**Sunniside Surgery**

**Audio, Visual and Photography Policy**

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| 1 | 07/01/2024 | Lucy Boyle | Helen McIntyre |  |
| 2 | 27/05/2025 | Lucy Boyle | Helen McIntyre |  |
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# Introduction

## Policy statement

The term ‘recordings’ will be used throughout this policy and refers to audio recordings, videos, photographs, and any other type of visual image of patients made by using any recording device, including mobile phones.

It is the duty and legal obligation of all staff at Sunniside Surgery to act in the best interests of patients when making recordings for the purposes of clinical assessment, teaching, or publication or when managing such recordings. All staff are under a legal duty to keep patient records confidential.

The [General Medical Council guidance on making and using visual and audio recording of patients](https://www.gmc-uk.org/-/media/documents/Making_and_using_visual_and_audio_recordings_of_patients.pdf_58838365.pdf) advises that when making or using recordings, patients’ privacy and dignity must be respected. All clinical recordings created on the organisation’s premises and within patients’ homes are subject to this policy, irrespective of who owns the equipment or the materials on which they are produced.

Any breach of this policy may lead to disciplinary action. Furthermore, staff must ensure that all recording processes comply with the [Data Protection Act 2018](https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted) incorporating the [UK General Data Protection Regulation at Part 2, Chapter 2](https://www.legislation.gov.uk/ukpga/2018/12/part/2/chapter/2/enacted).

In addition to this policy, further reading can be found at the following:

* [CQC GP MythBusters 100: Online and video consultations and receiving, storing, and managing intimate images](https://www.cqc.org.uk/guidance-providers/gps/gp-mythbusters/gp-mythbuster-100-online-video-consultations-receiving-storing-handling)
* [Accessible Information Standard Policy](https://practiceindex.co.uk/gp/forum/resources/accessible-information-standard-policy.1361/)

## Status

The organisation aims to design and implement policies and procedures that meet the diverse needs of our service and workforce, ensuring that none are placed at a disadvantage over others, in accordance with the [Equality Act 2010](https://www.legislation.gov.uk/ukpga/2010/15/contents). Consideration has been given to the impact this policy might have regarding the individual protected characteristics of those to whom it applies.

This document and any procedures contained within it are non-contractual and may be modified or withdrawn at any time. For the avoidance of doubt, it does not form part of your contract of employment. Furthermore, this document applies to all employees of the organisation and other individuals performing functions in relation to the practice such as agency workers, locums, and contractors.

# Compliance and guidance

## Clinical appropriateness

The General Medical Council (GMC) [remote consultation flow chart](https://www.gmc-uk.org/-/media/gmc-site/ethical-guidance/learning-materials/themes/remote-consultations-infographic.pdf) illustrates the factors that organisations should consider when determining if it is appropriate to use audio visual methods for the provision of healthcare. This should be documented in organisational policies and understood by all staff.

## Safeguards for patients accessing online and video healthcare.

There are potential patient safety risks with phone, video, and online consultations. At this organisation, patients can expect effective safeguards that will protect them, and this includes when they receive advice and treatment by video and online.

Should there be any concerns relating to any safeguarding issues then the same processes will be followed as detailed within [The Safeguarding Handbook](https://practiceindex.co.uk/gp/forum/resources/the-safeguarding-handbook.2021/), including adding flags or alerts upon the at-risk patient’s healthcare record. Any safeguarding concerns are to be discussed with the organisation’s safeguarding lead.

## Receiving and storing patient images

The [Medical Defence Union](https://www.themdu.com/guidance-and-advice/latest-updates-and-advice/receiving-and-storing-patient-images-from-online-consultations) (MDU) advises that many remote consultations reach a satisfactory conclusion through dialogue and, if in video mode, the patient illustrating their medical history, for example, by pointing to the site of pain although sometimes an image can be useful.

Staff at this organisation must be aware of the medico-legal issues regarding receiving and storing images.

These are:

* **Awareness***:* Clinicians are to be fully aware of the GMC guidance.
* **Necessity**: Would a remote consultation be the most appropriate for the patient? Is the image sufficient to make an informed decision about any diagnosis or is a more detailed examination required? This should be discussed at the outset of the consultation.
* **Consent:** There must be consented to receive and store any photograph from a patient. It should be noted that consent is required irrespective of who is suggesting forwarding the image.
* **Capacity:** Parental permission may be needed for any images of children who lack capacity, although Gillick competencies will be a consideration. Should it be an adult who lacks capacity, the clinician must be satisfied that the forwarding of the image is in the patient’s best interests.
* **Receipt and storing of images:** Should any image be forwarded by email; the clinician should request that this is sent to their secure and encrypted NHS.net or NHS.uk email address. The image should be uploaded into the patient’s medical record with both the original email and image then being deleted from the clinician’s account.

Should a patient refuse to allow any image of them to be retained in their medical record then the clinician must decide whether this is the most appropriate or safest form of consultation as potentially this will no longer be in the best interests of the patient.

## Intimate images

The [MDU](https://www.themdu.com/guidance-and-advice/latest-updates-and-advice/receiving-and-storing-patient-images-from-online-consultations) explains that intimate images (genitalia, anus and breasts) create particular medico-legal risks and in a normal consultation, when an intimate examination is needed, a chaperone would be offered to the patient.

A further consideration is that taking, sending, and receiving intimate images of children under 18 may potentially lead to a criminal investigation. Frail patients and those lacking capacity may need assistance from others in trying to obtain an intimate photograph and this could seriously impact their dignity and be an unreasonable burden on family or carers.

Consequently, when the need to obtain an intimate image arises in a clinical setting, and it is not possible to safely defer the consultation, the question arises as to whether a remote consultation is appropriate. In those circumstances, it should be considered whether the patient should be seen in person or a referral to a specialist colleague made when this is appropriate and necessary.

## Online services

Patient services must not be compromised when attempting to reduce footfall within the organisation and, at this organisation, online services will include patients having the ability to:

* Ask questions.
* Report symptoms
* Submit an administrative request.
* Discuss other information.
* Review a known problem or condition.
* Upload photos where appropriate.

During the consultation, clinicians should ask and record who is in the room with the patient and ask more questions than normal about how the patient is doing generally. If the consultation is with a child, they should try to speak with the child if appropriate. If this is not possible, ask to see the child on the video. After the consultation, a detailed record is required within the patient’s notes.

Additional guidance can be found in [NHS E Online consultations in Primary Care Toolkit](https://www.england.nhs.uk/wp-content/uploads/2020/01/online-consultations-implementation-toolkit-v1.1-updated.pdf).

## Remote consultation principles

At this organisation, clinicians will adhere to the [GMC principles](https://www.gmc-uk.org/professional-standards/professional-standards-for-doctors/making-and-using-visual-and-audio-recordings-of-patients/principles) when providing remote consultations to patients.

# Consent

## Consent

As per the [GMC guidance](https://www.gmc-uk.org/-/media/documents/Making_and_using_visual_and_audio_recordings_of_patients.pdf_58838365.pdf), staff at this organisation must obtain the patient’s consent to make a recording that forms part of the investigation or treatment of a condition or contributes to the patient’s care. Staff must explain to the patient why a recording would assist their care, what form the recording will take and assure them that the recording will be stored securely.

Furthermore, whenever practicable, staff should explain any possible secondary uses of the recording in an anonymous or coded form when seeking consent to make the recording. Staff must record the key elements of the discussion in the patient’s medical record. Patients must be advised that they have the right to withdraw consent at any time.

## Patients who lack capacity

Should a clinician judge that an adult patient lacks capacity to decide upon an investigation or procedure that involves a recording, they mut adhere to [GMC guidance](https://www.gmc-uk.org/-/media/documents/Making_and_using_visual_and_audio_recordings_of_patients.pdf_58838365.pdf) and obtain consent from someone who has legal authority to do so on the patient’s behalf before making the recording.

In a situation when no individual has legal authority or when treatment must be provided immediately, recordings may still be made providing they form an integral part of an investigation or treatment that is being provided.

For further detailed information, see the organisation’s [Mental Capacity Act Policy](https://practiceindex.co.uk/gp/forum/resources/mental-capacity-act-policy.1105/) and [CQC GP MythBusters 10: GPs and the Metal Capacity Act 2005 and Deprivation of Liberty Safeguards](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi42oP0sOGDAxWVQkEAHba6An8QFnoECBAQAQ&url=https%3A%2F%2Fwww.cqc.org.uk%2Fguidance-providers%2Fgps%2Fgp-mythbusters%2Fgp-mythbuster-10-gps-mental-capacity-act-2005-deprivation-liberty-safeguards&usg=AOvVaw0j8t6UhyLdZpxk345H539U&opi=89978449).

## Consent for children and young people

The [GMC](https://www.gmc-uk.org/-/media/documents/Making_and_using_visual_and_audio_recordings_of_patients.pdf_58838365.pdf) advises that children or young people under 16 who have the capacity and understanding to give consent for a recording may do so but clinicians must encourage them to involve their parents in decision making.

When a child or young person is not able to understand the nature, purpose and consequences of the recording, staff must obtain consent from a person with parental responsibility to make the recording.

For further detailed information, see the organisation’s [Consent Guidance](https://practiceindex.co.uk/gp/forum/resources/consent-guidance.707/) and [CQC GP MythBusters 8: Gillick competency and Fraser guidelines](https://www.cqc.org.uk/guidance-providers/gps/gp-mythbusters/gp-mythbuster-8-gillick-competency-fraser-guidelines).

## Disclosure and use of recordings

The [GMC](https://www.gmc-uk.org/professional-standards/professional-standards-for-doctors/making-and-using-visual-and-audio-recordings-of-patients/recordings-made-as-part-of-a-patients-care-including-investigation-or-treatment-of-a-condition) stipulates that recordings made as part of the patient’s care form part of the medical record and should be treated in the same way as written material in terms of security and decisions about disclosures. It is therefore essential that staff at this organisation adhere to the GMC’s [Confidentiality: good practice in handling patient information guidance](https://www.gmc-uk.org/professional-standards/professional-standards-for-doctors/confidentiality).

The GMC further advises that anonymised or coded recordings may be disclosed for use in research, teaching or training, or other healthcare-related purposes without consent. In deciding whether a recording is anonymised, clinicians should bear in mind that insignificant details may still be capable of identifying the patient. Clinicians should be particularly careful about the anonymity of such recordings before using or publishing them without consent in journals and other learning materials, whether they are printed or in an electronic format.

## Patient’s request for copies

Patients and their parents/carers have the right to obtain copies of the clinical notes under the Data Protection Act 2018. The normal rules for a subject access request apply and the Subject Access Request Policy should be followed when dealing with a request of this type.

For more information refer to the [Access to Medical Records Policy](https://practiceindex.co.uk/gp/forum/resources/access-to-medical-records-policy.1702/).

## Consent for publication

If a recording is to be used in any type of public media, then staff must obtain the patient’s consent in writing using the form at [Annex A](#_Annex_A_–_1). This is regardless of whether the patient will be identifiable from the recording.

The [GMC](https://www.gmc-uk.org/-/media/documents/Making_and_using_visual_and_audio_recordings_of_patients.pdf_58838365.pdf) advises that if a clinician wishes to publish a recording of a patient which was made as part of their care and consent was not obtained at the time the recording was made, then consent must be obtained. If the recording is anonymised, it is good practice to seek consent prior to publication.

## Covert recording without consent

Covert recording should ordinarily not be undertaken unless in exceptional circumstances and when there is no other way to obtain information.

Examples of this could include:

* When it is necessary to investigate or prosecute a serious crime
* Should there be a need to protect someone from serious harm, such as if there are grounds to suspect a child is being harmed by a parent or carer.

Before any covert recording can be conducted, authorisation must be sought from a relevant body in accordance with the law. In any situation when covert surveillance is proposed, the clinician should discuss this with an experienced colleague and/or seek independent expert advice.

Patients should be informed of any use of CCTV. Refer to the [CCTV Monitoring Policy](https://practiceindex.co.uk/gp/forum/resources/cctv-monitoring-policy.950/) for further information including CCTV signage that can be used.

# Data and its protection

## Storing and disposing of recordings

The [GMC](https://www.gmc-uk.org/-/media/documents/Making_and_using_visual_and_audio_recordings_of_patients.pdf_58838365.pdf) explains that recordings made as part of the patient’s care will form part of the medical records and must be treated in the same way as other medical records. Should a recording be made for secondary purposes, staff must ensure that there is an agreement about the ownership, copyright, and intellectual property rights of the recording. Recordings are to be retained in accordance with the [Records Management Code of Practice](https://transform.england.nhs.uk/information-governance/guidance/records-management-code/) and [Record Retention Schedule](https://practiceindex.co.uk/gp/forum/resources/record-retention-schedule.767/).

For further detailed information, see the organisation’s [UK GDPR Policy](https://practiceindex.co.uk/gp/forum/resources/uk-gdpr-policy.1703/).

The [ICO](https://ico.org.uk/for-organisations/advice-for-small-organisations/whats-new/blogs/practical-methods-for-destroying-documents-that-are-no-longer-needed/) provides guidance on the deletion of digital information.

## Receipt and transferring data.

It should be noted that, when the patient has chosen to capture and transfer images, issues of device usage/transfer and data protection/information governance are not relevant until the image has been received by the healthcare professional.

Once the image has been received by a healthcare professional, any onward data transfer and storage should meet data protection regulations and information governance requirements. Issues of consent will differ and will relate to any onward transfer, storage, and use of the images only once they have been received.

Note: Consent is required to be recorded for every single transmission.

## Sending sensitive information via NHS mail

As previously detailed, should any image be forwarded by email, the clinician should request that it is sent to their secure and encrypted @nhs.net or @nhs.uk email address.

Should a clinician need to forward or respond to an email that contains sensitive information, they can do so, even to a non-secure email address. However, they must always evaluate whether the email platform is the most appropriate method to communicate such data.

Additional information can be found in NHS E [Guidance for sending secure email (including to patients)](https://digital.nhs.uk/services/nhsmail/guidance-for-sending-secure-email).

## Sending sensitive information via a mobile phone

Emails may need to be accessed by a mobile phone although, should the email then need to be forwarded, this should only happen providing the following can be confirmed:

* It can be guaranteed that all PID can be encrypted.

* Bluetooth is disabled and will not be used to make the transfer of the images.
* Images can be downloaded using a wireless network provided the network conforms to the required level of encryption.
* It is acceptable to transfer data from a mobile device using a cable between the device and a desktop PC if the PC is not used as a storage device.

In circumstances when a secure transfer cannot be guaranteed, data should be anonymised as a solution and then safely transferred.

## Data Protection Impact Assessment (DPIA)

It is considered best practice to undertake DPIAs for any existing audio visual or photographic procedures to ensure that this organisation meets its data protection obligations. DPIAs are classed as “live documents,” and processes should be reviewed continually. As a minimum, a DPIA should be reviewed every three years or whenever there is a change in a process that involves personal data.

For further detailed information and a DPIA template, see the organisation’s [UK GDPR Policy](https://practiceindex.co.uk/gp/forum/resources/uk-gdpr-policy.1703/).

## Reporting data breaches, incidents, and weaknesses

At this organisation, should any member of staff become aware of a data breach, they are, when possible, to contain the breach and advise their line manager immediately.

The reporting of any losses, theft or damage to documentation or computer assets should be made at the first possible opportunity and with a degree of urgency. This should then be reported to the Information Governance Lead and/or the Data Protection Officer (DPO).

Information to be provided will include details of the losses or incidents and a detailed description of the data lost using the appropriate breach reporting form. Near misses and weaknesses will also be reported through this method.

For further detailed information, see the organisation’s [UK GDPR Policy](https://practiceindex.co.uk/gp/forum/resources/uk-gdpr-policy.1703/).

## Standards and expectations

All staff must adhere to the National Data Guardian (NDG) [10 Data Security Standards](https://www.digitalcarehub.co.uk/data-security-protecting-my-information/national-policy/). The standards outline the value of the safe, secure, appropriate, and lawful sharing of data.

# Assets and security

## Equipment storage and preparation

For the purposes of training, audio-visual recording or clinical photography is ordinarily to be undertaken using the organisation’s camera/digital video recorder/mobile device which is registered in the [Asset Register](https://practiceindex.co.uk/gp/forum/resources/information-asset-register.1895/).

When not in use, equipment is stored securely. The Practice Manager or nominated deputy will ensure that the video camera or camera is signed out to the relevant clinician or photographer upon request. On completion of the recording, the organisation camera/digital video recorder/mobile device is to be returned and signed in by the Practice Manager or nominated deputy.

Under no circumstances is the organisation’s camera/digital video recorder/mobile device to be removed from the premises without prior authorisation from the Practice Manager or their nominated representative.

The organisation’s camera/digital video recorder/mobile device must be assessed prior to use to ensure functionality. Also, the date and time on the device must be accurate.

It is best practice not to have multiple patients’ photographs stored on the internal memory of devices.

Further information regarding the security of portable devices can be found within the [Portable Device Policy](https://practiceindex.co.uk/gp/forum/resources/portable-device-policy.967/).

# Using mobile devices

## Recommended guidance.

This organisation will follow the [UK Guidance on the Use of Mobile Photographic Devices in Dermatology](https://cdn.bad.org.uk/uploads/2022/04/12110740/MobPhotDevFinalA4pages4-7-17.pdf) when using a mobile device to make a recording of any type. The guidance covers the following:

* The benefits and risks of using mobile devices
* Data protection and confidentiality issues
* Taking patient images with mobile devices
* Standards on consent, use of mobile devices and the safe transfer and storage of images captured with mobile devices.

At this organisation, staff are reminded that the transferring of images via mobile devices must only be done using the Pando app.

The [BMJ’s Medical photography using mobile devices guidance](https://www.bmj.com/content/378/bmj-2021-067663) details the key principles of medical photography, including:

* Lighting
* Focus
* Location and severity
* Colour
* Perspective and positioning

**Receiving images directly from patients (not via video consultation)**

There may be times that remote consultations are taking place and patients will send images to the organisation for diagnosis and treatment. These images are only to be stored on organisation systems and not personal mobile phones.

As a general principle of good practice, patient or staff identifiable information should not be stored on a mobile computer unless it is encrypted to the standards required in the organisation’s [Portable Device Policy](https://practiceindex.co.uk/gp/forum/resources/portable-device-policy.967/).

Should a patient be requested to submit an image directly to the organisation, they should do so using the process detailed on the organisation’s website. This includes completing an e-form and uploading a photograph.

# Recommended practice for video consultations.

**Patient verification**

The clinician should, on calling the patient, verify the identity of the patient and ensure their details match those recorded in the clinical system.

If the patient is well and able to speak to the clinician directly then a basic identification process should first be undertaken by asking the patient their full name, date of birth and full address.

Verification can also include:

* Patient information and contact details being matched against the patient record.
* Use of NHS Spine integration for patient matching
* Checking details with patients and a visual ID check where possible.
* Physical checking of photo ID by organisation staff for initial use on VCA

**Speaking to a family member or proxy**

If the clinician calls the patient and a family or proxy member answers, it is advisable in the first instance to ask whether the patient can speak to them. If they are able to, the clinician should complete the outlined identification checks with the patient and then ask them who the family member is and ask if they are happy for the consultation to be completed with the family member/proxy on their behalf as the patient may struggle in any number of ways (hearing, retaining information, understanding etc.) and normally would attend an appointment with the family member who leads the discussions.

If the patient cannot verify their identify prior to the clinician talking to a family member – due to them not being well enough or not having capacity – then the clinician should record this and act in the best interest of the patient. It is likely to be in the best interest of the patient that the consultation goes ahead.

The clinician should ask the family member who they are and if they can verify the patient’s identity. The clinician should record within the notes that the consultation took place within the patient’s involvement and record the reason for this.

**Multiple staff in the room**

If the clinician has another member of staff in the consultation room with them when conducting a video consultation, they must ensure the patient is made aware of this and be asked to indicate that they are happy to proceed. This should be recorded in the consultation notes.

## The process

To ensure compliance with the referenced legislation, the clinician must:

* Explain to the patient the purpose of the request to make the recording.
* Ensure the patient understands why the clinician wishes to make the recording.
* Ensure consent has been given freely, without influence.
* Obtain the patient’s signature on the organisation consent form.
* Advise the patient that it is their right to withdraw their consent at any time.
* Ensure consent is recorded.

Once the clinician is satisfied that the above actions have been completed, they will set the video camera to record and commence the consultation as they normally would.

At the end of the consultation, the patient should be offered the opportunity to review the consultation and reaffirm whether they are happy for the recording to be used for future teaching purposes if they previously had consented to this or if they wish the recording to be used solely for the purpose of training in relation to this consultation.

# Patients recording consultations or conversations.

A patient must discuss and have gathered consent to record any consultation or discussion, if this is done without a person's knowledge this is deemed as a breakdown in trust and further advice and action will be taken.

# Recording staff meetings

## Considerations

There may be circumstances when it is appropriate or deemed to be useful to audio-record a general meeting or a meeting with a member of staff. Recording a meeting is a reasonable request as it provides guarantees that all notes can be relied upon for accuracy.

While any recording is to ordinarily ensure that there is a confirmed record, the accuracy is especially important when there is a lot of information being discussed such as at an organisation meeting or within a staff specific setting such as on which is disciplinary, grievance or performance related.

## Prior to recording a meeting

Before any recording commences, the following should be discussed and agreed by both parties.

* Agreement to record should be obtained although it should be noted that having agreement to record is not an absolute requirement, e.g., for operational need or purpose.
* The recording device will be identified, and no covert recording can be made by any of the attendees in the premises or consulting rooms.
* If using for disciplinary, grievance or performance purposes, a copy of the recording should be offered to the staff member who the meeting is about. This must be an accurate copy and not have been amended.
* Staff should be assured that it is in their best interests as the record of the meeting will be accurate, fair and that there can be no misunderstandings at a later point.
* The recording will not be shared to third parties unless this is an absolute requirement.

## Recording equipment

Should all involved parties agree it that the meeting will be recorded, it is unlikely that a second means of minuting, such as the services of a note taker, will be used. As such, it is essential to ensure that equipment is fully functioning before the meeting begins. This should include:

* Power sources fully charged.
* Sound is adequate throughout the room.
* All are positioned so that they can be heard.

# Use of telephones

## Acceptable and authorised use

Organisation phones are only to be used for the purpose of organisation business. Personal use is prohibited except in the event of an emergency. Calls to premium-rate telephone numbers are also prohibited. Calls to areas outside the UK are blocked. Should it be necessary to call a number, Practice Manager authorisation will be required.

## Answering protocol

All staff are required to answer the organisation telephones in the same manner, answering as follows:

* Use the appropriate salutation.
* Please be advised, calls are recorded (with a justification given)
* The staff member should give their name and ask, *“How can I help you?”*
* The request should be actioned as appropriate.
* If appropriate, place the call on hold (advising the caller of this) until the request can be processed.
* Always speak in a polite and professional manner

## Assuring telephone standards

A regular comment or complaint often comes from the manner in how the patient feels that they are spoken to. Often there is dispute as the staff member feels that they have been courteous although the patient may feel otherwise.

To support this, at this organisation, telephone calls are recorded as a tool to assist with both responding to any complaint or concern and to support the team by reducing any negative concerns by monitoring the quality of the call.

To ensure that these relevant standards are being maintained, this organisation will undertake a regular compliance audit that will involve call monitoring and provide both feedback and, when required, additional training to ensure that an efficient and excellent service is offered.

There is a set of key standards that it is expected each patient or caller will receive. When auditing the quality of any call, it is expected that all these standards will be met.

This policy is updated yearly for any relevant guidance and changes by the Practice management team at Sunniside Surgery