

DOCUMENT CONTROL PAGE

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Supersedes:	Version 2 – (New amalgamated MFT Policy) Changes: New policy replaces legacy Version 2, Oxford Road & Version 3, Clinical Photography Policy, Wythenshawe.
Application:	All Patients and all staff

Originated /Modified By:	Geraldine Thompson
Designation:	Head of Clinical Photography & Medical Illustration Services
Ratified by:	Integrated Governance and Risk Committee (IGRC)
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Responsibility of:	Services Lead for MFT, Clinical Photography & Medical Illustration Services

Minor Amendment (If applicable)	Changes:
Notified To: IRGC	<ol style="list-style-type: none"> 1. Appendix E, pg. 28/29 added – Guidance regarding HIVE/EPIC image capture apps. 2. Section 1.2 and 1.4 clarification of application of policy 3. Section 1.11 Updated contact details for Clinical Photography 4. Added 1.5 for Community Nursing (LCO) Guidance 5. Minor language adjustment to Section 3.5 to advise on 'out of hours' ROVER capture. 6. Clarification Section 8.1 Duty of Confidence 7. Addition 10.5 to refer to this policy for ROVER use guidance. 8. Mention of IRGC as committee to ratify policy Section 14, pg. 16, under - Consultation, Approval and Ratification Process.

Date notified:	23/08/2022
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EqlA Registration Number:	2021-67 Refer to section 11: Equality, Diversity and Human Rights Impact Assessment
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1. Introduction

- 1.1. Manchester University NHS Foundation Trust (MFT) recognises that providing a safe and secure environment for patients, and for the staff who care for them, is an essential feature in the delivery of the high-quality health services to which the Trust is committed, that the confidentiality, delivery, consent, and storage of patient clinical images features highly on the organisation's agenda.
- 1.2. This policy sets out the requirements for **all staff** involved in the 'illustrative' recording of patients across **all MFT Group Hospitals** (including North Manchester General and Community Nursing).
- 1.3. The aim of this policy is to protect patients' confidentiality and to protect the Trust from litigious claims surrounding the misuse of those recordings. Trusts can become vulnerable to a wide range of incidents including loss of data through hardware theft, 'un-consented' images taken of patients who are vulnerable and clinical images taken on unsecured and undocumented personal equipment on the hospital site. Therefore, the policy seeks to provide a proportionate response from a variety of threats and hazards, to safeguard patients, staff, visitors, and protect NHS assets.
- 1.4. The following clinical areas which have 'managed devices/cameras' (listed below) are not covered by the restrictions in this policy. A managed device in this instance is a 'camera' managed by the Clinical Photography Services and not in reference to the ROVER device (see appendix E), which is a mobile phone device.

Despite certain restrictions and exceptions, all legislative guidance outlined in this document still needs to be followed by the camera users outlined below:

- Radiology Services
- Retinal/anterior segment, ophthalmic photography MREH
- Endoscopy imaging, proctoscopy or other fibre optic/digital imaging techniques and video used for diagnostic purposes in theatres
- Health & Safety Trust Lead
- Bereavement teams in both NICU and Maternity Ward's, Saint Mary's Hospital
- INRU (Intensive Neuro Rehabilitation Unit) at Trafford Hospital
- AHP (Allied Health Professions) Therapy Staff
- Emergency Services, trauma theatres (Adults)
- Emergency Services, trauma theatres (Paediatrics)
- SARC (Sexual Assault Referral Centre)
- Dental students under supervision at the University Dental Hospital of Manchester
- Macro and micro histopathology images
- NHSE Specialised Mesh Complication Service for the Northwest
- Burns and Plastics Services (Paediatrics & Adults)

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- Complicated Mesh Services, Saint Mary's Hospital
- 1.5 This policy applies to the LCO (Community Nursing and Community Therapies) regarding all IG legislation and consent guidance and best practice within this policy. The mechanisms for taking patient images in the community will vary and therefore all community practice, should look toward their local guidance and local standard operating procedures (SOP's) when imaging patients.
 - 1.6 It is the duty and obligation of all staff to keep all records confidential and secure and be aware that such records are protected under the **Data Protection Act 2018**.
 - 1.7 The Trust also recognises and accepts its legal responsibilities within the **Freedom of Information Act 2005, the Copyright, Designs and Patent Act 1998**, as well as other legislation and case law, which applies to the NHS regarding the governance of all clinical images.
 - 1.8 This policy applies to all employees of the Trust involved in the 'illustrative' recording of patients. All clinical illustrative recordings whether originated by the Clinical Photography & Medical Illustration Service or by other individuals (using cameras and or 'other' devices owned by other Trust Departments) are subject to this policy.
 - 1.9 In this policy, the terms 'recording' (or 'recordings'), 'illustrative' or 'images' are used to refer to **photography and video**. Such recordings may be used for the purpose of providing:
 - A clinical record
 - For assisting diagnosis
 - Teaching
 - Assessments of students
 - Quality assurance
 - Clinical Governance & Audit
 - Publication
 - Research & Development
 - Medical legal purposes
 - Providing evidence in cases of interest to the police
 - 1.10 As photographs/video are commonly understood by everybody, this policy will outline the legislation around the confidentiality of such recordings, including storage and retrieval and explain the correct methods of '**consent**' for each event.
 - 1.11 This policy must be applied to and cross referenced with other MFT policies including all HIVE training documentation on the use of apps, Governance legislation, Health & Safety and Informatics policies which will include Confidentiality Code of Conduct, Information Disclosure Practice and Consent and Copyright legislation, on data handling. References are made to these

throughout this policy document and are available on the MFT Intranet.
(Please refer to Section 17).

- 1.11. It is recommended that the first point of contact for all clinical photography/video requests and subsequent queries made during normal working hours, should be the Clinical Photography & Medical Illustration Services for MFT. **The contact numbers for the services are 0161 276 4139 (Manchester Royal Infirmary) 0161 291 5832 (Wythenshawe Hospital) 0161 72092373 (North Manchester General) and 0161 7462709 (Trafford General Hospital)**
- 1.12. This policy does not include guidance on PR photography or other forms of non-clinical photography or capture. Guidance on 'other' types of photography on site must be sought from MFT's Group Communications Department and/or Clinical Photography and Medical Illustration as outlined in reference point 1.9 in this policy.
- 1.14 In this policy the term's, 'Managed cameras', 'Out of Hours Cameras', HIVE/EPIC devices and additional apps used in HIVE by 'registered' and trained individuals, are used to describe staff who produce a patient image.

Training on 'some' devices external to HIVE as in the use of 'managed cameras', is by the Clinical Photography and Medical Illustration Services to ensure users produce images of the required quality and complete all the necessary paperwork. 'Managed camera users' are audited to ensure quality is maintained. Each site has a specific local procedure therefore it is advised you enquire on **0161 276 4139 (Oxford Road Campus) or 0161 291 5832 (Wythenshawe Campus)**. Managed cameras are not an automatic right and are assessed on a 'case-by-case' basis and recommendations made. Patient capture is also not an automatic right and consent with the reasons for the capture, require clear explanation to the patient.

2. Purpose

- 2.1 This policy is relevant to all healthcare and medical staff, affiliated clinical staff, university staff, patients, visitors, contractors, and any persons acting on the Trust's behalf across all MFT's Group Hospital's.

The policy also applies on all Trust premises, property and assets and it is intended to assist in preventing the 'unauthorised' taking and sharing of patient data/images and provide guidance in the correct use of digital devices/apps in clinical settings. That the appropriate levels of consent are used and that the methods used to take images and distributing those images are done so appropriately and with legislative guidance.

- 2.2 This policy can be applied to clinical recording in paediatric and in adult clinical areas and settings across MFT. **Including all patient capture within HIVE/EPIC.**

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- 2.3 This policy ensures that care must be taken to respect the dignity, ethnicity and religious beliefs of the patient when clinical recordings are made. **In every case**, recordings, whether photographic or video, **must only be used specifically for the intended purpose the recordings have been consented to.**

3. Key Principles

- 3.1 In emergency cases such as in 'out-of-hour's photographic needs and off-site, the Clinical Photography & Medical Illustration service is able to assist in setting-up a 'managed camera' service (see section 10) or provide advice to **HIVE/EPIC** users.
- 3.2 Any users of 'unauthorized' recording devices and not on the exemption list (section 1.4) of this policy will not be covered by the same levels of security and governance that the guidance in this policy affords those that are. As such it is the responsibility of the individual undertaking this activity to ensure the relevant legislation mentioned in this policy is fully observed or contact the Clinical Photography & Medical Illustration Services for guidance.
- 3.3 In every case, recordings, whether photographic or video, which are made in the clinical environment taken to assist in treatment or patient care, must only be used specifically for the intended purpose it has been consented to (See section 12).
- 3.4 In all cases and during working hours Clinical Photography and Medical Illustration Services must be called.
- 3.5 In cases of emergency and for the purposes of clinical decision-making HIVE and associated HIVE/EPIC apps and devices such as ROVER, will have the facility to record patient images when Clinical Photography and Medical Illustration Services are **unavailable**. Clinical Photography and Medical Illustrations remain the 'Gold Standard' in clinical photography/patient capture and should be called upon in any instance during working hours.

4. Minors

- 4.1 In the case of minors, the patient or guardian should sign the consent form, unless the minor reaches the age of 16 or is judged to be capable of consenting in his/her own right when new consent is required. 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.
- 4.2 Photographs/records of children should be taken only if there are specific features that need recording for clinical (e.g., assessing the progression of a skin lesion, disease, or clinical manifestation) or teaching (e.g., an important clinical sign that might only be seen rarely).

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- 4.3 Photographs/records should only include the specific areas of interest. Whole body shots should not be taken unless completely necessary.
- 4.4 If 'intimate' photographs of children are required, it is strongly advised by the Trust that a professional registered Clinical Photographer is called. Registered Clinical Photographers are specifically trained and have undertaken and developed credible audit trails where the integrity of the image is intact in support of the children and in any potential medico-legal and safeguarding situation.
- 4.5 Photographs of neonates on the point of death or stillbirths are covered by the normal consent procedure for minors. However, it may be in the best interests of the parents for a record photograph to be taken, although grieving parents should be asked by the responsible clinician in either case, whether they would want a photograph of their child. These matters should be managed with extreme sensitivity. The Clinical Photography and Medical Illustration Service already support 'bereavement' photography in many cases.

5. Photographs taken in Exceptional Circumstances

- 5.1 Photographs of genital areas, or of the chest in peri or post pubescent girls, should only be taken in very exceptional circumstances, clearly defined by clinical need and this should be recorded in detail in the patient record justifying why the photographs are necessary. Such images can only be used for the medical record or closely controlled clinical teaching.
- 5.2 Extreme caution should be taken where photographs of genital areas, or of the chest in peri or post pubescent girls are to be presented at clinical conferences or venues external to the Trust premises.
- 5.3 Under no circumstances should images referenced in 5.1 and 5.2 be emailed or sent in electronic presentations in advance of the events such as clinical conferences – or included in conference hand-outs or websites.

6. The Unconscious Patient

- 6.1 Photographs of the unconscious patient may be taken provided consent is obtained when the patient regains capacity and before the photographs are released.
- 6.2 The patient must be informed that the photographs/recordings have been taken at the earliest practicable moment for example, as soon as they regain capacity to provide permission to photography for clinical purposes.
- 6.3 If a patient does not consent 'retrospectively' then the records must be quarantined (i.e., images removed from the individual's medical record and

retained within the archive but not accessible to view) and a full note of all decision making must be made within the patient's medical record.

7. Vulnerable Adults

- 7.1 If the patient lacks the mental capacity to agree to photographs being taken for clinical use but it is felt that it is in their best interests to do so, the provisions of the Mental Capacity Act 2005 will apply. This must be followed to ensure that photography proceeds only when it is in the best interests of the patient at the time to do so or when consent has been provided by someone who has a valid and appropriate legal authority to make that decision on behalf of the patient. (Please also refer to **Mental Capacity and Best Interests Decision Making Policy for MFT**).
- 7.2 Where another person has the legal authority to decide on the patient's behalf, they must also apply the 'best interests' principles. A full note of decisions made within the best interest's framework (as well as the process by which they were reached) or under a valid legal authority must be recorded in the patient's medical record. All images taken in the 'best interests' of the patient or under the 'exercise of a valid legal authority' must be retained on the medical record.
- 7.3 Only in the most exceptional of circumstances will it be in the best interests of a person without capacity to take photographs of them for publication purposes. Therefore, photographs taken purely for this purpose are to be avoided with such patients. (Refer to the **MFT's Safeguarding Policies and Mental Capacity Act 2005** for guidance. If you require further advice, please refer to the Lead Nurse for Vulnerable Adults).

8. If a Patient Dies

- 8.1 The Duty of Confidentiality survives the death of a patient. Upon the death of a patient, a third party (including next of kin or personal representatives) cannot provide permission on the deceased behalf and this will include the use of clinical photographs should there be present in the case history. Under the provisions of the **Access to Health Records Act 1990**, a personal representative and a person who may have a claim arising from the death, has a right to access the records (although this is subject to any express wish by the patient that information is not to be disclosed) but does not have the right to disavow the original request of confidentiality.
- 8.2 Where the Police request the use of photographs, relating to deceased patients, reasons for the request must be established as per the Trust's guidance regarding requests for the disclosure of medical records and advice will need to be sought from MFT's Medical Legal Services.
- 8.3 Where the Coroner requests the disclosure of medical photographs, they should also be provided in line with the Trust's guidance on these matters

ensuring that the Data Protection Act 2018 is complied with regard too, third party personal information recorded on file.

Please also see **Procedure – Management of Deceased Adult Patient Paper Medical Notes and Patient Notes required for a Postmortem, MFT Policy**.

9. Legislation, Regulations and Best Practice

- 9.1 All recordings which illustrate a patient’s condition or an aspect of their treatment, form a part of that patient’s medical record and are subject to the same security and confidentiality considerations as any other medical record. As such recordings must be available for disclosure in response to any request made by, or on behalf of the patient, relatives, or legal guardians as guided by the underpinning legislation of the **Data Protection Act 2018 which is the UK's implementation of the General Data Protection Regulation (GDPR)**, the **Freedom of Information Act 2000**, and the **MFT Access to Health Records Policy**.
- 9.2 Informed consent is an indication that the consent a person gives meets certain minimum standards. 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. To give informed consent, the individual concerned must have adequate reasoning and be in possession of all relevant facts at the time consent is given. All MFT employees have a duty of care to explain the consent process and the reasons behind clinical photography/recordings of any kind.
- 9.3 MFT needs to collect, record, store and use patient’s personal data to provide healthcare services. The Trust has a lawful basis for processing personal data and meets the condition for processing special data. As an NHS organisation, MFT uses ‘public task’ as its legal basis for most of its processing. This includes using photographs for restricted medical teaching which the **Data Protection Act 2018** - the UK's implementation of the **General Data Protection Regulation (GDPR)** – is covered under. Therefore, any clinical image required for publication in a journal, medical textbook or for research purposes and is in an identifiable format, explicit and separate consent will be required (see appendix B).
- 9.4 Patients **have the right to withdraw their consent for the use of their images, including those taken and uploaded into HIVE/EPIC**. Where patients have provided their explicit consent e.g., for research and publication purposes, consent can also be withdrawn at any one time. However, when patient has consented to photography for the purpose of publication (especially electronic), they must be advised that once the photograph is in the public domain there is no opportunity for effective withdrawal of that consent.
- 9.5 Various sources of legislation, regulation and guidance have been used in the development of this policy such as supplementary information that can be

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accessed on the GMC (General Medical Council website) <https://www.gmc-uk.org/search-results?searchText=photography> guidance for doctors.

Other source references include those from the UK Caldicott Guardian Council available at <https://www.gov.uk/government/groups/uk-caldicott-guardian-council> and resources available from the Department of Health and Social Care <https://www.gov.uk/government/organisations/department-of-health-and-social-care>

In addition, resources from the Institute of Medical Illustrators (IMI) have also been referred to as all practising and voluntary registered Clinical Photographers with the Academy for Healthcare Science must abide by 'A Code of Responsible Practice' and adhere to National Guidelines on Consent which can be found at <https://www.imi.org.uk/>. Clinical Photographers will have the highest-level training in applying 'consent' and 'good practice in Clinical Photography'.

9.6 All MFT staff, regardless of their professional position, should adhere to the principles set out in these following documents. Please note that there may be changes and effects to the below legislation that exit from the European Union (EU) has not yet been accounted for:

- Copyright, Designs & Patents Act 1988 (amendment) Regulations 2010. <https://www.legislation.gov.uk/uksi/2010/2694/contents/made>
- The Protection of Children Act (1999) <https://www.legislation.gov.uk/ukpga/1999/14/contents>
- The Criminal Justice and Public Order Act (1994) <https://www.legislation.gov.uk/ukpga/1994/33/contents>
- The Children and Young Persons Act (2008) <https://www.legislation.gov.uk/ukpga/2008/23/contents>
- The Access to Health Records Act (1990) <https://www.legislation.gov.uk/ukpga/1990/23/contents>
- The Obscene Publications Act (1964) <https://www.legislation.gov.uk/ukpga/1964/74/contents>
- The Video Recordings Act (2010) <https://www.legislation.gov.uk/ukpga/2010/1/contents>
- The Mental Health Act (2007) <https://www.legislation.gov.uk/ukpga/2007/12/contents>
- The Human Rights Act (1998) <https://www.legislation.gov.uk/ukpga/1998/42/contents>

- The Mental Capacity Act (2019)
<https://www.legislation.gov.uk/ukpga/2019/18/contents>
- Guidance for the best practice for the management of intimate images that may become evidence in court (Royal College of Paediatrics and Child Health, June 2010 Jun 2020 Review date Jun 2023 – check <https://film.ac.uk/> for latest update).

- 9.7 It should be noted that consent for clinical photography or ‘recordings’ is not required in cases of Non-Accidental Injury (NAI). This is covered by the ‘In Best Interest principle’. Best Interests is a statutory principle set out in Section 4 of the Mental Capacity Act (2019). It states that ‘any act done, or a decision made, under this Act or on behalf of a person who lacks capacity must be done, or made, in his best interests’. (See MFT’s Safeguarding Policies for Adults and Children and Young People).
- 9.8 If law enforcement agencies such as the Police request a statement regarding your involvement in the taking or reproduction of patient images, please contact the **Trust’s Medical Legal Team** for advice and support. Most legal bodies and law enforcement agencies now have their own pro forma but it essential that Medical Legal advice is sought in the first instance.
- 9.9 Any healthcare professional taking a photograph of a patient would be deemed to be acting as an agent for the Trust in doing so, therefore copyright of all such recordings is vested in the Manchester University NHS Foundation Trust (MFT).
- 9.10 The **Copyright and Patents Act 1988** is applicable to all MFT patients’ and staff, as such images taken on properties of the Trust, with any recording or imaging device, ‘whether personal or trust owned’, ownership of all recordings **lies with MFT** whether for publication, for clinical use or the purposes of social media unless specifically consented for.
- 9.11 Making and using clinical recordings for learning, teaching and research is governed by the above-mentioned legislations. Ethical considerations in research would need to be considered and written into the research document by principal investigators. Further advice and assistance in ‘best practice’ for research photography methods can be sought from Clinical Photography & Medical Illustration or the associated legislation and references provided in this document.
- 9.12 It is important that for any contract entered for publication, that the copyright and reproduction rights of all images is held with MFT and does not automatically pass onto the publishers on first publication. If this is not done, the Trust may find itself unable to protect the patient’s interest by exercising control over further publications.
- 9.13 Healthcare professionals obtaining copies of clinical images/recordings in their course of their duties may retain these for teaching purposes only and within the bounds of the original consent. Before leaving the employment of

MFT, staff must seek specific permission to retain images for teaching purposes from the Head of Information Governance.

MFT may grant such permission, subject to the retention of copyright and reproduction rights.

9.14 The Trust is obliged to disclose the information to the police under **Schedule 1, Part 2, Section 10 of the Data Protection Act (DPA) 2018 (originally enacted)**. NHS organisations frequently receive requests to disclose medical notes in connection with actual or threatened litigation or by other bodies exercising their statutory functions – a clinical photograph is also a ‘medical record’ and can be requested. These requests can occur when;

- the police are investigating a crime (Whether a patient is a suspect or a witness)
- when medical notes are required of prosecution witnesses in a criminal case
- in connection with care, contact or other family proceedings.
- in civil litigation where a medical issue is relevant e.g., clinical negligence claims.
- where a statutory regulator such as the General Medical Council
- or the Nursing and Midwifery Council is seeking notes in connection with a fitness to practice investigation.

The general rule is that medical notes are confidential, and the confidence belongs to the patient. They should not be disclosed unless either (a) the Trust has the consent of a competent patient or, in the case of a child, a person with parental responsibility; or (b) there is a court order requiring the Trust to make the disclosure. Please refer all queries to MFT Medical Legal Services if in doubt.

10. Managed Cameras

10.1 ‘Managed Cameras’ are bespoke services set-up for those clinical service users that the Clinical Photography & Medical Illustration Services cannot cover outside normal working hours. These cameras will cover emergency services, ‘out-of-hours’ instances and safeguarding cases. During normal working hours clinical photography services should be contacted on back up photographs.

10.2 To enquire about a ‘managed camera’ please contact the Clinical Photography & Medical Illustration Services at either site **ORC 0161 2764139** or **Wythenshawe 0161 291 5832** (departmental details are also available on the MFT Intranet).

10.3 Users of ‘unauthorized’ cameras or devices capable of recording patients, are encouraged to report these devices to the Clinical Photography and Medical

Illustration Services at the ORC or WTWA to arrange a local SOP (Standard Operating Procedure), training and guidance offered on 'best practice'.

- 10.4 A local managed camera SOP will be designed for your area and that it remains the responsibility of the person/service taking the photographs, to strictly adhere to that written guidance as it is essential that patient details and level of consent is recorded correctly. Images taken on an 'out of hours' cameras can be requested by law enforcement or legal entities and/or a witness statements requested. The locally designed SOP must be followed and if the patient to be recorded lacks mental capacity to give consent, you must know how to apply the Safeguarding legislation and principles of 'best interest' (see **MFT Safeguarding Policies and section 4 and 7** of this document).
- 10.5 For guidance on the use of 'in-built' apps and devices that capture patient images such as using ROVER in HIVE/EPIC please use this policy for reference.

11. Storage of Clinical Photographs/Recordings

- 11.1 A medical record must be available for disclosure, **an image or video of a patient is regarded as a 'medical record'** therefore subject to the MFT Health Records Management Policy.
- 11.2 A clinical image or video requires secure storage for however long the MFT Health Records Management Policy outlines. In some cases, images need to be stored for 10 years, which is why the logical point of contact for the taking of images in patient settings, should be the department of Clinical Photography & Medical Illustration. They are the guardians of a central repository of clinical images ensuring the correct consent, governance and retention processes are applied with the ability to securely store and distribute clinical images safely.
- 11.3 Staff taking their own clinical images/recordings, need to abide by the same legislation and guidance around consent, governance, retention, storage, and distribution as outlined in this document. Advice on the use of managed cameras will be offered by Clinical Photography Services.
- 11.4 Unauthorized devices and unauthorized images will be subject to incidence reporting, risk management and breaches of governance, consent, and confidentiality (see section 12).
- 11.5 Where MFT is not the data controller and where no instructions have been provided regarding retention periods by the requesting organisation for non MFT work, MFT will retain copies of these images for two years only, in case of query.

12. Confidentiality of Clinical Photographs/Recordings

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- 12.1 In brief confidentiality is an important ethical and legal duty but it is not absolute despite confidentiality of patient data being an automatic right which may only be waived:
- by the patient,
 - by someone legally responsible to do so, on his or her behalf,
 - if the disclosure is of overall benefit to the patient who lacks the capacity to consent
 - if the disclosure is required by law
 - The disclosure can be justified in the public interest.
- Further guidance can be found on the General Medical Council webpages <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality/disclosing-patients-personal-information-a-framework> the Information Commissioners Office webpages https://icosearch.ico.org.uk/s/search.html?query=confidentiality&collection=ico-meta&profile=_default and MFT Governance Policies.
- 12.2 All staff must note that all photographic media and recordings including original digital camera files must be logged and stored appropriately on Trust premises in accordance with legislative requirements - they are regarded as a medical record. Since any medical record must be available for disclosure if required it is essential that every image is properly logged in the case notes or uploaded onto a Trust system.
- 12.3 Breach of confidentiality surrounding the taking of patient photographs and video are considered professional misconduct, incident reportable and may result in disciplinary procedures (refer to the **MFT Confidentiality Code of Conduct and Information Disclosure Code of Practice Policy** for more detail). Guidance surrounding consent and confidentiality of patient images and recordings can be offered by the Clinical Photography Services.
- 12.4 Non-compliance with this policy by any person working for the Trust (MFT) may result in disciplinary action being taken in accordance with the Trust's disciplinary procedure.
- 12.5 Clinicians and healthcare professionals should discourage patients from taking photographs of other patients or staff without their permission (the ability to upload photographs instantly on to social networking sites can have lasting confidentiality implications for the organisation and the individual). Patients must also not take photographs of medical records even where these images may relate to themselves. Please also see the **MFT Mobile Phone User Policy and MFT Informatics policies**.
- 12.6 Patients have the right to access their medical records, the right of access, commonly referred to as 'Subject Access', gives individuals the right to obtain a copy of their personal data, as well as 'other 'supplementary information which may include photographs, through a 'Subject Access Request' (SAR). An SAR can be made through the **Subject Access Health Records (SAHR) Team or the MFT Medical Legal Teams** which is why it is important to continue to use

Clinical Photography where possible as this service provides expert advice regarding origin, storage, and the correct handling of ‘patient images and consent data’ – this will also include the correct anatomical orientation of images in cases of defence or prosecution in court.

- 12.7 The Trust has several patient diary projects approved by Information Governance and these are acceptable and are subject to their local procedures, e.g., Patient Video Stories and Burns and ICU Patient Diaries. For Teams wishing to make a patient video story they should contact the **Patient Advice and Liaison Team on 0161 291 5600 (Wythenshawe)** or **0161 276 8686 (ORC)** who will ensure the correct consent procedures are in place.
- 12.8 MFT Clinical Photography and Medical Illustration Services will release images to entitled parties (e.g., patient Data Protection Act 2018 requests, requests from solicitors) provided proof of identity have been confirmed. All requests must be made through the Medico Legal Team in the first instance.
- 12.9 External emails containing images should only be sent where there is genuine clinical need and via ‘safe-haven’ email addresses such NHS.net addresses Images can also be sent safely between MFT-to-MFT email addresses (see the MFT Informatics Policies for more).

13. Equality Impact Assessment.

- 13.1 This Policy has been equality impact assessed by the author using the Trust’s Equality Impact Assessment (EqIA) framework.
- 13.2 The completed Equality Impact Assessment has been completed **29/03/21** and submitted to the Equality and Diversity Department for ‘Service Equality Team Sign off Abdul Khan, Equality and Diversity Lead, Manchester University NHS Foundation Trust.

Equality Impact Assessment	
Please record the decision whether the policy, service change or other key decision was assessed as relevant to the equality duty to:	
<ul style="list-style-type: none"> • Eliminate discrimination and eliminate harassment • Advance equality of opportunity • Advance good relations and attitudes between people 	
Not relevant	Relevant <input checked="" type="checkbox"/>
	Where the decision was RELEVANT and covered the relevant Equality duty – a robust policy.
Please enter the EqIA registration Number:	EQIA number 2021-67

14. Consultation, Approval and Ratification Process

- 14.1 The main internal stakeholders for the purpose of this policy are the MFT Clinical, Corporate, Communications and Clinical Support Service Directorates.
- 14.2 Health & Safety, Risk Management are also stakeholders along with Trust's Caldicott Guardian and Clinical Governance Group.
- 14.3 All stakeholders will be given an opportunity to comment before ratification.
- 14.4 Policy for comment and approval has been circulated to the **Sponsorship and Governance Oversight Committee (SAGO)**.
- 14.5 The newly formed MFT **Integrated Governance and Risk Committee (IGRC)** will ratify the policy.

15. Dissemination and Implementation

- 15.1 When ratified, the policy will be posted onto the MFT Intranet site.
- 15.2 Policy availability and information will be communicated by the following: -
- **Trust-wide Communications**
 - **Operational Risk Management Group**
- 15.3. The following will be formally notified of the ratification of this policy:

Director of Clinical Effectiveness
 Associate Director of Clinical Effectiveness
 Associate Medical Directors
 Director of Corporate Services
 Director of Nursing (Adults)
 Director of Nursing (Children's)
 Deputy Director of Nursing (Quality)
 Deputy Director of Nursing
 Caldicott Guardian
 Divisional Directors
 Divisional Risk/Governance Leads
 Head of Allied Health Professionals
 Head of Clinical Audit
 Head of Legal Services
 Health and Safety Adviser
 Directors of the Corporate Departments
 Head of Communications and Public Relations
 Document Control Co-Ordinator
 Equality Consultant

16. Monitoring Compliance of The Management of Digital Clinical Photography & Video Recordings

- 16.1 All healthcare and clinical staff are responsible for monitoring compliance with The management of clinical digital images and video recordings.
- 16.2 Staff must report all breaches via the MFT incident reporting system.
- 16.3 It is possible to audit the access to images by individual users and such An audit will be undertaken from time to time or as and when needed.
- 16.4 An 'annual snapshot audit' of completed consent and patient image management in records, can be undertaken with Risk Management and reported to the Integrated Governance and Risk Committee (IGRC).
- 16.5 The following will be monitored for compliance:
- Arrangements for ensuring that informed consent for photography is appropriately gained
 - Arrangements for ensuring all clinical images are stored, managed and distributed in secure facilities and or available on request in patients' records.
 - Any shortfalls identified will have an action plan put in place to address which will have timescales included for re-audit/monitoring.
- 16.6 There will be an annual audit of 'managed cameras' and 'registered users' of the photographic services.

The following will be monitored for compliance:

- Arrangements for ensuring that informed consent for photography is appropriately gained and the quality of the images are of a 'standard'.
- All clinical images have been uploaded to SECTRA.
- Any shortfalls identified will have an action plan put in place to address which will have timescales included for re-audit / monitoring.

17. Standards and Key Performance Indicators 'KPIs'

- 17.1 This policy must be reviewed at least every 12 months or when there are Significant changes to the document.
- 17.2 Reports of compliance will be tabled at the Integrated Governance and Risk Committee.

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18 References and Bibliography

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5. 'Legal and Ethical', Institute of Medical Illustrators, (2012).
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9. Policy Relating to the Illustrative Recordings of Patients, (2010). Bradford Teaching Hospitals Foundation NHS Trust.
10. 'The Management of Digital Clinical Images and Video Recordings'. (2005) Department of Medical Illustration & Photography, Norfolk & Norwich University Hospital NHS Trust.
11. 'Confidentiality: NHS Code of Practice. Department of Health and Social Care (DH). November, (2003). <https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice> Accessed from the World Wide Web, January 2021
12. 'Videos, photographs and patient consent'. British Medical Journal, March 1998, Vol 316: pp1109-1011.

13. Mobile Phone and Mobile Apps for Clinical Photography, A Guide to Good Practice. Institute of Medical Illustrators, October 2019, Version 2.0.

19. Associated Trust Documents

1	Safeguarding Children and Young People Policy	Version: 2 8/01/2020
2	Safeguarding Adults at Risk of Abuse Policy	Version: 3 19/08/20
3	Mental Capacity and Best Interests Decision Making Policy	Version: 5 26/10/2016
4	MFT Mobile Phone Policy	Version: 1.0 24/08/2018
5	Mental Health Act Policy	Version: 2.0 01/02/2021
6	Standard Operating Procedure for the Taking of Consent for a hospital Post-mortem examination after an early pregnancy, perinatal loss, or neonatal loss (Saint Mary's Oxford Road Campus site only)	Version: 2.0 22/10/2019
7	Records Retention and Destruction Policy	Version: 1.0 12/03/2018
8	Data Protection Policy	Version: 1.4 16/01/2019
9	Freedom of Information Policy	Version: 1.1 16/01/2019
10	Access to Health Records Policy	Version: 1.0 16/1/2019
11	Code of Practice for the use of IT, Internet, and Email	Version: 1.1 March 2018
12	Confidentiality Code of Conduct and Information Disclosure Code of Practice	Version: 1.0 12/03/2018
13	Handling Person Identifiable Information Policy	Version: 2.0 12/03/2018
14	Data Protection Policy	Version: 1.4 16/01/2019
15	Health Records Management Policy	Version: 2.0 26/09/ 2018
16	Handling Person Identifiable Information Code of Practice	Version: 2.0 12/03/2018
17	Confidentiality Code of Conduct and Information Disclosure Code of Practice	Version: 1.0 12/03/2018
18	Personal Use of Social Media Policy	Version: 1.0

20. Appendices

Appendix A

Sample patient Consent Form – For EMERGENCY Clinical Photography ONLY

I hereby give my consent for me to be photographed for clinical records only. *

Name of patient _____

D.O.B _____

NHS Number/District Number _____

Diagnosis _____

Name of staff member/designation undertaking the photographs:

Date _____

Patient/carer/guardian* signature _____

***delete as appropriate.**

This consent form is for photography that will become a part of the patient's clinical record. Clinical Photography & Medical Illustration should be contacted during normal working hours 8.30-5.00pm.

A separate written consent is required from the patient if the images are to be used teaching and publication purposes at any point in time and must be sought separately.

This form is to be retained in the patient's notes and the clinical images stored as outlined in this policy.

If a child is being photographed, please ensure the additional information is entered:

Name of Parent/Guardian _____

Relationship to child if not parent _____

Consultant/Clinical Lead _____

Signature of Patient/Parent/Guardian* _____ Date _____

*** Delete as appropriate.**

Appendix B – Consent for publication form

Release of Photographs to Internal Parties

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

Patient's surname: _____ Forename: _____ Address: _____ _____ D.O.B.: _____ <input type="checkbox"/> Male <input type="checkbox"/> Female NHS No.: _____ Hospital No.: _____	Consultant: _____ Dept: _____ Author: _____ Signature of author: _____ Date: _____
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I give my consent that the clinical images taken of me can be used for publication. I understand that once the images are published, consent cannot be revoked (especially for electronic media).

Name of publication: _____

Signature: _____
Patient / parent / guardian

I understand that if these images are required for a future publication then my explicit consent will be required.

Please note that in addition to the above information if Clinical Photography have taken the photographs, we would require the additional information below;

- The date the photographs were taken
- The unique Medical Illustration unit number (MIU) easily located on the existing images or original request.

Appendix C

Guidance for Staff on the use of mobile phone cameras (including ROVER) and other electronic recording equipment by patients and visitors.

Trust Position

This guidance provides useful information for staff on the use of mobile phone cameras or other digital recording equipment by patients and visitors and will explain when the use of such equipment could be considered unreasonable. It will also endeavor to strike a balance between the confidentiality and privacy of an individual with the need to protect children and vulnerable adults, whilst safeguarding their health and safety and risk of abuse.

Patients will often bring mobile phone cameras or other digital equipment into hospital, and it is not felt feasible to prohibit the carrying of such devices or to remove them for safekeeping. However, staff should always point out to patients and visitors that there are restrictions and that they are not permitted to take photographs of:

- Other people's children
- Other patients
- Staff (without consent)
- Visitors (without consent)
- Smart boards, or any part of it, located on the ward.
- Other identifiable information
- Health records, x-rays, or clinical photographs on PACS or information on other IT systems
- Vulnerable patients unable to give consent.
- During operations or whilst receiving treatment

Any patients or visitors ignoring these restrictions should be asked to stop and if they fail to do so, you may seek the support of security staff if necessary. Furthermore, staff must not take clinical photographs at the request of a patient using any recording device under any circumstances. If the patient needs a photograph, contact the **Department of Medical Illustration on 0161 291 5832 (Wythenshawe) or 0161 2764139 (ORC)** for advice.

Situations where the taking of a photograph is acceptable.

As stated above, the use of photographic equipment on wards and in departments is discouraged but there may be some instances, where it is acceptable, for example:

- A parent taking a photograph of their child or newborn baby.
- A visitor taking a photograph of a child or a newborn baby with consent of the parent or guardian.
- An adult patient taking a photograph of themselves preferably close-up and avoiding the inclusion of any outsider.

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Such photographs should be for personal use only and can be taken by a visitor as long as the patient is happy for them to do so, and discretion used at Ward level. Where inclusion of other people is **unavoidable, the photographs must not be taken.**

In all cases the need to respect the privacy and dignity of other patients is paramount and consequently, it is necessary to ensure that other people do not appear in the photograph. This however may not be achievable on some wards and therefore photographs must not be taken.

BYOD (Bring Your Own Device)

Patient images/recordings/photographs and data held on BYOD remains the property and responsibility of MFT and systems need to be in place to allow access to that data when needed (see Subject Access Policy). **Using your device to store patient data is discouraged (see Informatics Policies)** as there is a significant risk of personal devices being accessible by family or other third parties. It is vital that patient data is never stored in a standard photo gallery or any other app that does not have secure secondary authentication processes. Please see example 1 (below) which demonstrates legislation in practice.

Example 1. Legislation breach in clinical setting.

A junior doctor is asked to view the progress of a wound when the dressings are changed. To make it easier to report back the condition of the wound to the team, they ask the patient if they would mind if they took a quick photograph of the wound. While the doctor may feel like they gained 'verbal' consent this only covers 'permission to treatment' – there is no 'implied permission for use', or any 'record made of the patient's consent' made in their hospital notes. The doctor may at this point share the image with 'other' members of another clinical team electronically but will have done so without gaining the necessary permission to do so. As the data controller in this example, they are responsible for breaching GDPR (General Data Protection Regulation) rules.

Reference material: Mobile Phone and Mobile Apps for Clinical Photography, A Guide to Good Practice. Institute of Medical Illustrators, October 2019, Version 2.0.

Videoring a birth on the Maternity Unit

The Trust will allow parents to video the birth of their child on the Maternity Unit, but in each case the final decision will rest with the individual midwife conducting the delivery. If videoring is allowed, the midwife must make clear to the parents that she may stop the filming at any time, and that this instruction must be followed.

Patient Diaries

The Trust has several patient diary projects approved by Information Governance and these are acceptable and are subject to their local procedures, e.g., Patient Video

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Stories, Burns and ICU Patient Diaries. For Teams wishing to make a patient video

story they should contact the **Patient Advice and Liaison Team on 0161 291 5600 (Wythenshawe) or 0161 276 8686 (ORC)** who will ensure they have the correct guidance and procedures in place.

Appendix D

A guide on best practice on the use of mobile phone Apps for patient photography

‘Mobile phone devices’ or ‘Smartphones’ are now commonplace and can be found used in the clinical environment – the ROVER device is such a device and not exempt from the uses of mobile device photography guidance (see appendix E).

Improved technological advances in mobile phones/devices, has seen the increase of an assortment of ‘mobile phone apps’ developed and offered to clinicians driving ‘change’ and ‘innovation’ in the way patient facing care is delivered as ‘face-to-face’ patient consultation changes.

However, innovation needs to be proportionate with regulation. Whilst there are benefits to using ‘available technology’ for capturing patient images, there are also **‘substantial risks’** when using mobile phones apps and mobile phone devices, particularly if those apps and devices **are not authorized to be used in the clinical setting and are not designated medical devices because they are personally owned.**

Throughout this document MFT is referred to as the ‘Data Controller’ (the UK GDPR defines a controller as: the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data) and MFT as well as other hospitals trusts across the United Kingdom (UK), are vulnerable to the risks of employees using their personal mobile devices in a clinical setting for use on social media (**see the MFT Personal Use of Social Media Policy**). MFT staff are seen as the ‘Data Processor’ (means a natural or legal person, public authority, agency, or other body which processes personal data on behalf of the controller) any breaches in the use of personal devices such as capturing a patient without specific consent can lead to breaches in GDPR legislation (**see section 9**) and could carry the potential for **significant fines.**

Risks in using unauthorized mobile apps

These include and are not limited to the following:

- Poor security in that the apps are stored on portable devices that can be easily misplaced.
- Images can be shared almost instantly, and quality varies which can sometimes impact on the assessment of the condition presented.
- Passwords on the devices that apps are stored on are vulnerable to attack.
- Images of any kind taken directly on a phone are usually available within the phone’s gallery and very often mixed with non-clinical images.
- Images in a phone’s memory or app, may be set up to automatically ‘back up’ to cloud storage. If cloud servers are located outside the EU, (European Union)

- there are restrictions to how personal data can be transferred, and liability increases. * Please note: There is current lack of clarity around where 'cloud back-up' exists within the UK mobile network after EU Exit.

Exceptional Circumstances

It is hoped that with the introduction of ROVER the risks of inadvertently capturing a patient's image are substantially reduced as this will require 'justification to do so' in a closed system which will have the addition of a professional service such as Clinical Photography adding to that.

However, ROVER and 'other' mobile devices (see appendix C) and 'mobile phone apps' should only be used in **exceptional circumstances to capture patient images/or recordings in areas such as trauma or emergency assessments if Clinical photography is unavailable**. In all instances and where mobile phones are deemed to be a regular requirement, e.g., telemedicine, these devices should NOT be personally owned, the apps used for this purpose should be regulated and authorized and the devices should be properly configured for the use it is intended for. Under no circumstances should patient data be stored on a mobile device's 'app', and 'back-ups' should be configured to a secure hospital server in accordance with GDPR and the legislation outlined in this document.

Appendix E



MFT HIVE/EPIC and the use of patient image capture within inbuilt apps and linked devices such as ROVER.

The Trust position as outlined in **Appendix C** and **Appendix D**, remains unchanged with the introduction of various apps and image capture devices in the HIVE/EPIC environment. UK legislation and guidance outlined throughout this policy such as Consent, Data Protection, Confidentiality and Governance surrounding patient information, which includes staff images and data, remains 'applicable to the full extent of the law that binds them.

Careful consideration and appropriate consent for taking a patient's image must be considered in line with clinical decision making. As a reminder, images must only be taken for an 'absolute purpose' as indicated throughout this policy and a patient does have the right to refuse (refer to section 12.1). In the ROVER devices chat function, consideration in sharing an image for clinical decision must be made in line with the legislation outlined in this policy and the NHS record keeping policies. All patient images, whether considered for a case or not, need to remain in records and not be discarded. In all cases where there is doubt, Clinical Photography can be called to attend and can act as 'keepers' of said image without having to upload to a clinical system until further clarification of purpose is cleared.

The MFT Clinical Photography & Medical Illustration Services remains the 'gold standard' of patient capture throughout MFT and should be called in all instances during the working day Monday to Friday. Furthermore, Clinical Photography have an EPRR process (Emergency Preparedness Resilience and Response) including an Action Card enabling the service to be available for incidents and emergencies when required.

In those instances where the service is unable to attend, the 'patient capture' features on devices such as ROVER (which is an i-phone) can be used as 'additional clinical information' on patient presentation or for 'urgent' clinical decision making when the Clinical Photography Services **are unavailable**.

ROVER or any 'other' portable device is **not** advised for use in clinical areas such as:

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- Major trauma and emergencies (unless on first presentation decision making)
- Paediatrics and Adult Safeguarding
- GUM (Genital Urinary Medicine)
- SARC (Sexual Assault Referral Centre)
- Transgender Reassignment Clinic
- CAMHS

This is due to the complexities of medical legal legislation surrounding consent for minors, safeguarding protective characteristics of patients. Therefore, training on the use of the various devices and how to order Clinical Photography through the Radiance 'order comms systems', will be given by the HIVE/EPIC teams. This may also include guidance on the 'how' and the 'when' to use patient capture in line with this policy.

Any further queries can be addressed to your HIVE/EPIC Trainers or Clinical Photography and Medical Illustration on **(0161) 2764139** or **(0161) 2915832**.