

# Policy Document

Reference: Re02

# Clinical Photographic and Video Policy

<b>Version:</b>	<b>6</b>
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<b>Policy Author:</b>	<b>Directorate Manager, Children's &amp; Women's Directorate</b>
<b>Executive Lead:</b>	<b>Medical Director</b>

### Version Control Schedule

Version	Issue Date	Comments
1	October 2006	New Policy
2	May 2011	Ratified Executive Committee
3	June 2014	
4	October 2017	There has been one minor change relating to the restriction of video recording during child birth.
5	June 2019	Minor amends - Changed Directorate & Consent to Clinical Photography form
6	March 2021	

### Statement on Trust Policies

The latest version of 'Statement on Trust Policies' applies to this policy and can be accessed [here](#)

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## 1. INTRODUCTION

- 1.1 This Policy replaces any previous versions of the previous.
- 1.2 All clinical photography undertaken within the University Hospitals of North Midlands NHS Trust (the Trust) is subject to legislation and ethics which provide the patient with rights of and expectation of appropriate confidentiality, protection against the unlawful processing of data and the requirement of consent.
- 1.3 Any person undertaking clinical photography does so on the understanding that all photographic images produced will be regarded as medical records and are therefore by law, entitled to the same degree of protection.
- 1.4 This policy has been designed to ensure that all ethical and legal considerations are observed and that healthcare professionals are aware of the possibility of litigation for breach of confidence or the misuse of visual patient records.
- 1.5 As part of its constructive framework, the policy embraces the legal obligations of, The Data Protection Act 2018, The Human Rights Act 1998, and The NHS Code of Confidentiality, the Caldicott Report and additionally the Freedom of Information Act 2000.

The Human Rights Act 1998 is designed to protect the rights and fundamental freedoms of the individual. Clinicians should be aware that practices such as those contained within this policy could be particularly sensitive and therefore may invoke concern from either patients or relatives. Those who find that they are less than content with care or treatment provided may look to the Convention to challenge decisions made by healthcare professionals. The rights that are potentially most relevant are those that relate to 'degrading treatment' and 'respect for privacy' (articles 3 and 8).

- 1.6 Throughout the process leading up to the decisions to proceed with photography or video recording, clinicians must be alert to the amount and appropriateness of information to be given to patients and the management of situations where decisions regarding the competence of individuals to give or withhold consent are raised. The person obtaining consent must therefore ensure that the principles underpinning best practice in consent are adhered to and that individual rights are not infringed. Policy C43, the Policy and Procedures for Obtaining Consent must be consulted in all situations where clarification or guidance is required in the management of consent.
- 1.7 This policy should be read in conjunction with:
  - C43 Policy and Procedures for Obtaining Consent
  - G10 Confidentiality & Protection of Patient Information Policy
  - Re01 Multidisciplinary Health Records Policy
  - IT07 Information Security & Confidentiality
  - RM07 Policy and Procedures for Reporting Adverse Incidents
  - C44 Trust Policy on Chaperoning
  - HS07 Trust Policy for the Safe Use of Mobile Communications
  - G06 Media Policy
  - EF05 Policy on Waste Disposal
  - DSP18 Over-arching Data Security & Protection Policy

## 2. POLICY STATEMENT

- 2.1 The Trust is committed to ensuring that all photography of patients undertaken by the Trust conforms to current legal and ethical requirements.

2.2 This policy is not intended to be over-restrictive but aims to ensure all parties are protected. It recognises the essential role of photographic material within a teaching Trust for the benefit it brings to patients through the better education of its staff. In this respect, it recognises the need for continued use of materials already in existence within the teaching domain prior to the implementation of this policy.

### 3. SCOPE

3.1 All clinical photography undertaken at the Trust.

3.2 Excluded from this policy are cameras that form part of a medical device, which provide transient images that are never “broadcast” beyond the immediate clinical environment and are used solely to visualise a clinical procedure. However any images that are taken for record, teaching or research purposes are subject to this policy.

3.3 The policy does not cover the photography of histology slides, specimens, culture media, immunoelectrophoresis plates and chromatograms. The policy also excludes cameras used as part of security surveillance systems (CCTV).

3.4 The policy does not cover **Non Clinical** or **Patient Photography** as they are defined below. **Non Clinical, Patient** and other types of photography are dealt with in the Communications Strategy and Media Policy and Procedure (G06).

3.5 Image retention and storage should be as standard practice for patient records. (Trust Policy Re01)

### 4. DEFINITIONS

#### 4.1 Photography.

The capture of an image created by the use of any conventional still / digital / video cameras or any photographic image scanning device.

#### 4.2 Clinical Photography

Images acquired with a clinical purpose, such as informing treatment, aiding assessment, recording disease progression, and teaching.

#### 4.3 Patient Photography

When photography includes patients but does not form a clinical record or clinical document i.e. Media record or Publicity.

### 5. ROLES AND RESPONSIBILITIES

#### 5.1 Lead Director

- To ensure that the policy is reviewed in advance of the review date, which will take place every two years, unless there is a significant change in technology, legislation or ethics which necessitates an earlier review.
- To manage the effective withdrawal of the policy if appropriate.

#### 5.2 Directorate manager, Children’s & Women’s Directorate

- To adopt the role of policy developer.
- To provide expert related advice and guidance as required in consultation with the department of Clinical Photography.

#### 5.3 Data Security & Protection Manager

- To provide expert advice and guidance in respect of related legal and ethical guidance including Data Protection Act 2018 the NHS Code of Confidentiality and all related issues of DSP.

#### 5.4 **Health Records Manager**

- To provide expert advice and guidance on clinical record management relating to this policy.

#### 5.5 **Caldicott Guardian/Senior Information Risk Owner**

- To provide expert advice and guidance on the related use of patient identifiable information, the Caldicott principles and information risk in relation to this policy.

#### 5.6 **Head of Information, Management & Technology (IMT)**

- To provide expert advice and guidance, in relation to IT and IT security issues

#### 5.7 **Divisional Chair and Clinical Director**

- To ensure effective distribution and communication of the policy to all medical staff.
- To work to ensure all members of the medical staff have accepted the policy and the implications of non-compliance.
- To ensure the policy is implemented and adhered to by all medical staff.
- To ensure that systems and processes are in place to ensure compliance with this policy.

#### 5.8 **Associate Director and Directorate Manager**

- To ensure effective distribution and communication of the policy throughout their Division.
- To work to ensure all staff groups have accepted the policy and the implications of non-compliance.
- To ensure the policy is implemented and adhered to by all staff groups.
- To ensure that systems and processes are in place to ensure compliance with this policy.

#### 5.9 **Sisters / charge nurses and Departmental Managers**

- To notify all new and existing staff of this policy.
- To ensure that all staff, contractors and other persons affected by the policy comply with its actions.
- To ensure systems and processes are in place to ensure compliance with this policy.

#### 5.10 **Individual Trust Staff**

- **All staff are required to** familiarise themselves with the policy **and** to comply as is relevant to their role and responsibilities.
- All staff are required to seek clarification and support.
- To create or comply with local systems which meet the requirements of this policy in any creation, storage, recording and destruction of photographs (or digital images) held in local departments.

## 6. **PRINCIPLES**

### **General Issues**

- 6.1 A clinical photograph is a confidential document (a medical record) and hence “sensitive personal data” as defined in Schedule 3 of the Data Protection Act 2018. Failure to comply with this act may result in legal action against the Trust and/or the photographer concerned.
- 6.2 There must be a fully justifiable purpose for photography to be carried out e.g. for clinical record, teaching, research or audit purposes.
- 6.3 A full explanation of how the photographs will be used must be given to the patient and specific written consent must be obtained. All reasonable attempts must be made to obtain consent prior to the photograph being taken. However, in emergency circumstances, where a photograph is

required and consent has not been obtained, for example in a theatre environment, then retrospective consent must be obtained. The patient must be aware that photographs have already been taken and told the reason why they were taken. If the patient does not give written consent then the photographs or recordings **must** be destroyed.

**Where an individual is unable to consent for him/herself including:**

- **Unconscious patient**
- **Patient not competent** (See DH guidelines)
- **Deceased patient**

Refer to Appendix 1

- 6.4 If photographs or recordings are made solely for education, research or publication purposes, then written consent **is** required. It is important to inform the patient that they have the right to stop photography at any point and that they are entitled to view all images before providing consent for use.
- 6.5 Where photography forms part of a clinical procedure this must be fully explained and recorded in addition to the description of type of operation, investigation or treatment. (Refer to the Trust Policy and Procedures for Obtaining Consent - C43)
- 6.6 Neither written nor verbal consent constitutes a commitment by the patient, their parent or person with parental responsibility. A patient or person with parental responsibility has the right to withdraw consent at any time.
- 6.7 Any staff undertaking clinical photography shall respect the dignity, religion, nationality and individual sensibilities of the patient.
- 6.8 All parties undertaking clinical photography shall be aware of and act appropriately upon the need for chaperones. (See Trust policy C44 on Chaperoning.)
- 6.9 In accordance with the Data Protection legislation, information, including photography, which forms part of the health records, belongs to the patient and therefore whilst the Trust has responsibilities to legally and ethically manage the information the patient has rights on the use and disclosures of the information and has rights of access to the information.

**Confidentiality and Storage of Records**

- 6.10 Photographs that can identify a patient should only be taken if absolutely necessary. The use of black bands across the eyes in facial views is an insufficient means to conceal identity. Advice on this matter can be obtained from the Department of Clinical Photography.
- 6.11 Consent is required even when a patient is incidental to the main picture, e.g. documentation of equipment or procedures.
- 6.12 Where photographs are to be used for publication or teaching purposes, both the purpose and in what context the photographs would be displayed (e.g. to illustrate a research paper for a medical journal) must be fully explained to the patient and documented.
- 6.13 The patient must be informed that when photography for clinical record has been undertaken, full copyright and reproduction rights rest with the University Hospitals of North Midlands NHS Trust.
- 6.14 When photographs are taken for submission to journals, books or similar publications, the publisher normally requests full copyright and reproduction rights. You should be aware that when an image is created in the course of employment then the employer is legally classed as the copyright owner. **It is therefore strongly advised that full copyright should not be assigned unless there is no other option.**

The patient must be fully aware that the Trust cannot be responsible for the use of any images whose rights have been assigned to the publisher. If the patient having been advised of these developments objects, then the photographs cannot be submitted.

- 6.15 Photographs taken that form part of a patient's medical records will need to be stored securely and retained in accordance with the criteria applied to the health record. Please refer to policy Re01, "Multidisciplinary Health Records Policy" and NHS Code of Practice for Records Management.
- 6.16 Consent for all published images should be retained for the full copyright period of the image, which can be up to 70 years after the death of the creator of the published work.
- 6.17 All clinical images stored by computer should be password protected and not emailed (outside the Trust) unless protected by mandated NHS standard of encryption. Further advice on this matter can be obtained from the IMT or the Data, Security & Protection Team.
- 6.18 All photographs must be logged, processed and stored safely to prevent accidental loss, unauthorised viewing or damage.
- 6.19 On no account must commercial laboratories, or agencies that have not been approved by the Trust, process clinical photographic material. A list of approved agencies can be obtained from the Department of Clinical Photography.

#### **Storage and Destruction of Records**

- 6.20 Where possible all clinical images should be stored in their original format without manipulation to preserve their integrity. Proof of the integrity of the original may be required. For example, when photographic evidence may be required for legal purposes. Electronic storage of any images must be in accordance with the relevant Trust ICT guidance.
- 6.21 Photographic images and the additional personal data should only be handled, obtained, recorded, used and stored in accordance with the Data Protection Act 2018. Further advice on this matter can be obtained from the Data, Security & Protection Team.
- 6.22 Any photographic material and its associated data, which is no longer required, must be destroyed or erased in accordance with current Trust practices. The destruction of unwanted materials must be absolute (Please refer to the Code of Practice for Records Management). Information on the destruction of photographic/video materials should be obtained from the Department of Clinical Photography or Estates. Refer to Waste Disposal Policy (EF05). **Please note** that images which have been deleted from camera media cards, phone memory cards, tablets or from any computer hard-drive cannot be classed as ultimately erased when using the device trash/erase functions.
- 6.23 There will be no unauthorised copies made of any clinical photographic media. It is strictly prohibited to lend, sell or hire any photographic image without authority to do so. Further advice on this matter can be obtained from the Department of Clinical Photography.
- 6.24 In the case of an unconscious patient, photographs may be taken but must **not** be used until consent has been obtained. When conscious and regained capacity, the patient must be aware that photographs have already been taken and told the reason why they were taken. If the patient does not give consent then the photographs or recordings **must** be destroyed.
- 6.25 Photographs or recordings should not in any event be made of individuals who are unable to provide consent if a similar recording could be made to demonstrate the purpose by a patient who is able to provide consent.

- 6.26 In the case of a deceased patient consent for photography must be obtained from next of kin. It is important to remember that the right to confidentiality remains even after a patient's death and as a result any access or disclosure must be in accordance with the Access to Health Records Act 1990 and the related Trust procedure. Section 6.7 also applies to next of kin in this instance.

### **Legal and Professional Aspects of Photographic or Video Recording**

- 6.27 Photographs must not be used for any purpose other than that for which the original consent was granted. If existing photographs are required to be used for any reason other than originally documented, further consent from the patient, person with parental responsibility or next of kin must be obtained.
- 6.28 Specific written consent must be obtained from the patient, parent(s), guardian or next of kin when clinical images are to be displayed by electronic means, such as the Internet or on a commercial CD. Please note the patient must be made aware that once an image has been transferred to such media, control of its use is limited, if not impossible.
- 6.29 Photographs used for legal evidence require a strict audit trail. Failure to provide this information may result in the evidence being invalidated. It is important to remember that when using digital images for legal purposes proof of integrity is of vital importance, any form of image manipulation must be detailed.
- 6.30 If the primary purpose of a photograph is to provide legal evidence then the image must not be used for teaching or publication purposes without express permission of the individual and the legal office for which it was prepared.
- 6.31 Photographs that have been made for teaching or publication should cease to be used for such purposes if the images become the subject of litigation against the Trust or are used as evidence in a court of law.
- 6.32 All staff are reminded that breach of copyright material is actionable by law. It is important to remember that simply being in possession of material that has been reproduced without consent is unlawful.
- 6.33 Misuse of any photographic image or breach of patient confidentiality will be considered as an act of gross misconduct and subject to Trust disciplinary procedures.**
- 6.34 Failure to comply with current UK legislation with regard to data protection is an offence and is punishable by law.

### **Parental Consent, Consent for Children and Young Persons**

- 6.35 Children under 16 who have the capacity and understanding to give permission for photography may do so and a record should be made of the factors taken into account in the assessment of the child's capacity. It is seen as good practice to also clearly inform the parent or person with parental responsibility of the photographic procedure prior to commencement. (Reference Department of Health, "Confidentiality" NHS Code of Practice, November 2003).
- 6.36 It is important to remember that if a child is not willing for a photograph or recording to be used for education, publication or research purposes then that material must not be used, even if a person with parental responsibility has given consent.
- 6.37 In cases where photographs are required to document issues regarding child protection, it is advisable that the services of the Police are used in the first instance. The Clinical Photography Department can provide assistance in the documentation of such cases. Please remember that photographs used for legal cases require a strict audit trail; failure to observe the correct protocol could result in the evidence being invalidated and a prosecution possibly compromised.

- 6.38 Photographs of stillbirths and post-natal deaths may sometimes be requested for grieving purposes/bereavement counseling. In such circumstances the situation must be handled with sensitivity and respect. On occasions, the parents may not wish to see photographs so soon after the event. In such cases it is essential that consent is obtained from the parent(s) to retain any images on file until such time that they may wish to see them. Please remember that consent must be obtained for clinical type photographs, in particular images required for research, teaching or publication.

### Digital Cameras/ Mobile Phones

- 6.39 It must be recognised that while digital recordings are intrinsically no different to traditional recordings, they are easier to copy or manipulate in electronic form and are therefore more at risk of both image manipulation and inappropriate distribution.

In acknowledgement of these risks the Trust mandates that personal digital cameras/ camcorders cannot be used for clinical photography.

The use of any digital camera technology incorporated in personal mobile telecommunication devices is strictly prohibited.

This action has been taken to ensure that the rights of the patient, the medical professional and the Trust are protected. Medical professionals who require images for clinical record should seek the services of Clinical Photography.

It is however recognised that a controlled number of strategically placed and securely managed corporate camera systems are required within the Trust to cover "out of hours" periods and to document urgent cases on admission.

### Registration of Cameras and Users of Digital Clinical Photography System

- 6.40 The Trust has implemented a digital clinical photography system, WABA. All clinical images, taken within the Trust are managed on this intranet distributed system which provides both secure and appropriate access to images and an audit trail of their use. Medical professionals who wish to use this system should complete a **user account application form - Appendix 2**.
- 6.41 Medical professionals who wish to use a digital still camera to produce clinical images (e.g. for out of hours use) should complete a **camera registration application form. Appendix 3**. Applicants will be required to demonstrate a need for photography which cannot be generally met by the Clinical Photography in-hours service, and a process for the secure storage and handling of the camera and associated media.
- 6.42 Please remember that clinical photographs may sometimes be required to support medico-legal cases and can be requested as evidence in court. Digital images will only be truly admissible in such cases if it can be demonstrated that there is an adequate audit trail and that any manipulation of the file has been documented. Failure to observe these requirements can result in evidence being invalidated. It is also important to ensure that photographic equipment and media is stored safely. A detailed log should be kept showing the user, time/date of use, and how many images were taken.

Further information, camera and user registration forms, and advice on local procedures for cameras can be obtained from the Department of Clinical Photography.

## 7. IMAGE COLLECTIONS

### Existing Image Collections

- 7.1 Some medical professionals have existing image collections that they use for clinical teaching purposes. Many collections have been compiled over the years and have significant educational value or historical merit. The use of such material is seen as reasonable if the following General Medical Council guidelines are met.

*Images taken for teaching purposes prior to 1997 may be used as long as the patient is unidentifiable. Images made for treatment or assessment purposes before 1997 can also be used for clinical teaching so long as the patient's identity remains anonymous. You should however, attempt to replace all images at the earliest opportunity with similar material for which permission can be shown. It is recognised that in the case of some truly historical images this may prove difficult if not impossible.*

*All images used for teaching taken after 1997 **must** have patient consent.*

You **must** obtain consent for any image used for teaching or research purposes.

**NO** images should be used for publication purposes or displayed to a lay audience without written consent. Further advice on this matter can be obtained from the Department of Clinical Photography.

## **Photographic Reproduction of Radiological Material**

- 7.2 Radiographs, MRI scans, Ultrasound images form part of a patient's personal medical record and are therefore classed as "sensitive information". Under these terms they are protected by the Data Protection Act 2018.

- 7.3 Any radiological image used for teaching or publication must be **anonymised**. This includes removal of names, hospital numbers or any identifiable data from the image, image packaging or storage media.

## **8. EDUCATION / TRAINING AND PLAN FOR IMPLEMENTATION**

- 8.1 All persons undertaking or requesting photography on Trust premises must be made aware of this policy and their associated responsibilities.

## **9. MONITORING AND REVIEW ARRANGEMENTS**

- 9.1 This policy will be monitored via the adverse incident, complaints and claims reporting system. Appropriate action will be taken where there are issues of non-compliance.

## **10. CONSENT FORM GUIDELINES**

- 10.1 There are four levels of consent for images:  
Level 1 – **Patient record only** consent given for images to be taken.  
Level 2 – **Educate patients who are considering Similar Treatment** to show to patients considering similar course of treatment, (anonymous images **only** used).  
Level 3 - **Restricted Educational use** consent gained for use in teaching (anonymous images only used).  
Level 4 – **Consent for Open Public Display and/or Publication in books, journals or on websites.**
- 10.2 In the case of Level 4 – Open Public Display and/or Publication, it should be made clear to the patient that once an image is in the public domain, there is no opportunity for effective withdrawal of consent.
- 10.3 Consent is not a binding contract. A signature on a form serves as evidence of consent but does not prove that consent is valid. When obtaining consent you should refer to the Trust policy C43

“Policy and Procedures for obtaining Consent.”

- 10.4 The University Hospitals of North Midlands NHS Trust **consent form for clinical photography/video** must be used to document photographic images, which are required for teaching, research or publication. (Refer to **Appendix 1**).
- 10.5 **Completed consent forms must be photographed before each episode of Clinical Photography and stored along with the images on the Clinical Photography - WABA database, for an effective audit trail.**
- 10.6 It is good practice to supply the patient with a copy of the form for their reference.
- 10.7 Further advice on the use of these forms can be obtained from Clinical Risk Management or Clinical Photography Services.

## 11. REFERENCES AND ACKNOWLEDGEMENTS

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- Addenbrooke’s NHS Trust, “*Photography and Video Recordings of Patients: Confidentiality and Consent, Copyright and Storage*,” July 2002.

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FOI REF 678-2223

**Clinical Photography  
Informed Patient Consent**

University Hospitals of North Midlands   
NHS Trust

*Patient Details*

Surname
Forename
NHS Number
Unit Number
Date of Birth

Clinical Photography reference number
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Ward / Department
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Contact Clinical Photography at :-  
The Royal on - 01782 676300  
County Hospital on - 01785 230624

Consultant ..... Date ...../...../.....

Requested by .....

Images taken by :
-------------------

Diagnosis :
-------------

Main Features to be photographed :
------------------------------------

**Patient Consent** - There are 4 types of consent - No photographs can be taken by any Trust employee until the patient has been made FULLY aware of how these images will be used. The consent form, must be fully completed by the person requesting the work.

**1. Patient's Records ONLY**

I understand that the illustrations requested, to which I have agreed, will form part of my confidential treatment records.

Patient / Patient's representative signature : .....

**2. Educate new patients who are considering similar treatment**

I understand that these images may be used to show patients who are considering undertaking a similar course of treatment.

Patient's signature : .....

**3. Restricted educational use by Medical Staff**

I understand that these images may be used for the purposes of medical teaching and research and in view of the explanation given to me agree that the illustrations may be shown to appropriate professional staff.

Patient's signature : .....

**4. Open public display (leaflets / displays / WEB sites)**

I understand that the illustrations requested, to which I have agreed, may be useful for the purposes of general education and publication. In view of the explanation given to me, I agree that the illustrations may be published as part of a display, information package or open access web sites, which may be seen by the general public.

Patient's signature : .....

Intended publication : .....

**I understand that I have the right to withdraw consent at anytime by writing to the Trust, and that my choice of consent level will not effect in any way my treatment within this Trust.**

## User Account Application for Clinical Image System.

Please read the following carefully before continuing.

Terms:

By making this application, you agree:

1. To review the Trust Policy Re02 "*Clinical Photographic and Video Policy*" regularly. Your continued access to, or use of the database will mean that you agree to any changes made to that policy.
2. That you are responsible for the adequate protection and appropriate use of the material accessed with your user account and understand that a complete audit trail is maintained by the system.

Please provide details of your area/s of work.

Department	Directorate	Speciality

Please state why you require access to Clinical Images:

--

Supporting consultant:

Name	Signature	Date

Preferred Account details. (Optional, they will be supplied if left blank)

User Name	Password

Applicant:

I have read and understood the terms above.

please tick

Name	Signature	Date

### Clinical Photography Use

User created  Y  N

Date:

Initials:

Associated Role/s:

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Completed Form to be filed at:  
Clinical Photography

### **Application for the Registration of a Camera for Clinical use Important Information**

A Clinical Photograph is in itself a confidential document (medical record) and hence sensitive data as defined in Schedule 3 of the Data Protection Act 2018. Failure to observe this fact may result in legal action against the Trust and / or the photographer concerned.

It is recognised that while digital recordings are intrinsically no different to traditional recordings, they are easier to copy in electronic form and are therefore more at risk of both image manipulation and inappropriate distribution.

Digital Clinical Images used to support medico-legal cases are only truly admissible in a court of law if it can be demonstrated that there is an adequate audit trail and that any manipulation of the file has been documented. Failure to observe this requirement can result in evidence being invalidated.

All persons undertaking Clinical Photography must be aware of current legislation and act accordingly.

*Further advice can be obtained from Clinical Photography and Clinical Governance, Audit and Risk.*

Please provide details of area of camera use:

Department	Directorate	Division

Camera details

Camera	Model	ID Number

Proposed use of the camera:

Supporting consultant / Manager

Name	Signature	Date

I confirm that I will act as the data custodian for this device and that there is a local SOP in place for the use of the camera which includes the secure storage of the device and associated media.

Procedure in place  please tick Document Ref: \_\_\_\_\_

Procedure attached  Y  N

Data custodian:

Name	Signature	Date

Compliance signed off by:

Job Title	Name	Signature	Date
Directorate Manager			
Information Governance Manager			