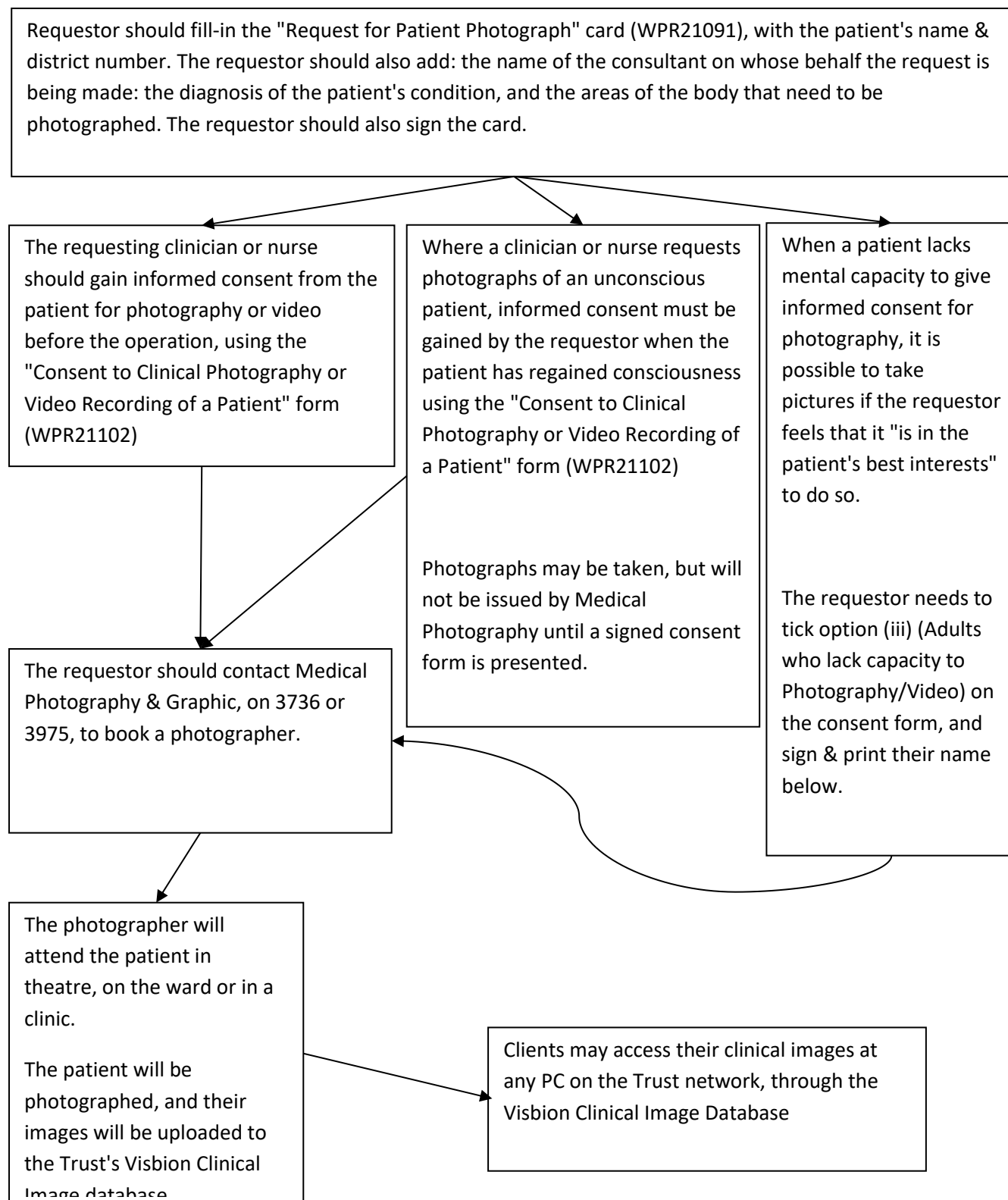
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1 INTRODUCTION

Within the NHS photography and video are widely used. A series of clinical pictures will show a patient's visible symptoms, and can substitute for a page of doctor's notes. Videos of surgical procedures are more effective teaching aids than text describing the stages of an operation. Creative photography can support effective health education campaigns.

Although shooting pictures may now be easy, laws introduced in the last 15 years have complicated life for people creating and using images. The Data Protection Act (1998), the Human Rights Act (1998), aspects of Common Law, and Government Information Governance guidelines mean that NHS staff should use digital cameras with care.

2 PURPOSE

The purpose of this document is to set out guidelines on the appropriate use of photography and video by anyone on a Trust site. It covers:-

- Consent relating to clinical & non-clinical photography.
- The confidentiality of clinical photographs.
- The copyright of images.
- Anonymising images.
- The need to adopt a systematic approach to shooting, processing and archiving clinical images.
- The public taking pictures and shooting videos on Doncaster and Bassetlaw Teaching Hospitals (DBTH) sites.
- The processes that allow the media to photograph and film within the Trust.
- Using photographs on the Internet and Social Media sites.
- Exceptions to this policy.

3 DUTIES AND RESPONSIBILITIES

All staff working for Doncaster and Bassetlaw Teaching Hospitals (DBTH) using photographic or video equipment are subject to the terms of this Policy.

The Communications and Engagement department, which includes Medical Photography will:

- Store the clinical material that it produces for clients in a central location.
- Label and archive its clinical photographs according to a system that will allow the easy retrieval of images if a job number can be provided.
- Provide clients with a system to safely store the pictures that they shoot of patients.

Clinical and nursing staff photographing patients should:

- Follow the guidelines laid out in this document when gaining informed consent for clinical photography from patients.

- Use the appropriate system for the storing of clinical images that they produce, and avoid storing images locally on their own PC hard drives.
- Use images in accordance with Trust and Government guidelines, and information governance and human rights law.

Staff shooting non-clinical pictures should:

- Use images in accordance with Trust and Government guidelines and information governance and human rights law.
- Ensure that they gain informed consent from the people that they photograph
- Immediately delete the photo if it has been taken on a non-Trust device, once it has been shared via appropriate channels (ie, for the Buzz or internal communications).

Patients and visitors to the Trust should:

- Follow the local guidelines for areas of the Trust where they want to take photographs. These guidelines should be outlined in leaflets and posters in the appropriate areas.
- Stop taking pictures if staff ask them to do so, see appendix 6 for further guidance.

Journalists, broadcasters and other organisations wanting to film or take pictures around the Trust should:

- Make contact with the Communications Department
- Follow advice from Communications Department for media photography and filming around the Trust
- Work with NHS staff to ensure that patient privacy, dignity and confidentiality are not breached.

If DBH staff photograph patients without following the guidelines laid out in this document, they risk:

- Exposing the Trust to legal claims.
- Disciplinary action for themselves.

4 PROCEDURE

4.1 Consent

Consenting patients for clinical photography and filming

Informed consent should be gained from all patients before they are photographed. This should be gained by the person who has requested the images. The Trust's Consent to Examination or Treatment Policy (PAT/PA 2) should be followed in gaining consent. The patient should be competent to take the particular decision, received enough information to take it, and not be acting under duress.

The requester should explain to the patient, and their carers or parents:

- The purpose of the photographs.
- How the images will be used.

There are 3 levels of consent for clinical photography:

- Medical records only.
- Medical records and teaching.
- Medical records, teaching and publication.

The requester should gain the appropriate level of consent for the images from the patient or their parents. It should be made clear to them that refusal for the pictures to be used for teaching or publication will not affect their clinical care.

Consent when photographing children & young people

Children under 16

Parents or legal guardians should give informed consent for clinical photography of patients under 16. **If a child is not willing for a recording to be used, it must not be used; even if a person with parental responsibility consents.**

Where there are safeguarding issues, a child under 16 may be assessed as competent to give consent using the Fraser Guidelines (previously known as Gillick Competence) (Gillick v West Norfolk & Wisbech Area Health Authority [1985]).

Young People aged 16-17

Patients aged 16-17 should be treated as adults when gaining consent for photography

Mental capacity and consent for clinical photography

Where patients who appear to lack mental capacity to give informed consent need clinical photography, the Trust's "Mental Capacity Act 2005 Policy and Guidance" (PAT/PA 19) should be followed. The policy covers issues such as:

- The main principles of the 2005 Act
- Who should assess patients for mental capacity
- The criteria for testing
- Documenting assessments of capacity when examination/recording is required
- The involvement of relatives or Independent Mental Capacity Advocates (IMCA) in communicating with the patient
- Acting in the best interests of the patient.

Family, carers or an Independent Mental Capacity Advocate (IMCA) may be able to help clinical staff communicate with a patient to establish their wishes.

If a patient has been assessed as lacking mental capacity to give consent, doctors and nurses can still request recording of a patient if it is felt to be in their best interests.

The “Consent to Clinical Photography or Video Recording of a Patient” form (WPR 21101 NCR YELLOW, WHITE, BLUE DEC 2010) should be completed by the requestor. In the section titled “Patient’s Consent to Photography/Video Recording” the requesting doctor or nurse should tick the box for option iii) Patients who lack capacity. They should also sign the form and record their job title and the date of the photographs.

Unconscious patients

A patient may be photographed during a surgical procedure when they are under anaesthetic.

It is preferable that the requestor gains informed consent before the operation. However, it is recognised that surgeons may discover that they need clinical photographs during the course of an operation; when the patient has been opened up and an unanticipated condition is revealed.

It is the requestor’s responsibility to seek and record the patient’s informed consent when they regain consciousness. Medical Photography and Graphic Design will only release the pictures to the requestor when it has received a copy of the patient’s signed consent form.

Consent for publication

There is no blanket consent for publication. A patient ticking the publication box on the consent form does not entitle a clinician or nurse to publish the resulting shots in any publication.

Clinical staff should gain informed consent for each specific publication of a patient’s pictures – listing the title(s) of each book or journal where their pictures will appear. Photographs should only be used for the purposes for which consent has been gained.

If staff later want to publish a picture, already consented for use in for “The Lancet,” in a different journal; they should contact the patient. A new consent form needs to be signed – recording the patient’s consent for the new use of their image.

It should be made clear to the patient that once their pictures are in the public domain, there will be no effective opportunity for the withdrawal of their consent. Many academic papers published in paper journals also appear as online content. This means that clinical photographs consented for publication will appear on the internet.

Documenting consent

When requestors have gained informed consent for photography from a patient, it should be recorded on the Trust's consent for clinical photography form (WPR 21101 NCR YELLOW, WHITE, BLUE DEC 2010 -see Appendix 1). The patient can be offered a choice from 3 levels of consent for the use of their pictures:

- Medical records only.
- Medical records and teaching.
- Medical records, teaching and specified publication (with a space to record the titles of the intended publications).

The consent form is a three-part NCR (carbonised) document, which includes instructions on the distribution of each of the three parts.

Withdrawal of consent

Patients who have consented to photography or filming have a right to withdraw that consent at any time. If this happens, MPGD should be contacted immediately and the records will be quarantined.

Visual recordings that form part of the healthcare record cannot be destroyed except under local Retention and Destruction policies. Quarantined images can only be released under a Court Order or Data Protection law.

Consent when a patient dies

Where a patient dies before consent can be obtained, identifiable clinical shots can only be released with the agreement of the deceased's personal representative (see Access to Health Records Act 1990). A duty of confidentiality survives the death of the patient.

Where a patient who has consented to clinical photography dies, clinicians wanting to use these images for a purpose not covered in the original consent form should contact the patient's personal representative. They can then gain informed consent for the publication or other use of the images from the relatives. The Trust consent form for this (WPR 21130) is in Appendix 3) of this policy.

Pictures of deceased patients should not be used if there are pictures of living patients (who can consent) available that could equally meet the clinician's need.

For any media or related work, images more than four years old will not be used, unless the team are certain that consent can still be obtained (for example, the individual still works within the Trust and so on).

Consent when clinical staff shoot their own pictures

When doctors, nurses and other clinical staff shoot their own medical photographs, the same consent procedures must be followed – i.e. informed consent must be gained from the patient by the doctor or nurse (and recorded on the appropriate consent form) before any pictures are taken.

Consenting people in Non-clinical pictures

Where stills or video are shot for non-clinical purposes informed consent, recorded on the Trust's non-clinical photography (see appendix 2) and video consent form, should be gained from:

- Patients.
- Relatives.
- Non-trust staff.

Where a patient signs a non-clinical photography/video consent form, a copy should be filed in their notes.

It is unnecessary to gain written consent from staff employed by the Trust for a non-clinical picture. However, staff have the right not to appear in a publicity or illustrative shot. They should be told this clearly before shooting begins, and thus be given opportunity to withdraw from the scene.

We are aware that some colleagues sometimes want to share pictures of activities or relating to patient progress when they have agreement from participating individuals via Trust communications channels. If you share a picture or post relating to a colleague or patient you must ensure you have consent from this individual, as well as ensure this individual has capacity to consent. If you wish to do this, please ensure that you delete the photograph once sent if you have taken it from a personal device. If at all unsure on this process, please contact the Communications team on 01302 644244 or email dbth.comms@nhs.net

4.2 The Confidentiality of Clinical Photographs

Clinical photographs are essentially visual medical records, and contain information about a patient's condition. They must be treated with the same care as written patient notes or

PACs images. Information gained in a confidential discussion or situation can only be disclosed with the information provider's consent (DOH 2008).

Breach of confidentiality is regarded by the Trust as serious professional misconduct. Disciplinary action might well arise from such a breach, together with possible legal action under common law, the Data Protection Act (1998) and the Human Rights Act(1998).

However the Department of Health's guidance also states that confidential information may be lawfully disclosed in the following situations:

- where the individual to whom the information relates has consented.
- where disclosure is in the public interest; and
- where there is a legal duty to do so, for example a court order.

4.3 The Copyright of Images

Doncaster and Bassetlaw Hospitals NHS Foundation Trust holds the copyright and moral rights of all photographs and video recordings made by its staff.

In cases where staff intend to illustrate a published paper with pictures shot within the Trust care must be taken with copyright. Many publishers include clauses in their publishing agreements that allow them to take ownership of images published in their books and journals. Staff should ensure that copyright must remain with the Doncaster and Bassetlaw Hospitals NHS Foundation Trust and must not be passed automatically to the publishers.

Doctors and other healthcare professionals acquiring copies of recordings in the course of their duties may retain these for teaching purposes, but must undertake only to use them within the terms of the original consent. Copyright and reproduction rights at all times remain with the Trust.

4.3.1 Using Images Found on the Intranet

Images found on an Internet search cannot be assumed to be available to be freely used. It is highly likely that many of the pictures displayed with an image search will be protected by copyright. Use of copyrighted material without the copyright owner's permission is illegal.

The use of a copyrighted image usually requires payment to its originator, or their agent – to obtain a licence to use it.

Google allows searches for copyright free images, through use of its “advanced search option.” The safest setting to use is: “free to use, share or modify, even commercially.” **Staff must check the copyright status of an image taken from the Internet before they use it.**

4.4 Anonymising Images

It is best practice to obtain informed consent from patients to allow them to decide how their clinical images are used. If the appropriate level of consent is obtained, making pictures anonymous is no longer an issue.

Blacking out a patient's eyes is not acceptable as a method of avoiding the need to gain informed consent, especially when publication of the image is intended.

Where images are truly anonymous, the Department of Health advises clinical staff that they cease to be confidential, and can be used with few restraints (DOH 2003). However, as the Caldicott Report notes, care should be taken when judging whether a person's identity can be established from a picture (DOH 1997 section 4.1.1). For example a shot of an arm may show a tattoo or unique birthmark that may allow identification.

4.5 The Need to Adopt a Systematic Approach to Processing and Archiving Clinical Images

Equipment

There are a wide variety of devices available that staff may use to photograph & film patients. These include:-

- Analogue and digital stills cameras.
- Video cameras.
- Mobile phones with still and/or video recording capability.
- Laptops and tablet computers.
- Webcams attached to computers.

Clinical photography and video should only be shot on equipment owned by the Trust. Cameras & other devices owned by staff (such as personal mobile phones) should never be used to photograph or film patients, due to the risk of sensitive images leaving the Trust when staff take their equipment home.

Removable Media

As still or moving images are shot, they are stored either on a device's built-in memory or on removable media. Only removable media owned by the Trust should be used when shooting clinical images. Examples of removable media include:-

- SD cards
- Micro SD cards
- Mini SD cards
- Miniature cards
- Multi Media cards
- Compact Flash
- Memory Sticks
- xD-picture cards
- P2 cards
- XQD cards
- Universal Flash Storage
- SxS cards
- Smart Media cards.

This is not a definitive list.

It must be noted that deleting files from these cards using the camera or phone's delete or format functions do not permanently remove them. Only the "flags" that mark where the files are on the card's file structure are deleted. The actual image files remain. Indeed, these deleted files may be retrieved using freely available software.

Consequently, removable media (such as SD cards) should never be lent to other departments, wards, patients or their relatives. These cards should remain in the possession of the staff authorized & registered to undertake clinical photography: the risk of deleted images being retrieved from them by unauthorised personnel is too great.

Registering Equipment

All image capture devices and removable media used to record clinical photographs & video files should be registered with MPGD. The registration of this equipment should include information on:-

- the make, model & serial of each device or camera that the ward or department uses.
- the make, type, and serial number of each piece of removable media.
- the postholder responsible for the security and the safe use of the above equipment.
- whether the area in question has a protocol in place to guide staff on the safe storage of the equipment (e.g. are they stored in a locked cupboard?)
- how the images are stored.

In using cameras\visual recording devices and removable media, staff should be aware that:-

- they are creating visual medical records of patients, equivalent to written notes in their importance. Where the patient/individual may be identified in an image, it is important to guard's the confidentiality of that person.
- they need to use the Trust's digital, clinical image database to store their clinical images
- they should delete clinical images from their removable media, and local PC drives, after they have been downloaded onto the Trust's image database.

Storing Photographic and Video Equipment

Cameras, other image capture devices, and removable memory should be stored in a secure, locked area or cupboard when they are not in use.

When cameras and memory cards are being used, staff should keep them in sight at all times – to reduce the risk of theft.

Staff working away from Trust sites photographing patients, should always return photographic equipment to secure Trust storage at the end of their working day. They must not take home cameras with patient images stored in their memory. The memory of photographic equipment cannot be encrypted. Thus, taking these clinical pictures home risks staff breaching Trust policies on confidentiality and data protection.

Each area using equipment to capture clinical images should have local protocols in place to ensure that staff guard the equipment, and follow Trust procedures in storing the images that they produce.

Laptops and Tablets

Many modern laptop and tablet computers have the ability to record images (still and moving) and record sound.

If these portable computers are used to shoot patient identifiable clinical images, they are subject to the same rules as still cameras, video cameras, and memory cards.

Personal laptops and tablets may not be used for reasons discussed above. All Trust laptops and tablet computers are encrypted by I.T., and can only be used by appropriate staff.

Thus images/video shot using them should be stored on the Trust's Visbion clinical image database, as soon as possible. This ensures that clinical records are stored on a secure central system, that is backed-up by I.T.; avoiding the issues of losing clinical information if the machine's hard drive becomes corrupted.

These portable computers should be stored in a locked cabinet or cupboard after they have been used/at the end of the working day.

If staff have been using them to shoot clinical images at an outlying site, it is good practice to download images to the Visbion database on the day of shooting. It is also good practice to return the machines to secure storage at a Trust site. If a laptop or tablet was stolen, even though the contents of its hard drive had been encrypted, valuable patient records would be lost.

Staff using Trust owned laptops and tablets to record events or create publicity images should ensure that they follow the consent procedures laid out in section 4.1 of this policy.

It is permissible to take encrypted Trust laptops or tablet computers home. Staff should follow the guidance in section 5.7 of this policy if they are considering posting still images or video files of events connected to the Trust on the Internet. It is best practice that all PR material shot on these machines should be sent to the Communications Department for vetting. Communications will then decide what is suitable for posting on the internet.

Image Storage

When a patient is recorded, the images are stored on built-in or removable memory in the camera. These images should be downloaded to the Trust's image database as soon as possible. This will ensure that:-

- All images are stored in a secure, central location on the Trust's servers (required by The Data Protection Act 1998; Data Handling Procedures in Government: Final Report June 2008 (Cabinet Office); and the Trust's Data Protection and Clinical Records Policies)
- Authorised staff should be able to access photographic patient records instantly, at any PC on the Trust network via a secure web browser
- Images can be easily found by automated searches.
- Disclosure requests for clinical images can be met (required by The Access to Health Records Act 1990).
- Images will be stored on a managed system where image access can be monitored and tracked, like PAS, to minimise the risk of misuse.
- The consent levels for clinical images are clear to clinical staff – reducing the risk that that they will be miss-used.

A guide to using the database to browse clinical images is included in **Appendix 4** of this policy.

How Clinical Staff Should Store Clinical Photographs That They Shoot

All clinical shots of patients done by non-MPGD photographers (doctors, nurses, clinical therapy and other staff) should be uploaded onto the Trust's digital clinical photography database. Detailed instructions for this are included in **Appendix 5**.

Client images should be uploaded in Jpeg format with an image size of 6x4" at 300 DPI (i.e. 1800x1200 pixels). MPGD will advise clients on camera settings to achieve this. Existing images shot by clinical staff on their cameras' higher resolution settings may be reduced in size using a photo editing program or Microsoft Office Picture Manager. MPGD will advise clients on down-sizing images using Picture Manager.

MPGD will also be happy to upload clinical photographs shot by doctors and nurses to the database. These pictures will need to be presented in a logical, organised manner – with each patient's pictures separated into folders. Clients will have to identify each set of images as belonging to a specific patient and supply the following information to MPGD:-

- Patient's name.
- Patient's District number.
- Date of birth.
- The date of shooting.
- The diagnosis.
- The body part photographed (if not obvious in the images).

Sending Clinical Photographs by Email

Clinical photographs of patients photographed at DBH are stored centrally in the Trust's clinical image database. This allows authorised users in different disciplines across the Trust easy access to these images through their PCs.

When patients are transferred to other Trusts, it may be necessary to send medical images to their clinical teams. Clinical images should only be sent by e-mail using the nhs.net e-mail service. They should be sent from an nhs.net address to the recipient's nhs.net e-mail address. Any images sent should be password protected using an encryption system such as WINZIP. The Information Technology Department will advise users on the encryption process.

The Trust's Use of the Internet and E-Mail Policy (CORP/EMP 16) outlines why nhs.net email addresses should be used, and the consequences of sending clinical images by other means.

4.6 Photography and Filming by the Public and Media on DBTH Sites

Patients and Visitors Using Cameras and Mobile Phones to Record Images

Guidance from the Department of Health (DOH 2009) aims to make it easier for patients and visitors to use their mobile phones on hospital sites to make telephone calls.

The same document also urges Trusts to balance the rights of individuals to use mobiles against problems that they may create. It recommends that local risk assessments should be undertaken to ensure that mobile usage will not create a threat to:-

- the safety of patients and other people.
- the safe operation of medical devices in clinical areas.
- privacy and dignity of patients, staff and others.

Risk Assessments

Because modern mobile phones have the ability to shoot & transmit still and moving images, most people now have a stills camera and a video camera in their pocket. Whilst very convenient, these functions can create serious problems relating to privacy, consent, confidentiality, data protection and patient dignity. These factors should be considered when writing risk assessments.

Each ward and clinical area should undertake risk assessments relating to patient and visitor mobile phone use. The Trust's Mobile Communications Policy (CORP/HSFS 16) should be referred to when undertaking these assessments.

The Medical Technical Services Manager should be consulted for advice when checking the sensitivity of a particular piece of equipment.

Issues Relating to the Camera and Video Functions of Mobile Phones Confidentiality

Images are information, and should be created and treated with care. A still picture showing a patient in a ward bay can show:-

- The patient's face
- Their sex
- Their ethnicity
- Their age
- The outward signs of their illness.
- Their name (if the name tag on their bed is visible)
- Written details of their medical condition (if notes or other medical records are on view)

A video clip of the same scene can show all the above, and record sound at the same time. The sound track of a clip may contain the sound of voices of figures in the scene and off-camera. These may be staff or other patients and may contain confidential information.

Consent

Only people who give informed consent should appear in a photograph. Patients and staff who have not given consent must never appear in the background of a shot. Equally, un-consenting patients should never be secretly recorded by another patient or visitor.

Privacy and Dignity

The Privacy and Dignity Policy (PAT/PA 28) stresses the importance of maintaining patient dignity by preventing the shooting of inappropriate images on mobile phones and cameras.

The Trust's Audio/Digital Recording on Trust Premises and in Trust Meetings Policy (CORP/COMM 23) also warns that the public have a right not to be recorded, and that pictures and videos should not be edited in a way that could lead to misinterpretation.

Allowing photography on the ward

In some areas the risk assessments may indicate there are too many risks associated with allowing patients and visitors to use the camera functions of their mobiles. In other areas, if there are workable controls in place, patients may be allowed to take pictures. Examples include:-

- On the Neonatal Unit and Maternity Wards, where parents want to photograph their new born child.
- In single accommodation rooms on a ward, where the risk of photographing other patients or staff is minimal.
- Where a patient is celebrating a special occasion, such as a birthday.

In wards where it is decided to allow visitor/patient photography local protocol should be drawn up to guide staff and visitors. Each ward may have a different protocol – depending on its type of patients and the medical equipment used. Important issues to cover include:-

- Communicating the rules for taking pictures to patients and visitors clearly – eg. only photograph your consenting relative – nothing else.
- That patients and visitors should seek permission from the Sister/Charge Nurse/Staff Nurse in charge before pictures are taken.
- Using curtains to ensure that visitors do not get other patients and staff in the background of their pictures
- Considering whether staff should supervise visitor photography - to ensure that curtains are drawn back at the end of the session. This gives staff a clear view of the ward, and allows them to administer care to patients quickly in the case of an emergency.
- Patients and their visitors should not be allowed to shoot videos, due to the risk of nearby conversations being picked up. Broadcasters and the media should be allowed to film in clinical areas, with the permission of the Director of Communications, assuming that they follow the Trust guidelines and obtain the appropriate consents.

- Clarifying where patients cannot take photographs or transmit them (by texting, blue tooth, or using the mobile Internet) because of interference with medical equipment. Signs should be put up in these areas.
- Staff who witness patients or visitors ignoring these rules have a duty to challenge them.

Patients and visitors should be made aware of restrictions by such means as Patient information leaflets and posters. Suggested wording:-

"Patients and Visitors using Mobile Phones & Taking Pictures on Trust Premises

There are certain areas where mobile phones interfere with medical equipment. These areas are identified by signs, and we ask visitors and patients to turn off their phones when they enter them.

If you want to take any pictures of your relative whilst they are in hospital, please ask Sister or Charge Nurse in charge of their Ward. You must not include other patients on the ward or staff in your picture. This is to ensure that their privacy & dignity are protected.

Using a video camera or the video capability of your mobile phone within the hospital is forbidden. This is to prevent confidential conversations about patients' health and treatment being recorded by mistake in the background.

Each ward area will have a notice indicating when mobile phones may be used. Please abide by these times as they are there to provide privacy, dignity and a peaceful environment for all patients. Wherever possible please switch phones to silent mode to restrict noise levels.

Your cooperation is greatly appreciated."

Patients and Visitors Using Cameras and Mobile Phones to Record Images or Film of Staff

Only people who give informed consent should appear in a photograph/film. This is applicable to both staff and patients.

Patients and staff who have not given consent must never appear in the background of a shot. Equally, un-consenting patients or staff should never be secretly recorded by another patient or visitor and the same is true of staff.

For those filming consultations or other episodes of care please note the following:

Filming in our hospitals by patients, their friends and families is not allowed without the express permission of the senior nurse in charge or appropriate service lead, and patients and staff may legitimately refuse to give this permission. This is to protect the privacy of patients and staff, and any sensitive information which may be displayed as part of the

consultation or episode of care, and is accordance with Trust policy. If individuals engage in this behaviour, they may be asked to leave.

If individuals continue to film without permission, and this includes just audio, you security may be called for further support.

Whilst the Trust understands an individual's desire to undertake these actions, it has a duty to protect the privacy and dignity of its patients and staff under article 8 of the Human Rights Act.

Photography and video by the Press and other media

Where it is proposed that external photographers, video production companies and broadcaster want to film around the Trust, the Communications Department must be contacted for permission. This also applies to contractors either in clinical services or non-clinical services, working on site who wish to shoot stills or video.

Communications will ask the film makers to fill out a filming request form, to record the following: -

- The programme's title.
- Who commissioned it?
- How it is going to broadcast (TV, DVD, Blu Ray, Internet), and what the format of the film will be (e.g. documentary)?
- Why the film is being made?
- Who the audience for the film will be?
- What are the themes of the film?
- When will it be shown?
- The details of the main person to contact at the production company.

The production company will need to show the Trust a copy of their public liability insurance, and sign an agreement to respect patient confidentiality before filming starts.

Patients or staff should not feel pressurized to appear in the film. Patients should be made aware that refusal to take part in the program will not affect their care. Also, staff should know that the Trust respects their right to not to appear in a film.

All patients and staff who will appear in the film should give informed consent. The consent agreement is between the patient or staff member and the production company, not DBH Trust, and should be recorded on the company's own consent form. This is not a legally binding document but provides evidence of the consent giving process.

Additionally, the Trust has a responsibility to ensure that patients have the mental capacity to give consent for filming. This consent should be recorded on the Trust's PR consent form (see **Appendix 2**), and a copy should be stored in the patient's notes.

In both cases, consent should be gained by a Trust Communications Officer rather than any staff involved in the patient's care.

Caring for patients, and ensuring that their privacy and dignity is protected, is paramount. Where it is felt that patients are distressed or uncomfortable, staff should ask the patient if they want the filming to continue; and request that filming is stopped if necessary. Both patients and staff can withdraw from the filming at any point where they feel uncomfortable, regardless of any consent agreement that they have signed.

Secret Filming by Broadcasters

On occasion journalists and broadcasters may feel it appropriate to secretly film in areas where there is a news story of public interest, such as:-

- (i) detecting or exposing crime or a serious misdemeanour
- (ii) protecting public health or safety
- (iii) preventing the public from being misled by some statement or action of an individual or organisation
- (iv) exposing significant incompetence in public office

An example of this is the recent case of abuse of vulnerable patients at the private Winterbourne View Hospital in Bristol, exposed by the BBC's undercover journalists. Staff were secretly filmed physically abusing patients.

Whilst the Trust understands journalists' desire to pursue public interest stories, it has a duty to protect the privacy and dignity of its patients and staff under article 8 of the Human Rights Act. Where staff suspect that secret filming is taking place, they should report this to their line manager. Line managers should contact security, to prevent further filming, and also report the matter to the Director of Communications.

4.7 Using Photographs on the Internet and Social Media Sites

Social Media are a series of technologies that allow people to share information. They have positive uses for encouraging the building of online communities and sharing knowledge.

Social media include:-

- Forums such as Facebook, Twitter and Linked In.

- Online blogs.
- Video sharing sites such as YouTube.
- Personal web sites.
- Discussion boards.
- Email groups.
- Instant messaging, such as Widows Live Messenger.

Staff Posting Pictures on Social Media Sites.

This is covered within the Trust's Policy (CORP COMM 24)

4.8 Exceptions to this Policy

Various diagnostic procedures incorporate cameras which are used to record findings in patient examinations. These include:-

- Colposcopy.
- Endoscopy.
- Fluorescein angiography.
- Pathology/laboratory microscopes.
- Dolphin Imaging System in Orthodontics.

The use of such cameras is permissible and therefore they are excluded from the General Policy, strictly providing that they not be used to take pictures from which a patient could be identified.

The consent form which is devised for the clinical procedure involved must incorporate a clause stating that photography forms, or may form, an integral part of the procedure, and consent to photographs being taken is therefore implied within the general consent.

The staff of the Communications Department are allowed to use the camera function of their mobile phones for publicity photographs, so long as appropriate consent is gained and the pictures are sanctioned by the Director of Communications.

PATIENTS LACKING CAPACITY

Sometimes it will be necessary to provide care and treatment to patients who lack the capacity to make decisions related to the content of this policy. In these instances staff must treat the patient in accordance with the Mental Capacity Act 2005 (MCA 2005).

- A person lacking capacity should not be treated in a manner which can be seen as discriminatory.
- Any act done for, or any decision made on behalf of a patient who lacks capacity must be done, or made, in the persons Best Interest.

- Further information can be found in the MCA policy, and the Code of Practice, both available on the Extranet.

There is no single definition of Best Interest. Best Interest is *determined on an individual basis. All factors relevant to the decision must be taken into account, family and friends should be consulted, and the decision should be in the Best interest of the individual. Please see S5 of the MCA code of practice for further information.*

5 TRAINING/SUPPORT

Initial guidance on the use of the Trust's Visbion digital clinical image database may be found in **Appendices 4 and 5** of this policy. However, clients needing further help and training with this system or other issues relating to the use of photography or video may contact Communications and Engagement on 01302 644244.

Please note: The training requirements of staff will be identified through a learning needs analysis (LNA). Role specific education will be co-ordinated/ delivered by the topic lead. Alternatively, training may be accessed via an approved e-learning platform where available.

6 MONITORING COMPLIANCE WITH THE PROCEDURAL DOCUMENT

What is being Monitored	Who will carry out the Monitoring	How often	How Reviewed/ Where Reported to
This policy should be regularly reviewed	The policy should be reviewed by the Communications and Engagement Team.	Every three years	The policy will be reviewed in consultation with relevant service users.
Incidents arising from failing to comply with this policy	Incidents will be reviewed and investigated by the Head of Communications and Engagement.	As incidents occur	This policy may be amended as a result of the outcome of such investigations in consultation with senior medical staff and the Information Governance Manager.

7 DEFINITIONS

Clinical photography or video – using stills photography or video equipment to record the outwards signs of a patient’s condition; or a medical or surgical procedure being applied to a patient.

Confidentiality – a duty of confidence that arises when one person discloses information to another person where it is reasonable to expect that information to be held in confidence. This duty of confidence may be governed by legal obligations derived from case law, professional codes of conduct, or by NHS employment contracts.

Consent – giving permission.

Copyright – the legal right to publish a work

Guideline – a principle or criterion guiding or directing action.

Informed consent – “An informed consent can be said to have been given based upon a clear appreciation and understanding of the facts, implications and future consequences of an action. In order to give informed consent, the individual concerned must have adequate reasoning faculties and be in possession of all relevant facts at the time consent is given.” (Wikipedia).

MPGD – Medical Photography and Graphic Design Department

Policy – a prudent course of action, a principle of action adopted by a Government party, business or individual.

Procedure – a mode of performing a task.

Recordings - ‘recording’ or ‘recordings’ are used to refer to photographs taken by means of conventional, Polaroid or digital cameras, or video equipment (analogue or digital), including video (picture) telephones.

8 EQUALITY IMPACT ASSESSMENT

The Trust aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are disadvantaged over others. Our objectives and responsibilities relating to equality and diversity are outlined within our equality schemes. When considering the needs and

assessing the impact of a procedural document any discriminatory factors must be identified.

An Equality Impact Assessment (EIA) has been conducted on this procedural document in line with the principles of the Equality Analysis Policy (CORP/EMP 27) and the Fair Treatment for All Policy (CORP/EMP 4).

The purpose of the EIA is to minimise and if possible remove any disproportionate impact on employees on the grounds of race, sex, disability, age, sexual orientation or religious belief. No detriment was identified. **(See Appendix 6).**

There are now nine protected characteristics:-

- Age.
- Disability.
- Gender reassignment.
- Marriage and civil partnership.
- Pregnancy and maternity.
- Race - this includes ethnic or national origins, colour and nationality.
- Religion or belief.
- Sex, and;
- Sexual orientation.

9 ASSOCIATED TRUST PROCEDURAL DOCUMENTS

Audio/Digital Recording on Trust Premises and in Trust Meetings Policy (CORP/COMM 23)

Consent to Examination or Treatment Policy (PAT/PA 2)

Mental Capacity Act 2005 Policy and Guidance (PAT/PA 19)

Mobile Communications Policy (CORP/HSFS 16)

Privacy & Dignity Policy (PAT/PA 28)

Use of the Internet and E-Mail Policy (CORP/EMP 16)

10 DATA PROTECTION

Any personal data processing associated with this policy will be carried out under 'Current data protection legislation' as in the Data Protection Act 2018 and the UK General Data Protection Regulation (GDPR) 2021.

For further information on data processing carried out by the trust, please refer to our Privacy Notices and other information which you can find on the trust website:

<https://www.dbth.nhs.uk/about-us/our-publications/information-governance/>

11 REFERENCES

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Wikipedia, Informed Consent, http://en.wikipedia.org/wiki/Informed_consent, accessed 04.11.2012.

Legislation:

The Access to Health Records Act 1990

The Copyright, Designs and Patents Act (1988)

The Data Protection Act (1998)

The Human Rights Act (1998)

Department of Constitutional Affairs Mental Capacity Act (2005): Code of Practice, 2007

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APPENDIX 1 – CONSENT TO CLINICAL PHOTOGRAPHY OR VIDEO RECORDING OF A PATIENT

HMR 6

Patient identifier/label

Doncaster and 
Bassetlaw Hospitals
 NHS Foundation Trust

Consent to Clinical Photography or Video Recording of a Patient

Doncaster and Bassetlaw Hospitals NHS Foundation Trust has adopted a policy in line with the Data Protection Act to give you the right to control the future use of photographs (including video, slides and digital images) taken of you/your child during the course of treatment. This consent limits the use of any pictures taken of you/your child solely to the purpose specified by you in the consent form below (please delete those purposes for which you do NOT give your consent). Should it be desired to use these photographs/recordings in any other way - for example, in a medical textbook or as an on-line teaching resource - the Trust will seek your specific permission to do so.

a. Clinician's Referral to the Department of Medical Photography

I (Name and Job Title), _____, wish to refer you to the Trust's Department of Medical Photography for medical photographs to be taken. These photographs will form part of your health record and may also be used for the teaching of medical, allied health professional and nursing staff, or for some specific other use as detailed below.

Signed: _____ Date: _____

OR

b. Medical Photographs/Recordings taken within the Trust by non-Medical Photographers

I (Name), _____, confirm that I have registered with the Trust's Department of Medical Photography for the taking of appropriate photographs/recordings. I will ensure that any photographic/recording procedures I undertake, together with the storage and usage of the resultant images, will be carried out according to the Trust's Policy and Procedures for Photography, as defined in Policy PAT/PA14. I agree to take the photographs/recordings in a manner that maintains the patient's dignity and well-being.

Signed: _____ Date: _____

Job Title & Department: _____

Patient's Consent to Photography/Video Recording (patient to tick box(es) and delete at * as appropriate)

In view of the explanation given to me by Mr/Dr/Mrs/Miss _____,

- (i) ☐ I consent to these photographs/recordings being taken for my/my child's* personal clinical health record
- (ii) ☐ I consent to these photographs/recordings, in addition to being used in my/my child's* clinical health record, being made available for teaching in the healthcare context
- (iii) ☐ Adults who lack capacity to Photography/Video (Assessment of Capacity in accordance with the Mental Capacity Act)

In my clinical judgement the photography/video recording is in the best interests of the patient who lacks capacity to give or withhold consent. Where possible and appropriate I have discussed with those close to the patient the reasons about the decision to take photographs/recordings.

Signed: _____ Date: _____

Name (PRINT): _____ Job title: _____

Date photographs/recordings taken: _____

- (iv) ☐ I consent to these photographs/recordings being published in the following book, journal or website:

Signature of Patient/Parent/Guardian: _____ Date: _____

Relationship to Patient (if appropriate): _____ Phot. No.: _____

Copy accepted by Patient / Parent / Guardian? Yes / No (please circle)

**YELLOW COPY: CASE NOTES WHITE COPY: PATIENT/PARENT/GUARDIAN
 BLUE COPY: RETAINED BY THE DEPARTMENT OF MEDICAL PHOTOGRAPHY, DRI**

WPR21101
 NCR YELLOW/
 WHITE/BLUE
 Dec 2010

APPENDIX 2 – PUBLIC RELATIONS PHOTOGRAPHY/FILMING CONSENT FORM

HMR 6

Patient identifier/label

Doncaster and **NHS**
Bassetlaw Hospitals
 NHS Foundation Trust

Public Relations Photography / Filming Consent Form

We often use photographs of people on our website and in publications to provide important information, publicise our services or record special events. We also make some short films for the same reason. These images may be sent to external media and published on the internet. We also work with external media on news stories or documentaries about our services.

This form allows us to record that you have given informed consent for images of you or your child to be used in this way. Please be assured that this is completely your decision and we totally understand if you would prefer not to be filmed or photographed. Your decision will never affect your care or that of your loved one or friend.

Consent statement:

I give my consent for my image to be used by Doncaster and Bassetlaw Hospitals NHS Foundation Trust in all areas of promotion and publicity*. I understand that images of me / my child may appear in the Trust's printed and electronic internal communications, external communications and by other external media including newspapers, magazines and broadcasters, websites and social media.

Signature: _____ Date: _____

Your name: _____

Name of child*: _____ Relationship to child: _____

Email and phone: _____

Address: _____

Any restrictions on use*: _____

(We will only use your details to contact you about these images.)

For completion by staff member witnessing signature:

Subject and location: _____

Signature: _____

Name and job title: _____

File in the patient's casenotes and send a copy to Medical Photography & Graphic Design.

*Please note that once a picture is published or transmitted electronically, it is in the public domain, and it is effectively impossible to control its subsequent use.

**You must be a parent/carer with the legal right to consent on their behalf.

Complete electronically and print three copies – Each copy must be signed.		
Copy distribution – Casenotes	Relative/Parent/Guardian/Friend	Department of Medical Photography, DRI

WPR38120
 December 2012

APPENDIX 3 – SUPPLEMENTARY AGREEMENT CLINICAL PHOTOGRAPHY OR VIDEO RECORDING OF A DECEASED PERSON

Appendix 3

Patient identifier/label

Doncaster and 
Bassetlaw Hospitals
 NHS Foundation Trust

Supplementary Agreement Clinical Photography or Video Recording of a Deceased Person

Doncaster and Bassetlaw Hospitals NHS Foundation Trust has adopted a policy in line with the relevant legislation and professional duties to give you the right to control the future use of photographs (including video, slides and digital images) taken of your deceased relative.

This agreement limits the use of any pictures taken of this deceased person solely to the purpose specified by you in the consent form below (please delete those options to which you do NOT consent). Should it be desired to use these photograph(s) or recording(s) in any other way - for example, in a medical textbook or as an on-line teaching resource - the Trust will seek your specific permission to do so.

Clinician's Referral to the Department of Medical Photography

I (Name and Job Title), _____, wish the Trust's Department of Medical Photography to take photographs/recordings of your deceased relative. These photographs may be used for the teaching of medical, paramedical and nursing staff, or for some specific other use as detailed below. We promise that these photographs will be professionally taken with all due respect for your relative, and any religious beliefs that you hold will be recognised.

Signed: _____ Date: _____

Agreement to Photography or Video Recording of a Deceased Person (please delete* option(s) to which you do NOT consent)

In view of the explanation given to me by Mr./Dr. /Mrs./ Miss _____

I agree to photographs/video recordings being taken of*.

(Name of Deceased): _____

I agree to these photographs/recordings being made available for teaching in the healthcare context as described above*.

I agree to these photographs/recordings being published for the specific purpose described below*.

I understand that this agreement applies solely to the publication shown below, and that should it be wished to extend publication further, my permission will be sought again*.

Publication for which agreement is given: _____

Signature of Agreeing Person: _____ Date: _____

Relationship to Deceased (if appropriate): _____ Phot. No.: _____

Copy accepted by Deceased's Relative/Parent/Guardian? Yes / No (Circle as appropriate)

Complete electronically and print three copies – Each copy must be signed.

Copy distribution – Casenotes Relative/Parent/Guardian/Friend Department of Medical Photography, DRI

WPR38110
December 2012

APPENDIX 4 – GUIDE TO USING THE TRUST DIGITAL CLINICAL IMAGE DATABASE

All clinical images of patients are stored on the Trust's Visbion digital clinical image database. Images are stored on a secure, central server, and can be accessed by service users using a web-page.

All users need to contact MPGD to become registered, and be granted access to appropriate parts of the database. Staff will be given an initial password and a username.

Setting up a short-cut to the database web-page

- i) Right click on the desktop of PC. Click "create new shortcut."
- ii) Enter the following <http://dbhphoto/>
- iii) Click "Next"
- iv) Name the shortcut as "Clinical Photography Database"
- v) Click "Next"

Double clicking on this shortcut will open the database web-page. Under the heading "Visbion PACs" click on "Clinical Photography Database." Users should then log-in with their user name & password.

Users should immediately change their password. They should click "User tools," then (in the left hand pane "Tools Menu") click "Change Password."

Searching for clinical images

To search for a specific patient's images, click on "Clinician Homepage."

In the left pane ("Clinicians Menu") click on "Search for Studies." This brings up a dialogue box to enter patient information into. The most efficient method of searching is to enter the patient's district number in the "Patient Number" field, then press the blue arrow at the bottom of the screen. If the district number is unavailable, enter the patient's name and date of birth.

The database will list all of the patient's sessions of photography in "Patient Record" pane on the left of the screen. Users should choose session that they want to view, and click on the on the small icon that looks like a calendar page (see below).



Click here to access the images

Searches can also be done against the body part photographed and the admitting diagnosis.

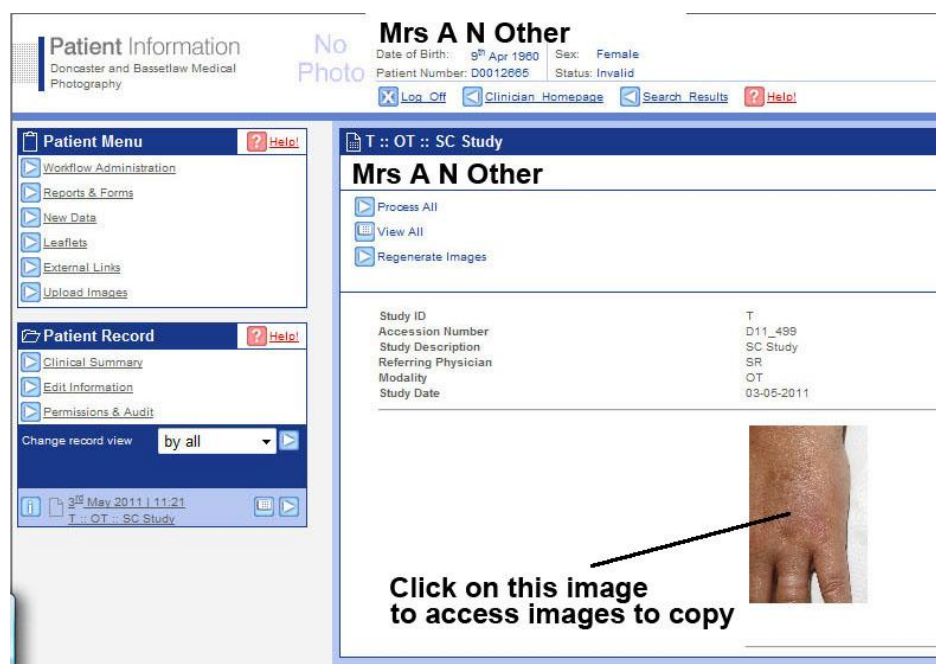
When clinical staff request patient photography, they should clearly print the diagnosis on the request card. Clearer the information on the request card will allow MPGD to attach more accurate information to the pictures as they are uploaded to the database. In turn this will benefit clinical staff when they are searching for shots of a specific condition.

Using clinical images on the database for teaching

Clinical staff may want to use appropriately consented clinical pictures for teaching. A password protected, encrypted Trust PC should be used to run PowerPoint presentations containing clinical images. No images should display patient demographic information.

Images may be copied from the database, to be inserted into a PowerPoint presentation by the following method:

- a) Have both the Visbion Database & PowerPoint open.
- b) Find the appropriate patient.
- c) Instead of accessing the image by clicking on the calendar icon as described above, click on the thumbnail image in the centre of the page. This will bring up larger versions of the images. The user can then right click on the appropriate image, and then copy & paste it into PowerPoint.
- d) In PowerPoint resize the image by shift/dragging its corner nodes.



APPENDIX 5 – HOW MEDICS & NURSES CAN SORE THEIR OWN CLINICAL IMAGES

The web page can also be used by doctors and nurses who shoot their own clinical photographs to safely store them on the Trust's database. This can be done as follows:

1. Open the Visbion database web-page & log-on.
2. In the Clinician Menu (left hand side of the screen) click on "Search for Patients."
3. In the "Patient number" field, enter the patient's District Number. Lacking this, enter name and date of birth.
4. Click "Search Patients"
5. Check the patient's details displayed on screen against the details in their notes, to ensure that the correct patient has been found.
6. Click on "Upload Images" in the left hand pane.
7. Fill-in the following information on the displayed page:
 - Diagnosis
 - Pick a body part from the drop-down menu.
 - Pick a Department/Consent level from the drop-down menu. If the picture is of a less sensitive nature (e.g. a rash on a hand) choose "all users & general."
8. Users should connect their camera to their PC or plug their memory card in to card reader connected to the computer. This will cause Windows to display the images in a window on the computer desktop. The user should select the views to be added to the database.
9. These pictures can be dragged into the indicated box on the right hand side of the screen.
10. When done, the PC will display a "Files uploaded" message.
11. Use the patient search facility to ensure that the system has taken the images, and that they are correctly labelled. It should be noted that patients from Montagu & Bassetlaw may take 3-5 minutes to reach the DBH servers.
12. Patients should be uploaded as soon as they are shot. This will ensure that they are correctly labelled with the time/date of shooting – important for legal reasons. If they are uploaded days after shooting, the date of shooting should be manually added during the upload process.

Note: The first time that users try to upload images, the PC may ask to allow the automatic installation of a Java plug-in. This is necessary for the operation of the database on the user's PC.

APPENDIX 6 - EQUALITY IMPACT ASSESSMENT PART 1 INITIAL SCREENING

Service/Function/Policy/Project/ Strategy	Division	Assessor (s)	New or Existing Service or Policy?	Date of Assessment
Communications & Engagement	Corporate	Adam Tingle	Existing	November 2021
1) Who is responsible for this policy? Name of Division/Directorate: Communications				
2) Describe the purpose of the service / function / policy / project/ strategy? Who is it intended to benefit? What are the intended outcomes? Patients and staff				
3) Are there any associated objectives? Legislation, targets national expectation, standards: No				
4) What factors contribute or detract from achieving intended outcomes? Visitors/patients not adhering to it.				
5) Does the policy have an impact in terms of age, race, disability, gender, gender reassignment, sexual orientation, marriage/civil partnership, maternity/pregnancy and religion/belief? Details: [see Equality Impact Assessment Guidance] – N/A				
<ul style="list-style-type: none"> If yes, please describe current or planned activities to address the impact [e.g. Monitoring, consultation] – 				
6) Is there any scope for new measures which would promote equality? [any actions to be taken] N/A				
7) Are any of the following groups adversely affected by the policy? N/A				
Protected Characteristics	Affected?	Impact		
a) Age	No			
b) Disability	No			
c) Gender	No			
d) Gender Reassignment	No			
e) Marriage/Civil Partnership	No			
f) Maternity/Pregnancy	No			
g) Race	No			
h) Religion/Belief	No			
i) Sexual Orientation	No			
8) Provide the Equality Rating of the service / function / policy / project / strategy – tick (✓) outcome box				
Outcome 1 ✓	Outcome 2	Outcome 3	Outcome 4	
<i>*If you have rated the policy as having an outcome of 2, 3 or 4, it is necessary to carry out a detailed assessment and complete a Detailed Equality Analysis form – see CORP/EMP 27.</i>				
Date for next review: 28/03/2025				
Checked by: Emma Shaheen		Date: 28/03/2022		