Video, Photographic and Audio Recording

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| Policy Title / Reference | Author | Owner |
| Video Recording and Photography Protocol | Emma Cooper, Cluster DPO (Kafico) | Practice Manager |

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| --- | --- | --- |
| Version | Revision author | Version comments |
| 1 | Emma Cooper, Kafico Ltd | New Draft |
| 1.2 | Emma Cooper, Kafico Ltd | Feb 20 Amendment to length of time CCTV is retained for based on DPO event process review |

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# Scope

This protocol has been drafted for use by customers of Kafico Ltd across Norfolk and Waveney.

At the time of writing and unless alternative protocols have been adopted locally, the protocol applies to;

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| --- | --- | --- |
| Acle Medical Partnership | Boughton Doctors Surgery | Hellesdon Medical Practice |
| Beccles Medical Centre | Bridge Street Surgery | Holt Medical Practice |
| Birchwood Surgery | Cromer Group Practice | Feltwell Surgery |
| Blofield Surgery | St Clement's Surgery | Great Massingham and Docking Surgeries |
| The Brundall Medical Centre | Castle Partnership | The Harleston Medical Practice |
| Coltishall Medical Practice | The Burnhams Surgery | Heacham Group Practice |
| Campingland Surgery | Drayton Surgery | St John's Surgery |
| Hoveton & Wroxham Medical Centre | Roundwell Medical Centre | Staithe Surgery |
| Ludham Surgery | Paston Surgery | Thorpewood Surgery |
| The Market Surgery | Prospect Medical Practice | Upwell Health Centre and Welle Ltd |
| Howdale Surgery | Sheringham Medical Practice | Watlington Medical Centre |
| Litcham Health Centre | Southgate and Wootton’s | Wells Health Centre |
| Mundesley Medical Centre | St James Medical Practice | St Stephen’s Gate |
| Manor Farm Medical Centre | The Fakenham Medical Practice | Plowright Medical Centre |
| Grimston Medical Centre | Aldborough Surgery | Bacon Road / Taverham |
| The Burnham Surgery | Reepham & Alysham Surgery  | Lakenham Surgery |
| Oak Street Medical Practice | UEA Medical Centre | Woodcock Road Surgery |
| Old Catton Medical Practice |  |  |

# Definitions

**Personal Confidential Information** This term is intended to cover information captured by the Data Protection Act 2018 / GDPR (identifiable information about the living), information covered by the Common Law Duty of Confidence / Tort of Misuse of Private Information and finally, information covered by Article 8 European Convention for Human Rights.

|  |  |
| --- | --- |
| **Recordings** | Originals or copies of audio recordings, photographs, and other visual images of patients that may be made using any recording device, includingmobile phones and CCTV. |

# Introduction

This protocol supports staff to manage recording practice so that **The Practice** complies with the requirements of privacy law and observes the rights and freedoms of data subjects.

# Statutory Mandatory Framework

* Data Protection Act 2018
* General Data Protection Regulations (EU) 2016/679
* Common Law Duty of Confidentiality
* The Human Rights Act 1998 (HRA)
* GMC: Making and using visual and audio recordings of patients
* Various ICO Codes of Practice

# Accountable Parties

See Information Governance Policy for key roles.

All staff, whether management or administrative, who create, receive and use Personal Confidential Information have responsibilities to ensure effective reporting and management of information risk for **The Practice**. Employees have a contractual and legal obligation to read and comply with all company policies and to attend mandatory training to support the appropriate management of information.

# Context

Recordings may be used for purposes related directly to the care of the patient, for example, video consultations or as part of the assessment, investigation or treatment of patients’ condition or illness.

They may also be used for “secondary” purposes, such as for training or assessment of healthcare professionals and students or for research.

Whatever the purpose, it is essential that there is a systematic consideration of the rights of individuals and the security of the recording as personal data.

# Transparent and Lawful and Specific

* Patients must be made aware of recording through a multi layered approach.
* This might include information on the website, in posters as well as “just in time” information at the point of contact with the patient.
* Recording can offer convenience to patients such as offering video or telephone consultations, it is important that they are not under pressure to consent and that traditional routes remain available.
* The preferred lawful basis for recordings for direct care purposes or staff training purposes is very likely to be consent, because recordings can represent an unexpected intrusion, particularly where sensitive health information is concerned.
* In order to establish lawful consent, please use the checklist at Appendix A
* The preferred lawful basis for recordings for CCTV or telephone recordings is likely to be “legitimate interests” since the activity is routine for many businesses and public-sector organisations.
* The practice has carried out a ‘legitimate interests’ assessment for these activities that is held by the Data Protection Officer.
* It is essential that the purpose for processing is specified and that any further uses are compatible with the original purpose.
* All recording activities must be logged in the Processing Activities Log.
* The patient has the right to withdraw consent at any time and so you must make them aware of this and stop the recording if the patient asks you to, or if it is having an adverse effect on the consultation or treatment.
* Where recordings have the potential to be used for secondary purposes or further purposes than can be anticipated such as research or discussion at MDT, it is best practice to obtain consent for this prior to the recording.
* Where consent has not been provided for any further uses, recordings must be anonymised or coded before doing so. This should mean that there is no possible way for the individual to be identified from the recording.

# Adequate, Relevant and Not Excessive

* It is important to minimise the personal data and the privacy intrusion when recording.
* The ICO CCTV guidance, for example, indicates that using audio on CCTV is often not necessary for the desired purpose and the same principle should be applied to all recording.
* Consider the length of recording, the information captured, placement of recording devices (i.e. do we need CCTV only in the waiting room or also in the corridor) so that you are capturing only what is necessary for the purpose.
* Consent does not absolve the practice from their obligation to minimise the personal data collected.

# Accurate

* The practice must take every reasonable step to ensure that recordings are accurate and of good quality
* You should regularly check that the date and time stamp recorded on images and audio recordings are accurate (for example, when the UK switches between summer and winter time)
* You should ensure that recordings are appropriately labelled to avoid mismatches with the main record
* Old hardware resulting in poor recordings should be replaced to avoid issues with data quality

# Retention Periods

* Recordings should be kept for no longer than necessary their intended purposes
* Consideration around transcription into hard copy (such that it represents a reduced privacy intrusion) should be made
* CCTV is usually wiped over 28 days to 3 months after recording, retention periods beyond this should be discussed with the Data Protection Officer
* Fair Processing / transparency materials should include information about how long the recordings are retained

# Data Security

* Recording activities must be added to the Processing Activities Log and have a risk score attributed
* All physical assets capable of making audio or visual recordings should be added to an asset log so that they can be tracked and returned when required
* All physical assets capable of making audio or visual recordings should have a nominated owner that can monitor associated risk
* All physical assets capable of making audio or visual recordings should be destroyed in line with the Information Lifecycle and Data Quality Protocol
* All physical assets capable of making audio or visual recordings should not be removed from the premises without being signed out on the asset log
* Where audio or video recordings are made, this should be recorded within the main record along with the consent form (barring CCTV and general telephone recording)
* Disclosure of audio of video recordings to third parties must be subject to an Information Sharing Agreement or discussed with the Caldicott Guardian / Data Protection Officer
* Audio or video recording software that is supported by a third-party provider must be subject to a compliant contract that has been reviewed by the Data Protection Officer
* Transfer of recordings must be through encrypted methods in the first instance. Alternative routes must be discussed with the Data Protection Officer
* Recordings, including still images, must not be obtained using personal devices such as mobile phones.
* Recordings must be stored securely in the shared drive and must not be stored in email accounts, personal drives or on personal devices such as mobile phones

# Information Rights

Individuals being recorded must be informed of their rights

* The right to object to being recorded
* The right to withdraw their consent to being recorded
* The right to rectify inaccurate information that has been recorded
* The right to have their recorded information sent to another Controller
* The right to restrict the use of the recording
* The right to request a copy of the information and confirmation that it is held
* The right to be informed about the use, disclosure and retention of the recording
* The right to make complaints

These rights are described in more detail in the Information Rights and Access Protocol.

# Associated Protocols

This protocol should be read in conjunction with;

* Risk Management Policy
* Change Management Policy
* Information Governance Policy
* Information Rights and Access Protocol
* Information Sharing and Privacy Protocol
* Information Lifecycle and Data Quality Protocol
* Information / Cyber Security Protocol
* Information Incident Protocol
* Information Risk and Audit Protocol
* Data Protection Impact Assessment Protocol
* Freedom of Information Protocol

# Audit Schedule

Outcomes of the protocol will be fed into the Plan, Do, Check, Act cycle as referenced in the Information Risk and Audit Protocol.

# Review

This protocol will be reviewed every year or sooner where necessary

# Appendix A – Consent Checklist

|  |  |  |
| --- | --- | --- |
| Valid Consent Criterion | Detail | Status |
| We have made information about recordings available in a multi layered way | *Example: Information about recordings is available on our website and via the consent form at the point of contact*  |  |
| We ask people to positively opt in. | *Example: individuals are required to ask to use tick box to say they are happy to take part in recordings.* |  |
| We use clear, plain language that is easy to understand. | *Example: We believe our fair processing materials are easy to understand and we are scheduling a review via the PEG in-year* |  |
| We specify why we want the data and what we’re going to do with it. | *Example: The fair processing materials and the consent form make it clear how the information will be used and who will have access* |  |
| We give individual (‘granular’) options to consent separately to different purposes and types of processing. | *Example: individuals are able to indicate what activities they are happy for us to use their data for and which they aren’t. This can be recorded in local systems.* |  |
| We name our organisation and any third-party controllers who will be relying on the consent. | *Example: Our privacy notices list all of our sharing partners specifically by name.* |  |
| We tell individuals they can withdraw their consent. | *Example: contact details are provided for individuals to withdraw consent from any or all of the processing activities.* |  |
| We ensure that individuals can refuse to consent without detriment. | *Example: Withdrawal of consent to recording does not affect the individual’s ability to access our services* |  |
| We avoid making consent a precondition of a service. | *Example: Withdrawal of consent to recording does not affect the individual’s ability to access our services* |  |
| If we offer plan to record children, we only seek consent if we have capacity measures (and parental-consent measures for younger children) in place. | *Example: We have a section within the consent form for parental permission. Our fair processing materials include videos that are accessible for children and young people.* |  |
| We keep a record of when and how we got consent from the individual. | *Example: Consent forms are scanned into the main record.* |  |
| We keep a record of exactly what they were told at the time. | *Example: Consent forms are scanned into the main record* |  |
| We regularly review consents to check that the relationship, the processing and the purposes have not changed. | *Example: Consents are usually on a case by case basis. Where consent is for ongoing recordings, regular checks are undertaken to ensure consent remains valid* |  |
| We have processes in place to refresh consent at appropriate intervals, including any parental consents. | *Example: Quarterly reviews of consents are undertaken to ensure that consent remains valid.* |  |
| We make it easy for individuals to withdraw their consent at any time and publicise how to do so. | *Example: Our staff are trained to action withdrawal of consent and the option is also available on our website.* |  |
| We act on withdrawals of consent as soon as we can. | *Example: Our staff are trained to action withdrawal of consent and the option is also available on our website. The recording protocol makes it clear that if consent is withdrawn, the recording should be stopped and subsequently destroyed where no overriding lawful basis.* |  |
| We don’t penalise individuals who wish to withdraw consent | *Example: Withdrawal of consent does not affect the individual’s ability to access services.* |  |

# Appendix B – Recordings Compliance Checklist

|  |  |
| --- | --- |
| I have identified all the recording that happens at our practice, added it to the Processing Activities Log and shared with our Data Protection Officer |  |
| I am now using the consent form at Appendix C or have checked our current consent form against the checklist at Appendix A |  |
| I have completed my legitimate interest assessment for the use of CCTV at our practice and returned to our Data Protection Officer |  |
| I have completed my legitimate interest assessment for the use of telephone recording at our practice and returned to our Data Protection Officer |  |
| The entries related to recordings in our Processing Activities Log include a retention period for recordings |  |
| All relevant staff are aware of the requirements about minimisation of data captured as part of recordings |  |
| All physical assets capable of making recordings have been added to an asset log so that they can be tracked and returned when required |  |
| All physical assets capable of making recordings have a nominated owner that can monitor associated risk and usage |  |
| The nominated owner will regularly check that the date and time stamp recorded on images and audio recordings are accurate (for example, when the UK switches between summer and winter time) |  |
| All physical assets capable of making recordings will be destroyed in line with the Information Lifecycle and Data Quality Protocol |  |
| All staff involved with making recordings are aware that that should not be removed from the premises without being signed out on the asset log |  |
| Where recordings are made, this is recorded within the main record along with the consent form (barring CCTV and general telephone recording) |  |
| Disclosure of recordings to third parties is subject to an Information Sharing Agreement or discussed with the Caldicott Guardian / Data Protection Officer  |  |
| Audio or video recording software that is supported by a third-party provider is subject to a compliant contract that has been reviewed by the Data Protection Officer |  |
| Transfer of recordings is through encrypted methods in the first instance. Alternative routes will be discussed with the Data Protection Officer |  |
| Staff involved with making recordings, including still images, are aware that they must not be obtained using personal devices such as mobile phones. |  |
| Recordings are stored securely in the shared drive and will not be stored in email accounts, personal drives or on personal devices such as mobile phones |  |
| We are not using old hardware that compromises the accuracy or quality of recordings |  |

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# Appendix C - Consent Form for Recording

I have consented to [insert practice name] making an [audio / video / photographic] recording of [insert activity / body part etc]. I agree that the recording can be used;

[ ]  To provide me with a digital appointment without me visiting the surgery

[ ]  To support my diagnosis or delivery of my care

[ ]  For training and assessment of healthcare staff in training

[ ]  For research purposes, as long as it is shared only with healthcare providers and academics for approved research programmes

I have been informed that the scope of the recording will be;

[practice to enter information about what will be recorded, for example, the video is ONLY of you and the doctor talking together. No intimate examination will be done in front of the camera. OR the recording will not include images, only audio.]

[ ]  I have been aware of my right to object, withdraw my consent, request a copy of the recording, request amendments, restrict the use of the recording, have the recording sent to another organisation and make a complaint.

I have been informed that the recording will be shared with;

[practice to enter information about who the data will be shared with.]

I have been informed that the recording will;

[ ]  Retained as part of my health record

[ ]  Destroyed after XX years

If your consent the recording, please sign below. Thank you very much for your help.

Signed…………………………………………………………………………. Date………………………

Signature(s) of any accompanying person(s) ……….………….…

Practice notes around capacity to consent: