Northampton General Hospital
NHS Trust

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Audio and Visual Recording on Personal Devices Policy

NGH-PO-1830

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POLICY

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Version Control Summary

Version	Date	Author	Status	Comment
1	September 2022	Data Security & Protection Adviser	Draft	Initial draft
	December 2022	Data Security & Protection Adviser	Draft	by various: see ratification form
	December 2022	Data Security & Protection Adviser	Draft	Reviewed by Medical Photography to be in line with Medical Photography Policy
1.2	January 2023	Data Security & Protection Adviser	Draft	Reviewed against KGH (Kettering General Hospital) equivalent for consistency and alignment.
1.2	December 2022	Data Security & Protection Adviser	Draft	Data Protection Specialist added Guidance for managing Call Recordings in the Trust
1.3	September 2023	Data Security & Protection Adviser	Draft	Reviewed with amendments by HR Business Partner.
1.4	November 2023	Head & Deputy Head of DSP	Draft	Final Review and amendments
1.5	December 2023	Data Security & Protection Adviser	Final Draft	Amendments made after review.

SUMMARY

Northampton General Hospital NHS Trust (the Trust) recognises that the increased availability of mobile devices has improved the ease and ability for individuals to make video and audio recordings, which has in turn increased the likelihood of staff to patient and patient to patient interactions being recorded.

The Trust is aware of social media posts which inform patients that they have a right to record video on NHS property, as it is considered a 'public space.' This is a misconception as NHS sites are not defined as public spaces. This means that it is the responsibility of local NHS Trusts to set their own policies to ensure the safety and well-being of staff, patients, and all patients.

This policy sets out the Trust's position in relation to both the use of audio and /or visual recording devices on the premises by patients, carers, visitors, and staff. This policy sets out principles to control such records to ensure that they meet national guidance and legal requirements.

The Trust understands that there is a significant benefit to both patients and staff which can be achieved through consensual recordings. These can enable patients to have a permanent record of information that they may otherwise struggle to remember or want to accurately relay to third parties.

Advice and guidance have been provided by the British Medical Association (BMA) and has been incorporated into this policy. Patients recording consultations (bma.org.uk)

1. INTRODUCTION

There is a recognised increased use in mobile phones and other mobile devices which have the capacity for taking photographs and making audio / video recordings.

Increasingly patients may wish to take a recording of their treatment or consultations in the hospital.

The Data Protection Act 2018 allows processing of information to take place for domestic purposes. Information processed purely for domestic purposes with no connection to a professional or commercial activity is out of scope of Data Protection law.

There are no specific legal requirements that govern an individual making a personal recording of their medical consultation or treatment, either overtly or covertly, for their private use. Recordings made to keep a personal record of what the doctors said are deemed to constitute 'note taking' and are therefore permitted when undertaken for this purpose.

The British Medical Association (BMA) states: "*Information disclosed during a consultation is confidential to the patient, and a covert recording is not therefore a breach of confidentiality.*

Similarly, where a recording is made entirely for personal reasons it is unlikely to engage the Data Protection Act.

Doctors nonetheless have a reasonable expectation of privacy during a consultation. Patients should therefore seek a doctor's agreement to make a recording.

Where a patient makes a recording without permission, doctors have no legal redress. Patients should seek the agreement of the doctor. In addition to legal questions, it is a matter of ordinary courtesy and respect and is more likely to lead to a positive and trusting relationship." Patients recording consultations (bma.org.uk)

Recordings can be made overtly or covertly, however, in a hospital setting there are considerations around privacy and confidentiality which will need to be addressed. This policy provides appropriate

advice and guidance to staff and members of the public which encourages them to be open about making recordings so we can ensure they comply with the legal requirements.

The Mental Health Code of Practice makes specific reference to email and internet access as well as mobile 'phones. It states that *"many mobile phones have cameras and give access to the internet. This creates potential for the violation of the privacy and dignity of other patients, staff, and visitors to the ward, and may constitute a security risk. It would therefore be appropriate to stipulate the circumstances in which photographs and videos can be taken, for example only with specific permission from hospital staff."*

This policy should be read in conjunction with the policies and procedures listed under Associated Documentation in section 10 of this document.

2. PURPOSE

The purpose of this policy is to ensure staff are informed of the legal framework regarding recordings and supported by the relevant teams within the Trust to ensure patient's rights are respected and that staff and patients are protected from potential abuse. Further to this, the policy aims to promote positive contact with patients and their relatives while also ensuring the confidentiality of all patients, staff, and visitors to the Trust.

The key purpose of this policy and these procedures are:

- To offer a framework regarding the use of recording devices by patients, carers, visitors, and staff.
- To highlight the issues that can arise when using recording devices, the requirements that need to be in place and the response by staff to prevent intrusion of privacy to patients and staff.
- To reinforce the responsibility of the Trust to ensure the privacy, dignity and confidentiality for patients and visitors to the hospital site.
- To define appropriate behaviour of staff, patients, carers, and visitors when using recording devices on Trust premises.
- To define the Trust's stance on overt and covert recordings made by patients, carers, visitors, and staff.
- To enable staff to establish whether the recordings made are appropriate.
- To define the process that staff should take if they believe inappropriate recording has taken place.

3. SCOPE

This policy and procedures document applies to all:

- Audio / Visual Recordings made by patients, carers, visitors, and staff on Trust premises using personal recording devices such as mobile phones, smart phones, handheld recording devices, with exception of the recording types outlined in the 'Out of Scope' section below.
- Patients, carers, visitors, Trust employees, including permanent, temporary and contract staff, including staff who hold honorary contracts, contractors working on behalf of the Trust, volunteers, and Non-Executive Directors, as well as those working for organisations hosted by the Trust.

Out of Scope

This policy does not apply to audio/ visual recordings made by the Trust for the following purposes:

- Audio and visual recordings of patients that are required for their direct care/ treatment. These form part of the health record and are covered by the Photography and Video Recording of Patients Policy NGH-PO-068.
- Radiology's position on the use of video and audio recording equipment during medical examinations. This is covered by a separate policy: Radiology Policy Recording of diagnostic examinations and consultations within Radiology.
- Audio/ visual recordings taken by journalists or film crews with permission to film on the Trust site. (Please refer to the Communications Team for further information.)
- Audio/ visual recordings made for security purposes in line with policy NGH-PO-1206.

4. COMPLIANCE STATEMENTS

Equality & Diversity

This document has been designed to support the Trust's effort to promote Equality, Diversity and Human Rights in the workplace in line with the Trust's Equality and Human Rights Strategy. It has also been analysed to ensure that as part of the Public Sector Equality Duty the Trust has demonstrated that it has given 'due regard' to its equality duty and that, as far as is practicable, this document is free from having a potential discriminatory or adverse/negative impact on people or groups of people who have relevant protected characteristics, as defined in the Equality Act of 2010.

NHS Constitution

The contents of this document incorporate the NHS Constitution and sets out the rights, to which, where applicable, patients, public and staff are entitled, and pledges which the NHS is committed to achieve, together with the responsibilities which, where applicable, public, patients and staff owe to one another. The foundation of this document is based on the Principals and Values of the NHS along with the Vision and Values of Northampton General Hospital NHS Trust.

Person Identifiable/Confidential Data and Privacy Rights

In line with the UK (United Kingdom) General Data Protection Regulation (2016) and the Data Protection Act (2018) the Trust is obliged to treat all information in a secure, professional, and ethical manner, whilst keeping all person identifiable and personal data confidential. In addition, the Trust will not share employee information with a third party, unless there is a legal basis for disclosure, for example for the detection and prevention of crime, or if it is in the legitimate interest of the Trust.

As part of the Data Security and Protection policies of the Trust and data protection legislation, if the Trust is required to share any reports / information / data relating to the processes and procedures of any of our policies, the data, where possible, will be anonymised to remove person identifiable / confidential data unless there is a justifiable reason not to. It is important that policy leads are aware that policies may be released in response to FOI (Freedom of Information) requests.

For further information regarding a Data Protection Impact Assessment and Sharing Personal Data, please contact the Data Security and Protection Team @ ngh-tr.dpo@nhs.net

5. DEFINITIONS

Body Worn Cameras (BWC)	Refers to Body-Worn Cameras that are recording devices used by some members of staff for the purposes of recording. See the Trust CCTV (Closed Circuit Television) Policy NGH-PO-1206
British Medical Association (BMA)	British Medical Association. The British Medical Association (BMA) is the trade union and professional body for doctors and medical students in the UK.
CCTV	Refers to Closed Circuit Television systems which can be overt [able to be seen] or covert [concealed]. Further information is available in the Trust CCTV (Closed Circuit Television) Policy NGH-PO-1206.
Clinician	Doctor, nurse, allied health professional.
Common Law Duty of Confidence	The "duty of confidence" is long established within common law and as such applies equally to everyone. This means that any personal information given or received in confidence for one purpose may not be used for a different purpose or passed to anyone else without the consent of the data subject.

Covert recordings	Audio or video recordings made without the knowledge of the people being recorded. A recording that is not openly acknowledged or displayed.
Data Protection Act (DPA) 2018	Data Protection Act 2018 (legislation.gov.uk) The Data Protection Act 2018 controls how your personal information is used by organisations, businesses, or the government. The Data Protection Act 2018 is the UK's implementation of the General Data Protection Regulation (GDPR).
Data Security and Protection (DSP)	Data Security and Protection. This term may be used interchangeably with 'Information Governance'
Data Security and Protection Group (DSPG)	Data Security and Protection Group. A group of managerial representatives that includes Finance, Data Security and Protection, Digital Directorate, Governance and Divisional representatives. This group meets once a month and discusses data governance issues and directions.
Data Subject	The identified or identifiable living individual to whom personal data relates.
General Medical Council (GMC)	The General Medical Council work to protect patient safety and improve medical education and practice across the UK by working with doctors, employers, educators, patients, and other key stakeholders in the UK's healthcare systems.
Information Commissioners Office (ICO)	The Information Commissioners Office is the UK's independent public body and supervisory authority, reporting directly to the UK Parliament. In the UK, the Commissioner has a range of duties. This includes promoting access to official information and protecting personal information by promoting good practice, ruling on eligible complaints, providing information to individuals and organisations, and taking appropriate action when the law is broken.
May	This term is used to state an Optional requirement of this policy.
Medical Photography	The purpose of medical photography is to improve and aid patient care by accurately recording the physical appearance of a clinical condition. Medical Photography is not subject to this policy. Please refer to: Photography and Video Recording of Patients policy, NGH-PO-068.
Mobile device	Includes mobile phones, digital cameras, laptops and tablet computers and any device which connects to the internet or has the capacity to record either sound and / or pictures. Mobile devices may belong to an individual or be issued by the Trust for work purposes.
Personal Information	Information / data which relate to a living individual who can be identified: a) From the data, or b) From the 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 intention of the data controller or any other person in respect of the individual.
Overt Recordings	Audio or video recordings made with the knowledge of all the people being recorded. A recording that is openly carried out in plain sight and is not concealed.
Patients	People who use the Trust's services.

Personal device(s)	Any form of device, electronic or conventional, used to make audio or visual recordings which belongs to an individual and has not been issued by the Trust's Digital Directorate.
Public Authorities	Public sector organisations as defined by the FOIA (Freedom of Information Act) are organisations such as the NHS, Police, Local Authority, and other central government bodies. Northampton General Hospital NHS Trust is a public authority.
Recorded Information	Recorded information includes printed documents, computer files, letters, emails, photographs, and sound / video recordings.
Recording	Photography, video, audio, and other illustrative recordings for subsequent reproduction or broadcast.
Social Media	As per the Trust's Social Media policy, NGH-PO-1182, social media refers to websites and relates products or services such as mobile phone apps which allow quick and dynamic (usually public) interaction between users. For the purposes of this policy and associated procedure, social media shall also include online forums and personal websites.
Security surveillance	See the Trust CCTV (Closed Circuit Television) Policy NGH-PO-1206
Shall	This term is used to state a Mandatory requirement of this policy.
Should	This term is used to state a Recommended requirement of this policy.
Third Party	Where information is about someone other than the person making the recording.
UK General Data Protection Regulation 2016 (UK GDPR)	The General Data Protection Regulation is a European Union regulation on information privacy in the European Union and the European Economic Area. The GDPR is a vital component of EU privacy law and human rights law, in particular Article 8 of the Charter of Fundamental Rights of the European Union.

6. ROLES & RESPONSIBILITIES

ROLE	RESPONSIBILITY
Chief Executive and the Trust Board	Chief Executive and Trust Board have ultimate accountability for actions and inactions in relation to this policy.
Caldicott Guardian	The Caldicott Guardian is responsible for protecting the confidentiality of patient and information and this policy supports the Caldicott function by ensuring that the rights of patients are considered and respected.
Head of Data Security & Protection (DSP) UHN (University Hospitals of Northamptonshire)	The Head of DSP (Data Security and Protection) has day to day responsibility for implementing and monitoring procedures. The role includes providing guidance and updates to Trust staff, as necessary. As required, the Head of DSP will provide specialist advice on matters relating to Personal Information.
Senior Information Risk Owner (SIRO)	To be made aware of any unmitigated risks which are to be reported to the ICO.
Data Security and Protection Group (DSPG)	To receive monthly updates on information risk, including Incidents and risks. To receive and approve this policy, prior to approval at the Trust PDG.
Data Security and Protection (DSP)Team	To provide specialist guidance and support in respect of this policy. To review this policy and to advise on matters relating to risk affecting personal data. To escalate risks to the Data Protection Officer.
Line Managers	To act as the initial point of contact for queries and concerns that staff may raise regarding the content of this policy, or with recordings which are being made or to be made within their areas of responsibility.
Matrons	Matrons' areas are responsible for ensuring information is displayed to patients, visitors and staff about this policy and local procedures.
All Trust Employees	Are responsible for reading this policy, understanding their personal responsibilities for data security and protection, and complying with legislation and adhering to it at all times.

7. SUBSTANTIVE CONTENT

7.1. Statutory Obligations

Privacy and Dignity (Article 8 of the European Convention on Human Rights)

The Human Rights Act 1998 (HRA) enshrines the right to respect for private and family life set out in Article 8 of the European Convention on Human Rights, 'Everyone has the right to respect for his private and family life, his home and his correspondence'.

Workers are entitled to a reasonable expectation of privacy. This protects workers' privacy at work, balanced against business interests.

To protect fully these rights, the Trust considers the need to take the positive action of putting in place a policy which defines when the use of cameras and mobile phones with cameras and other recording devices are not permitted in certain areas of the Trust and when they may be used.

Patient Confidentiality Third party (Data Protection Act 2018)

The ICO states that all public and private organisations (i.e., the Trust) are legally obliged to protect any personal information they hold. In relation to this, any individual who takes a recording will be processing personal data and must comply with the DPA 2018 in relation to the circumstances in which the recording is taken and the use of that recording.

Where a recording contains sensitive personal data, it will be necessary for the individual being recorded to give their explicit consent to the recording being taken and they should also be notified of all the purposes for which the recording will be used.

The recording of a consultation is likely to constitute processing of personal data under the DPA and as such it must comply with the provisions of the DPA. There is an exemption in the DPA where personal data is processed by an individual for their own personal purposes. In such cases, the 'processing' does not engage the data protection principles of the act (the 'domestic purposes' exemption). However, further processing of the data would have to comply with the DPA.

Article 2(c) of the General Data Protection Regulation (GDPR) states that the regulation does not apply to the processing of personal data by a natural person during a purely personal or household activity. This means that recordings of this type are exempt from Data Protection legislation as proven in a court of law (see Appendix 6). In essence, a patient is allowed to record their consultation.

Child Protection

The Children Act 2004 places a duty on the Trust for ensuring that their function is discharged having regard to the need to safeguard and promote the welfare of children. The Trust will safeguard and promote the welfare of children, by considering that mobile devices are a potential risk in that inappropriate photographs could be taken either of them, or of confidential information pertaining to them, within the Trust and could be disseminated further. In the event that inappropriate images of children were found on a mobile device, this should be escalated to the child safeguarding team for support and further action as necessary.

Potential legal action

If any part of the covert or overt recording of the patient's consultation is disclosed to a third party without the prior consent of the other recorded parties, then depending on the nature and the context of such disclosure, a criminal offence may be committed, civil legal action may be taken, or a breach of the DPA may occur.

Criminal offences could arise from unauthorised disclosure, depending on how that disclosure or publication is made. However, the offences could include an offence contrary to section 1 of the Protection from Harassment Act 1997, an offence contrary to section 4, 4A or 5 of the Public Order Act 1986, an offence contrary to section 1 of the Malicious Communications Act 1988 or an offence contrary to section 127 of the Communications Act 2003.

In-patient settings should include a risk assessment in admission pathways specifically related to phones/devices to ensure that patients are informed of the rules and limitations as well as the consequences of non-compliance.

Signage is included in appendix 7 which may be used to remind patients, services users and visitors over appropriate usage and areas where mobile phones may be used and where their usage is prohibited.

Staff should consider displaying relevant posters contained in the Appendix 7 in their areas to clearly set out to patients and visitors expected appropriate behaviour. Images and audio of other patients or of the professional workforce may also be included in images, videos and audio recordings and shared without consent. It can then be impossible to remove these non-consensual images or recordings, particularly if no prior notice of policy has been communicated.

Staff are not obliged to give their consent to being filmed / photographed but it is good practice to do so and there should be no cause for trepidation in being recorded. Staff can stipulate that their faces, name badges, are to be kept out of the recording.

In some exceptional medical situations, patients may have a valid reason to request audio / visual recordings of their consultation, and this is supported by the GMC, but consultations are the sharing of information between medical practitioners and patients and involve the discussion about diagnostic findings and further instructions and do not include the actual diagnostic examinations. Staff need to consider carefully any reasons provided and balance these against the clinical imperatives arising from the examination.

7.2. Types of Recording

7.2.1. Overt Recording

Overt recordings are made openly, with the acknowledgement of the parties that are subject to the recording. The Trust shall ensure that:

- any 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 understands that a note will be made in their health record stating that they have recorded the consultation or care being 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;
- any recording is only made for personal use;
- patients are aware that the misuse of a recording may result in criminal or civil proceedings;
- patients are discouraged from undertaking recordings in the first place unless it is deemed to be necessary by highlighting the above responsibilities.

Please see appendix 1 to support when agreeing an overt recording is being made which may be used to give all parties relevant guidance and assurance.

7.2.2. Covert Recording

Covert recording is when a recording takes part in secret, or the recording is made without the express acknowledgment of the people being recorded.

The Trust discourages the use of covert recordings as these may harm the relationships between the Trust and the people using its services.

Although we cannot place restrictions on a patient wishing to covertly record a consultation or conversation with a health professional, they should aim to discourage patients from doing so by ensuring that:

the Trust promotes the open and honest recording of consultations, where a patient deems it necessary;

patients are advised that they are entitled to see their notes, if they so wish, by informally asking the healthcare professional in charge of the consultation, or to request a copy of their medical notes formally through a Subject Access Request (SAR) made under the Data Protection Act;

patients are given information on how they can complain if they have an issue with their treatment and care, and their attention is drawn to the relevant guidance from the Care Quality Commission (see below) and Information Commissioner's Office.

No covert recording of patients, visitors or staff will be undertaken by the Trust without prior written approval as per the Trust's CCTV policy, NGH-PO-1206. Any such recordings would be subject to the Regulation of Investigatory Powers Act 2000. Such recordings would be made in line with a documented specification which includes the purpose and a defined period.

Under no circumstances shall staff engage in covert recording without authorisation.

If staff have concerns that they feel need to be investigated, these should be reported to their Line Manager or HR (Human Resources) Business Partner in the first instance. Where staff do not feel comfortable with following this process of escalation, they should instead raise the concerns with the Freedom to Speak Guardian in line with the Freedom to Speak Up: Raising concerns at work (Whistleblowing Policy) NGH-PO-1255.

Staff members are not permitted to make covert recordings of staff, patients, carers, or visitors for their own purposes whilst at work. If a member of staff is identified as having made an unauthorised recording, then this may be dealt with via the UHN Disciplinary Policy NGH-PO- UHON-HR01.

7.3. Audio and Visual Recordings Made by Patients

There are circumstances in which patients and visitors to the Trust sites may wish to make audio/ visual recordings either on the Trust site, or in individual care settings.

In order to assist patients and visitors to understand whether recording is permitted in an area, any areas where restrictions are in place will clearly display posters or guidance for patients and visitors. See Appendix 2 for area specific restrictions.

This information should state:

- Details of the restriction in place e.g., where mobile phones cannot be used in the area / department.
- Rationale for the restriction.
- Actions that may be taken if the restrictions are not complied with.

Patients shall be made aware of this policy as soon as practicable upon admission or attendance to the Trust. Information shall be made available via the Trust's public facing website.

The policy sets out situations in which requests to make a recording may be made and sets out the associated processes for each of these cases. A summary of acceptable and unacceptable use of recording equipment can be found in Appendix 8 of this policy.

Where a patient asks to make a recording, clear and open dialogue is essential to discuss their reasons and consider the best way to meet their needs. Alternatives to recording may be available depending on their individual requirements. Practical options may include:

- Providing an audio recording of any information given because of the findings.
- Providing a copy of the report.
- Supporting patients' understanding by providing further written information.
- Drawing diagrams to help explain challenging concepts or unexpected findings.
- Signposting to appropriate support organisations or to high-quality information on the internet.

If patients have questions relating to this policy or any restrictions in place, it is important to offer an opportunity to discuss these with an appropriate member of staff, who can explain the rationale for the policy.

Where patients will not comply with this policy or local procedures, then they must be asked to cease using their telephone. In situations where the patient lacks capacity to understand the implications of the guidance and the impact on others, then the nursing team should liaise with the family to seek their support or for them to remove the device.

The use of mobile phone cameras is seen as an infringement of the patients' rights under the Data Protection Act 2018 and General Data Protection Regulation 2016 and the Children's Act 2004 and the Human Rights Act 1998.

The use of recording devices can intrude into the lives of other patients, for example the use of cameras and video to take images of patients and staff which:

- Can compromise the dignity and privacy of patients and staff;
- Can create sensitive personal data about an individual's mental or physical health;
- Can be used as a tool for the harassment and abuse of patients and/or staff;
- Can be used to obtain images of confidential information/sensitive personal data;
- Can be transmitted anywhere and to large numbers of people within moments of taking;
- Are taken without the consent of the individual.

7.3.1. Recordings in Waiting Areas and Public Areas including Wards.

Photographs and recordings may not be taken within the waiting areas or public areas; this also includes the taking of "selfies" where other patients' may be captured in the image or recording.

Recordings on Wards

Patients are not permitted to make audio or video recordings of other patients, visitors or staff performing their duties on wards. This is a breach of the General Data Protection Regulation as well as patients' privacy and dignity. Patients shall be informed of this on admission to the ward or as soon as practical thereafter.

Similarly, visitors to wards are not permitted to make recordings on the ward.

It should be noted that modern cameras and mobile phones can capture detailed information at great distances. Staff shall take care that any authorised recording is not permitted to capture patient identifiable information that may be visible e.g., on desks, screens, and white boards.

If staff become aware of anyone making any such recordings, they shall ask them to delete the recording from their device and staff shall witness the deletion.

If the patient persists in making recordings it may be necessary to involve Security, they can be contacted on extension 2222.

If visitors are found to be making recordings on the ward they will be asked to stop and to delete the recordings. If an individual refused to cease recording or taking photographs, they may be asked to leave the ward or the Trust site.

7.3.2. Recording Consultations

Consultations may take place on the Trust site, in an offsite location, such as a Community Hub, virtually or in the patient's own home.

Patients may approach staff to request their clinical consultations / treatment / scans to be recorded for private use. This is permitted under Article 2(c) of the Data Protection Act 2018. Recordings made to keep a personal record of information shared in the consultation or appointment are deemed to constitute 'note taking' and are therefore permitted when undertaken for this purpose

Both legally, and as a matter of courtesy, patients should seek the agreement of their Healthcare Professional before recording a consultation, however it should be noted that a patient does not have to have express permission in order to make the recording. The Trust encourage staff to consent to reasonable requests for such recordings. Patients should be invited to record consultations overtly, not covertly.

Making a recording is not indicative of a lack of trust in their medical professional and the consultation should be conducted as normal. Encouraging patients to be overt about making records can create trust between patients and healthcare professionals.

There can be particularly good reasons for requests to record the consultation and it can help patients make informed choices. For example, some patients may have hearing or learning difficulties; for some their first language may not be English.

A recording can be useful for helping to overcome barriers for communication and understanding. During a consultation, a patient may find it difficult to concentrate due to anxiety; distress; fear; or pain; unfamiliarity with the language or terminology; and the amount of information being conveyed to them. A recording will allow a patient time to process sometimes complex information provided during consultations.

These recordings can support patients in making informed decisions about their treatment. They can support patients understanding and learning about their condition and help them to engage with their medical care provider. It gives a feeling of control for the patient and helps to overcome barriers to understanding.

While staff may initially be daunted by the thought of a recording being made it should be noted that this can be a useful tool for communication. It can encourage patients to take a greater role in their own care and increase their understanding.

The content of the recording is confidential to the patient, not to the Trust. The patient can waive their own confidentiality as they wish; this could include disclosing the details of their consultation with third parties or even posting and/or sharing the recording in unadulterated form on the internet through social media.

The position may, however, change once a recording is no longer used as a record of the consultation, for example where the recording is disclosed or publicised in a modified way which is not connected

to the consultation. This could include an instance where it is designed to cause detriment to or harass another individual captured in the recording. Any such disclosure or publication, depending on the nature and context, may attract a civil action for damages and may also be a criminal offence.

Care shall be taken that no other patient information is recorded as part of the recording. Care shall be taken that no reference is made to a third party during the recording.

The Health and Care Professions Council have similar advice to the GMC within their Standards of Conduct, Performance and Ethics; Section 2, 2.1.- 2.4: 5 "You must give patients and carers the information they want or need, in a way they can understand."

7.3.3. Recording devices and medical equipment

At times patients may wish to film treatments such as x-ray, Magnetic Resonance Imaging (MRI), or CT (Computerised Tomography) scans. Due to the potential for interference with electronic medical equipment, there are restrictions on the use of mobile phones and personal recording devices in some areas of the Trust This is not permitted due to the potential impacts of recording devices on the medical equipment. See Appendix 2 for further detail.

Signage will be displayed in areas where recording devices cannot be used mobile phones should be switched off in these areas. (See Appendix 7)

7.3.4. Recordings in the Patient's Home

Patients may have CCTV installed with their property or use portable recording devices to record interactions or consultation with staff. While staff may feel uncomfortable with being recorded, it would be inappropriate to decline to treat a patient because the recording is being made. Please refer to the guidance in section 7.3.2 of this Policy (Recording Consultations).

7.3.5. Recordings in Maternity Settings

Relations and visitors may be permitted to photograph new-born babies. Photography should only be permitted when parental consent is obtained and at the discretion of local staff. The confidentiality, privacy and dignity of other patients, staff and visitors must be maintained.

7.3.6. Recording of telephone calls

Incoming and outgoing telephone calls made from and to the Trust may be recorded for legitimate reasons, for example, to enable staff transcribe calls and update patients' medical records with accurate notes, for service monitoring and improvement, as evidence for medico-legal purposes, staff training, and audit, provided reasonable steps are taken to inform callers that their call may be recorded.

Given the sensitive nature of calls to medical advice lines or similar services, particular care must be taken to ensure that callers are aware that their call may be recorded. For all recording telephone lines, there shall be a message at the beginning of every call, advising callers that calls are recorded and highlighting the legitimate reasons for the recording.

The Trust shall not make covert recordings of calls.

The Trust has a licensed corporate call recording solution which is currently used by the Switchboard, Accident and Emergency, Site Management and Maternity Triage departments.

For more details regarding the management of Trust recorded calls, please see appendix 54.

7.3.7. Complaints or claims

There may be rare occasions when a patient wishes to use a recording as part of a complaint or claim. Keeping clear and comprehensive written records of consultations and acting in a professional manner in accordance with the GMC Good Medical Practice Guidelines will help to protect staff if a patient tries to use the recoding to support a complaint or a claim.

The best outcome for recordings is that it will result in better communication with the clinician and a better outcome for the patient.

Complaints will be investigated in accordance with Complaints Procedure Policy NGH-PO-483.

7.4. Guidance for Staff

7.4.1. If you are unhappy with being recorded

Whilst we encourage staff to consent to reasonable requests for recordings, the Trust recognises that staff have an expectation of privacy even when working in a professional capacity.

You should tell the patient and sensitively explain your reasons. If the patient insists, it is important to remember that you still owe them a duty of care. Medical defence bodies advise doctors not to refuse to continue with the consultation.

Misuse of recorded material, such as where it is used to cause detriment to or harass any individual, may constitute a civil or criminal offence.

Patients should be encouraged to ask for consent to record consultations or treatments but there is no legal obligation for them to do so. Under Data Protection Regulations if the information in the recording is solely about themselves the information belongs to them and they have the right to use it as they choose.

Where the professional is aware that a recording is being made, the patient or carer should be reminded of the private and confidential nature of the recording and that it is their responsibility to keep it safe and secure. The professional should clarify that any recording is only made for personal use and that the misuse of a recording may result in criminal or civil proceedings.

The professional may request that they are not visible in any video recording.

If the professional believes that the recording could be detrimental to the treatment of the patient or that it could pose a risk to the safety of the patient or the professional (for instance if it were posted online) then they may terminate the consultation unless the recording is stopped.

7.4.2. Staff Use of Personal Mobile Phones/Cameras

The Trust has an obligation to provide a safe environment to deliver care. Staff shall be aware that personal mobile phone/cameras should not normally be used for private use in areas where care is delivered and where patient confidentiality could be compromised and should therefore make use of more suitable areas such as staff rooms.

Staff shall vigilant when taking a mobile phone into an area where care is delivered, even if it is not being used at the time, i.e., in a pocket. Incidents of inadvertent live streaming on social media shall be reported on Datix.

Staff shall not use their own personal devices to make audio or visual recordings of patients.

7.4.3. Recordings by the media

All media enquiries should be handled by the communications team who will liaise with the relevant/appropriate person(s) within NGH to agree a response. Detailed advice is available in the Trust's Media Handling Guidelines..

If you are contacted by any media outlet, please contact the communications team for support before responding.

The media are not permitted to interview, film, or take photos on trust premises without permission, which must be obtained via the communications team. NGH is not a public open space and, as such, media representatives require, and should seek, permission before filming anywhere on site.

7.5. Compliance and Incident Reporting

All incidents where a patient or visitor has made audio or visual recordings of another patient/ service user, other than their own family/friend, shall be reported on to Datix in line with Trust 's Management of Incidents Policy NGH-PO-393. The report must include details of the actions taken as a result of the incident – for example, removal of the device; handling of the patient; improved signage; expectations and consequences set on admission.

Staff who become aware that they have been covertly recorded during a consultation or when providing treatment shall record the incident by submitting a Datix incident report.

The setting in which any non-compliance has occurred will predicate how the issue will be managed.

In in-patient areas the patient shall be advised not to record or photograph other patients. Where the patient lacks capacity to understand the implications of their actions then the patient's family or next of kin, where possible, should be encouraged to remove devices.

If a patient or other visitor to Trust premises is found to be making a recording in a restricted area without the permission of the Trust, the individual should be advised that this may contravene the right to confidentiality of any individuals being recorded and is against Trust policy.

Any visitor observed making an unauthorised recording of other individuals on Trust premises should be asked to leave. A refusal to leave could result in Security being called and/or police involvement.

If the making of a covert recording, from which individuals can be identified, is discovered after the recording has been made and if it has already been published (for example on Facebook or YouTube) the maker should be requested to immediately remove the recording and notify the Trust when it has been done.

When staff become aware that inappropriate images have been uploaded to social media then they may report the "posting" as inappropriate via the social media site so that the site may remove the images and narrative. This should also be reported to the Trust's Communication Team. Where appropriate the Head of Communications and/or Head of Data Security and Protection can provide additional support.

Not all recordings will be considered an offence, but some postings placed on the internet and social media may constitute an offence under:

- Section 5 of the Public Order Act 1986
- Protection from harassment Act 1997
- Section 127 of the Communications Act 2003
- Section 1 of the Malicious Communications Act 1988
- S.119 Criminal Justice and Immigration Act – Causing a disturbance on NHS premises.

7.6. Actions that may be taken in response to unauthorised recordings

Injunctions – injunction is a civil court order which orders a person to “stop” or to “do” a particular act or thing. A breach of injunction is punishable as contempt of court and in some cases can lead to imprisonment. Interim injunctions can be sought to restrain publication where it is known that someone intends to publish defamatory material.

To obtain an interim injunction the aggrieved party must be able to show that they have a substantive cause of action. Injunctions are an ‘equitable’ remedy, which means the court is never obliged to grant them but will exercise its discretion to do so considering the conduct of the parties and all the relevant circumstances.

An interim injunction to restrain publication would be likely where a hospital or service becomes aware of someone’s intention to publish something defamatory about staff at that organisation. It is unlikely to apply in circumstances where such a recording of a consultation has already been disclosed or published. In this situation, seeking damages may be the most likely remedy.

Damages – are the main means by which somebody who has been defamed can seek redress. General damages are claimed to compensate for a loss of reputation, and special damages to compensate any monetary loss incurred because of the defamation.

See appendix 3. Letter to patient if a recoding has been posted online without consent.

8. IMPLEMENTATION & TRAINING

- There is no specific training related to this policy, but staff should ensure they have taken conflict resolution training if there is an identified need for this within their role.
- All employees have a confidentiality clause in their signed contracts obliging them to comply with confidentiality practices.
- This policy will be published on NetConsent and accessible via the Trust intranet.
- The policy will be distributed to all heads of departments who will disseminate to their team members.
- The policy co-ordinator will retain all versions of the policy for future reference when updated.

9. MONITORING & REVIEW

Minimum policy requirement to be monitored	Process for monitoring	Responsible individual/ group/ committee	Frequency of monitoring	Responsible individual/ group/ committee for review of results	Responsible individual/ group/ committee for development of action plan	Responsible individual/ group/ committee for monitoring of action plan
Data Security and Protection Adviser to review any applicable incidents that are reported to ensure compliance with this policy is adhered to.	Departmental reporting via DSP Group Incident Report, highlight in DSP report of any occurrences or concerns	Head of Data Security & Protection / Data Security and Protection Group	Monthly departmental reporting	Head of Data Security & Protection	Head of Data Security & Protection	Data Security & Protection Group
Data Security and Protection Adviser to review any feedback received for the Policy via Netconsent and report back to the Head of DSP as appropriate	Escalations via the DSP Group Report, highlight in DSP report of any concerns	Head of Data Security & Protection / Data Security and Protection Group	Monthly departmental reporting	Head of Data Security & Protection	Head of Data Security & Protection	Data Security & Protection Group

10. REFERENCES & ASSOCIATED DOCUMENTATION

British Medical Association (2021) *Patients recording consultations* [online] London. BMA. Available from: https://www.bma.org.uk/advice-and-support/ethics/confidentiality-and-health-records/patients-recording-consultations [Accessed 18th September 2023]

Care Quality Commission (2023) *Using cameras or other recording equipment to check somebody's care*. [online] s.l. CQC. Available from: https://www.cqc.org.uk/contact-us/report-concern/using-cameras-or-other-recording-equipment-check-somebodys-care [Accessed 18th September 2023]

Children Act 2004 (c.31) [online] London. HMSO. Available from: https://www.legislation.gov.uk/ukpga/2004/31/contents [Accessed 18th September 2023]

Data Protection Act 2018 (c.12) [online] London. HMSO. Available from: https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted [Accessed 18th September 2023]

Department of Health (2009) *Guidance on provisions to deal with Nuisance or Disturbance Behaviour on NHS Premises in England* [online] London. DH. Available from: https://webarchive.nationalarchives.gov.uk/ukgwa/20130105054001/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_109251 [Accessed 18th September 2023]

Department of Health (2015) *Mental Health Act 1983: Code of Practice.* [online] Norwich. TSO. Available from: https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983 [Accessed 18th September 2023]

Department of Health (2009) *Using mobile phones in NHS hospitals.* [online] London. DH. Available from: https://webarchive.nationalarchives.gov.uk/ukgwa/20130107105354/http:/www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_092811 [Accessed 18th September 2023]

Department of Health and Social Care (2023) *The NHS Constitution for England.* [online]. London. DHSC. Available from: https://www.gov.uk/government/publications/the-nhs-constitution-for-england [Accessed 18th September 2023]

Health and Care Professions Council (2016) *Standards of conduct, performance and ethics* [online] London. HPC. Available from: https://www.hcpc-uk.org/standards/standards-of-conduct-performance-and-ethics/ [Accessed 18th September 2023]

Human Rights Act 1998 (c.42) [online] London. HMSO. Available from: https://www.legislation.gov.uk/ukpga/1998/42/contents [Accessed 18th September 2023]

Information Commissioner's Office (n.d.) *ICO website.* [online] s.l. ICO. Available from:

https://ico.org.uk/ [Accessed 18th September 2023]

NHS England (2021, updated 2023) *Records management code of practice: a guide to the management of health and care records.* [online] s.l. NHS England. Available from: https://transform.england.nhs.uk/information-governance/guidance/records-management-code/ [Accessed 18th September 2023]

Medicines and Healthcare Products Regulations Agency (2020) *Medical devices: sources of electromagnetic interference.* [online] gov.uk. Available from: https://www.gov.uk/government/publications/electromagnetic-interference-sources/electromagnetic-interference-sources [Accessed 18th September 2023]

NHS Digital (2023) *Data security and protection toolkit* [online] s.l. NHS Digital. Available from: https://www.dsptoolkit.nhs.uk/ [Accessed 18th September 2023]

NHS England (2023) *Use of mobile devices by patients in hospitals.* [online] s.l. NHSE. Available from: https://transform.england.nhs.uk/information-governance/guidance/use-mobile-devices-patients-hospitals/ [Accessed 18th September 2023]

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA (European Economic Area) relevance) [online] (*Official Journal* L119, 4.5.16 p1-88) Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679 [Accessed 18th September 2023]

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation) (Text with EEA relevance) SI 2016/679 [online] London. HMSO. Available from: https://www.legislation.gov.uk/eur/2016/679/contents [Accessed 18th September 2023]

Associated Trust documents:

Northampton General Hospital NHS Trust (2020) *Data protection and confidentiality policy.* NGH-PO-334. Northampton: NGHT

Northampton General Hospital NHS Trust (2019) *Documentation management (retention policy).* NGH-PO-123. Northampton: NGHT

Northampton General Hospital NHS Trust (2021) *Information governance policy and management framework*. NGH-PO-233.Northampton: NGHT

Northampton General Hospital NHS Trust (2020) *Mandatory training (including role-specific training).* NGH-PO-306. Northampton. NGHT

University Hospitals of Northamptonshire NHS Group (2023) *Disciplinary policy.* UHON-HR01. Northampton. UHON

SEE ALSO:

Northampton General Hospital NHS Trust (2021) *Approved/invited visitors.* NGH-PO-954. Northampton. NGHT

Northampton General Hospital NHS Trust (2020) *CCTV (Closed Circuit Television).* NGH-PO-1206. Northampton. NGHT

Northampton General Hospital NHS Trust (2022) *Freedom to speak up: raising concerns at work.* NGH-PO-1255. Northampton. NGHT

Northampton General Hospital NHS Trust (2022) *Management of comments, concerns, complaints, and compliments (4 C's)* NGH-PO-483. Northampton. NGHT

Northampton General Hospital NHS Trust (2019) *Mobile devices for business use.* NGH-PO-1250. Northampton. NGHT

Northampton General Hospital NHS Trust (2022) *Photography and video recording of patients.* NGH-PO-068. Northampton. NGHT

Northampton General Hospital NHS Trust (2023) *Safeguarding children and young people.* NGH-PO-243. Northampton. NGHT

Northampton General Hospital NHS Trust (2018) *Social media policy.* NGH-PO-1182. Northampton. NGHT

Northampton General Hospital NHS Trust (2020) *Use of mobile devices and mobile communications.* NGH-PO-009. Northampton. NGHT

APPENDICES

Appendix 1: Contract for Patient taking a recording.

Patient's Name	
Ward/Unit	
Consultant Name	
Date	

The above patient has been granted permission to take a recording subject to the following conditions:

1. That the recording will be used for private healthcare purposes only e.g., for greater understanding of medical advice.
2. That the recording will not be shared with a wider audience such as on social media.
3. Recordings will not be made of third-party patients, visitors, staff, contractors, or others without their permission.
4. Recording of consultations is permitted for private use only.
5. Recording other patients or visitors is not permitted without their consent.

I agree to abide by the above conditions.

Signed	
Name	
Date	

.....
.....
.....
.....

Appendix 2: Area specific guidance

Paediatrics Disney, Paddington ward.	Photography should only be permitted when parental consent is obtained and at the discretion of local staff. The confidentiality, privacy and dignity of other patients, staff and visitors must be maintained.
Maternity	Relations and visitors may be permitted to photograph new-born babies. Photography should only be permitted when parental consent is obtained and at the discretion of local staff. The confidentiality, privacy and dignity of other patients, staff and visitors must be maintained.
Consultation rooms	Recordings are permitted and patients should be encouraged to do this overtly.
Treatment rooms	Recordings are permitted and patients should be encouraged to do this overtly.
MRI (Magnetic Resonance Imaging) e.g., equipment Endoscopy Ultrasound / Radiology	Mobile phones and Smart Watches may affect equipment such as pacemakers and MRI scans and should not be permitted in areas where sensitive equipment is being used which could result in adverse effects. For example: Magnetic resonance imaging (MRI) is a type of scan that uses strong magnetic fields and radio waves to produce detailed images of the inside of the body. Some electronic equipment such as mobile phones and smart watches contain magnets which can react with some medical equipment. Patients are discouraged from bringing any electronics into treatment rooms such as MRI rooms as this will cause the imaging to be disrupted. The MRI will prevent the phone from working and can damage the phone. The ultrasound scan is not a consultation but a medical diagnostic examination, in the same way as procedures in CT/MRI, endoscopy etc. Nationally bodies such as the Society and College of Radiographers have guidance that these scans are medical examinations and that they should not be recorded. These are highly technical examinations that have the additional pressure of communicating results to the patient and partner in real time; may on occasion involve having to break unwelcome news. Staff need the ability to be able to concentrate on the intricacies of the examination determined by the national Fetal Anomaly Screening Programme.
Public Areas/Waiting Rooms/Wards	Patients are not permitted to make recordings in areas frequented by service users and members of the public as recordings are likely to compromise patient confidentiality.

Appendix 3: Letter to patient if a recording has been posted online without consent

For further guidance see Management of Aggression and Violence Policy NGH-PO_046

https://netconsent.ngh.nhs.uk/NETconsentPMC/content?ia=true&noheader=true&pep_name=&type=

Dear (insert name),

It has been brought to our attention that recordings you have made of a member or members of our staff have been posted online without our agreement.

We take every effort to ensure that we develop open and trusting professional relationships with all our patients and will support patients seeking to record information in order to promote their care and treatment. We recognise that legally patients are entitled to make a recording of a consultation for their private use.

This does not, however, extend to publishing this material without agreement in publicly accessible media, such as via the internet or social media sharing platforms. In these circumstances, advice from the British Medical Association, our trade union and professional body, indicates that our privacy rights are engaged and that this may also amount to a breach of the Data Protection Act. It is likely therefore that we would be able to take legal action.

I am therefore writing to politely request that this material is taken down.

I would be happy to talk about this, and our general policy regarding recording consultations, in person.

Yours sincerely,

(Insert name)

Appendix 4: Guidance for managing Call Recordings in the Trust

I. Specific areas where calls are recorded include:

The Switchboard - is the first contact, main number, or reception phone for the hospital. This can include any patient facing staff that work over the phone regarding patients' appointments or access to hospital services. Recording protects the hospital against malpractice claims or denial of service claims. There are also large benefits to the hospital for monitoring communications for quality of service and ensuring positive interactions with patients and hospital guests. This line is the most likely number to receive threats against the safety of the hospital, so having recordings of any threats would be beneficial in protecting the hospital and prosecuting the offender.

Emergency Department (ED) – call recording in the Accident and Emergency (A&E) department is vital to ensure that each interaction with patients or members of the public is managed in the most effective way possible. Call recordings in the A&E department are often used to corroborate these interactions and to check for mistakes, train staff, prevent and detect fraud, investigate, and manage complaints.

Site Management – it is essential that concerns that are raised via telephone to the site management team regarding the Trust's sites are captured accurately so that they can be dealt with appropriately. Call recording in the Site Management department provides the opportunity for staff to play back calls to clarify issues / concerns raised.

Maternity Telephone Triage – This is when a midwife helps direct or advice callers on maternity concerns e.g., should they drive to hospital, call an ambulance, or schedule an appointment with a specialist. Recording maternity calls protects the hospital from disputes or claims of malpractice. Due to the midwives providing medical advice on behalf of the hospital, recordings provide a review capability to ensure best practices are being followed. In the event of a complaint or legal proceedings, the call recording will form part of the investigation.

Complaints - record calls via the Contact Centre platform, which are only kept for 28 days.

EMAS – East Midlands Ambulance Service – This line is recorded 24/7 365

Out Of Hours Service – Managed by DHU (111) – these telephones are in Fracture Clinic and consulting rooms and handle all clinical information from patients, staff, and members of the public.

II. Access to Call Recordings

Departments can request access to their own call recordings when it is necessary. There are several reasons why a department may request access to call recordings, and these include but are not limited to investigations, audits, training, and quality assurance purposes.

Access to call recordings shall be made via a ticket with the IT service desk, with the head of department or manager for the area copied in, to review, verify and provide expressed approval for the Unified Communications team to process the request. The management approval provides traceability should there be a need for an audit or investigation into the request.

Once the request has been approved, the IT service desk will review the request and provided the request does not breach any data security and protection requirements, the requester will be granted access to the call recording. However, if the IT service desk has any data security and protection concerns, they will ask the Data Security and Protection team to review and approve the request before releasing the call recording to the requester.

The service desk will provide the requester with a Standard Operating Procedure (SOP) explaining how to access and retrieve the specific call recording required. The requester will only have access to recordings in their area or department.

The requester or their manager shall inform the service desk when they no longer need access to the call recording so that their access can be removed. This could be when they have completed the legitimate activity for which they needed access to the call recording, when they leave the organisation or when they move from one department to another. This prevents individuals who have left the organisation or moved departments from having continued access to call recordings as it is deemed to be unauthorised access and a data security risk. This requirement must be documented in the local call recording SOPs (Standard Operating Procedure).

Departments cannot access call recordings for other departments. For monitoring and administrative purposes only, the Unified Communications Manager has global accessibility and can access recordings for all departments.

The solution has full audit trails enabling the review of each individual's access of recordings and what they do with them.

III. Subject Access Requests involving Call Recordings

A subject access request (SAR) is a right provided to individuals under Data Protection Law which allows them to ask an organisation whether they are using or storing their personal information. It also allows individuals to request for copies of their personal information from organisations which may include call recordings. Individuals including patients and employees may submit a SAR to the Trust's Access Team for their telephone call recordings. To make a request, individuals can access the form via this link https://northamptongeneral.ams-sar.com. Further information on Subject Access Requests is available on this web page https://www.northamptongeneral.nhs.uk/About/Information-and-Data-Protection/Your-Rights/Your-rights.aspx

Currently, we do not have corporate call recording telephone lines in Outpatients, Complaints, PALS, and Litigation. The Liberty Call Recording facility is used in these areas, and it only stores the recordings for 28 days after which they are deleted. Should a SAR be submitted in relation to any of these departments, we may have to decline as the call recordings may have been deleted in line with the facility's retention schedule. The Trust does not make recordings of Pager and Radio Communications.

It is strongly recommended that staff should add at least a summary of telephone conversations to patients records where telephone lines do not have the recording functionality. This is essential for medical purposes to ensure continuity of care and in order to meet the GDPR principle that requires records to be kept 'up to date and accurate.' It will also ensure that in the event of a complaint, legal proceedings or investigations, the Trust will have the information required to assist in a meaningful way.

For SARs (subject access requests) relating to recordings that we do have, the Request for Information (RFI) Team can email servicedesk.ngh@nhs.net and request a login for the SAR team member who will be processing the request. Once the RFI Team have responded to the SAR, access to the call recording must be removed and all copies downloaded on to computers must be permanently deleted.

As above, the service desk will provide a SOP which details guidance on how to access and manage the specific call recording requested.

IV. Storing and Sharing Call Recordings

If a copy of a recording is provided, the recipient of the recording shall ensure the call recording is kept safe and secure and not used for any purpose other than for which it was provided. The requester shall store it in a folder with access restricted to only those who have a legitimate reason to have access.

The call recording can be shared but only with those who have a legitimate and justified reason to have access. It must be shared via encrypted email or secure shared folder only. Sharing call recordings without appropriate security is prohibited. Any breach of this requirement must be reported via Datix.

V. Call Recording Retention

Call Recordings are retained in line with the Trust's records management policy. Calls relating to children are kept for 25 years then archived on a server on the premises with encryption in place. For adults, the calls are retained for 15 years and archived to a large, encrypted data storage that can be accessed when necessary.

All calls recorded using the Liberty Call Recording facility will be stored for 28 days and then deleted. Areas using this system include Outpatients, Complaints, Patient Advice and Liaison Service and Litigation and they will not be able to store data beyond the retention schedule of the facility.

Appendix 5: Legal ruling in a case of covert recording

The case of Mustard v Flower [2019], which dealt with covert recordings of medico-legal examinations.

In this case the Claimant was involved in a road traffic accident and bringing a claim for compensation against an insurer for injuries sustained. During that litigation, the Claimant recorded her medico-legal examinations with the Defendant's medical experts, covertly. The Claimant argued that the stance of the GMC (General Medical Council) was that it was lawful for patients to make covert recordings of consultation with their doctors. With the Defendant arguing that the recordings had been obtained improperly or unlawfully under the Data Protection Act 2018 or the General Data Protection Regulations.

In addition, the British Medical Associations suggests that a doctor's "common law privacy rights" are likely to be engage where patients make audio or visual recordings without a doctor's consent.

However, the Judge in the case of Mustard v Flower specifically noted that;

> *"I reject the proposition that the recordings were a breach of the Data Protection Act or the GDPR…. Article 2 (c) of the GDPR provides that the Regulation does not apply to processing of personal data "by a natural person in the course of purely personal…activity". Recording a consultation with or examination by a doctor would seem to me to fall into this category…. The relevant data related to Ms Mustard and not the Doctor."*

So, whilst there is a difference between recording a consultation and recording a procedure, clinicians do have to remember that they are owe a duty of care to the patient so it would be difficult to refuse to carry out a procedure if a parent or patient insisted on filming. In addition to the fact that it in practical terms it is going to be difficult to stop them.

Appendix 6: Poster for use in areas where recording is not permitted

Appendix 7: Examples of Acceptable and Unacceptable Behaviour

Examples of acceptable behaviour are:

- Parent taking a photograph of their new-born baby in the Maternity Unit on their own mobile phone with no staff or other patients captured in the image.
- Patient agrees with their Consultant in advance to make an audio recording on his mobile phone of his clinic appointment and then plays it back later to their partner.
- Team photograph taken to celebrate 12 months without a pressure ulcer and published on social media with full consent of all staff and no patients or their information displayed in the background.
- Patient requesting staff to take a photograph or film of them on the patient's own mobile phone to remind them of physiotherapy exercises.
- Parent taking a photograph of their new-born baby on the scales to establish the birth weight.

Examples of unacceptable behaviour are:

- Patient making a visual recording on their mobile phone of a busy waiting area which they then publish on social media.
- Patients taking photographs of other patients in their hospital beds in a ward.
- Staff covertly recording colleagues to illustrate loud conversations.
- Relative / family member taking an audio / visual recording of a patient having orthodontic treatment where the patient is clearly not providing consent as they are waving their hands indicating the recording should stop.
- Staff member taking an office "selfie" with colleagues in the background and uploading to social media without the permission of staff captured in the image.
- A parent being present during the administration of anaesthesia for their child and taking a photograph / video recording. This would be a distraction to the clinical team and not in the best interests of the child.