

# The Recording of Images and Clinical Discussions by Patients During Diagnostic Imaging, Interventional Procedures and Radiotherapy Treatment

2<sup>nd</sup> Edition. January 2019

**Imaging Services Accreditation Scheme (ISAS) mapping:**

<https://www.isas-uk.org/default.shtml>

**FR5; section e)** 'The views of patients and their carers, staff and professionals should be sought and taken into account in planning service development. Patient involvement might be achieved through lay representation in department management structure, use of suggestion boxes and 'mystery patients', focus groups or formal public consultation'.

[https://www.sor.org/system/files/article/201810/fr\\_5.pdf](https://www.sor.org/system/files/article/201810/fr_5.pdf)

**PE1 commentary (c)** - All patient information material should be patient-friendly, current, and have a review date. It should be updated frequently to take into account changes in: technique; staff; facilities; location; and public expectations. Involvement of lay people and patients in the preparation of materials is strongly encouraged. Processes should be in place to ensure that patient information conforms to local styles and templates and is approved before release.

[https://www.sor.org/system/files/article/201810/pe\\_1.pdf](https://www.sor.org/system/files/article/201810/pe_1.pdf)

## 1. Introduction

- 1.1. The Society of Radiographers (SoR) is aware of an increasing number of requests by patients (and/or those persons accompanying them) to record their diagnostic imaging investigation, clinical discussion or treatment using mobile phones and other devices. This document gives advice on the issues involved and links to national guidance published by organisations such as the National Institute for Health and Care Excellence (NICE). It also refers to the 2018 General Data Protection Regulation and previously published advice from NHS Protect (England).
- 1.2 The aim of this document is not to dictate local policy but to provide background information and to discuss general principles. This will allow local policies to be determined that are able to take account of all relevant circumstances, which are likely to be very varied. Guidance on the many factors that need to be taken into account when formulating local policy is provided in section 5.
- 1.3 The term 'patient' is used throughout unless not applicable (as in some screening situations) where 'service user' is adopted as an alternative.
- 1.4 This document applies to the diagnostic imaging and radiotherapy workforce and includes students. It does not refer to the taking of images during obstetric ultrasound examinations by sonographers at the request of a patient or service user where there is an agreed procedure between the ultrasound department and the employer. This is usually for a previously advertised fee and for which the SoR has separate guidance.<sup>1</sup> Imaging departments may also have contracts with, for example, a local chiropractor or dental practice to provide patients with digital copies of their images and this guidance, again, does not apply to those situations.
- 1.5 This document applies to all four UK countries. Where a reference or discussion point relates to a specific country this is indicated. There may, however, be detailed differences between the four countries in the civil and criminal law that relate to this document. Local advice

should be sought if required. This document is meant as guidance only and does not constitute legal advice

## **.2. Sources of Information and Discussion**

- 2.1 Members of the diagnostic imaging and radiotherapy workforce as well as students working alongside them may be asked by a patient or their family member, friend or advocate, if they can make their own recording of an imaging examination, clinical discussion or treatment. This request may perhaps be to use a mobile phone to record videos or capture still images of the display screen, to record on a digital recording device or utilise other digital or analogue recording media. With rapid developments in communications technology the ways in which such recordings are possible are likely to become ever more varied. There are a wide range of situations in diagnostic imaging, screening and radiotherapy where such requests might be made.
- 2.2 Usually a patient will request to make their own video and/or audio recording but these requests may sometimes be made on their behalf. In this situation the patient whose medical record it is must give their permission.
- 2.3 Images and audio of other service users or of the professional workforce may also be included in videos and audio recordings and shared on social media without consent. It can then be impossible to remove these non-consensual recordings from social media, particularly if no prior notice of policy has been communicated.
- 2.4 Video recording in particular, by a patient or third party, can also be a considerable distraction for the healthcare professional at a time when they require very high levels of concentration.
- 2.5 Many healthcare professionals and students therefore have concerns when asked by a patient or someone accompanying them if they can make their own recording, including concerns that these recordings will be used in some way against them.
- 2.6 There can, however, be very good reasons for these requests and it can help patients make informed choices. For example, some patients may have hearing or learning difficulties; for some their first language may not be English. It is also the case that without a recording of what may be a critical clinical discussion at a time of great stress for the patient, much of what has been said to them may be forgotten or confused.<sup>2</sup>
- 2.7 The National Institute for Health and Care Excellence (NICE) has guidance on improving the experience of care for people using adult NHS services (CG 138, 2012).<sup>3</sup> This document refers to general principles and in section 1.5.16 states:

*“Ask the patient whether they want to be accompanied by a family member, friend or advocate, and whether they would like to take notes and/or an audio recording of the consultation.”*

- 2.8 The General Medical Council (GMC) states that they: <sup>4</sup>

*“...expect doctors to give patients the information they want or need to know in a way that they can understand. You should make sure that arrangements are made, wherever possible, to meet patient’s language and communication needs.”*

2.9 The Health and Care Professions Council have similar advice to the GMC within their Standards of Conduct, Performance and Ethics; Section 2, 2.1.-2.4: <sup>5</sup>

*"You must give service users and carers the information they want or need, in a way they can understand."*

2.10 The Society and College of Radiographers in 2018 published a document on patient centred care entitled '*Patient, Public and Practitioner Partnership within Imaging and Radiotherapy: Guiding Principles*'. This document refers to the 'patient voice' and how best to engage patients and public as stakeholders within imaging and radiotherapy practice.<sup>6</sup>

2.11 The Medical Defence Union (MDU) has published advice that provides relevant information.<sup>7</sup>

Two specific points from this advice are that:

*"Patients do **not** need permission to record a consultation"* and;

If found to be covertly recording:

*"...you would **not** be justified in refusing to continue to treat the patient."*

This MDU publication also advises:

*"Be aware that recordings (even those made covertly) have been admitted as evidence of wrongdoing by the General Medical Council and in court. However, they can also prove the opposite. If you have acted ethically and professionally, you should have no reason to worry."*

2.12 The Medical Protection Society (MPS) has also published similar advice.<sup>8</sup>

2.13 In 2016 NHS Protect (England) published a document entitled '*Patients recording NHS staff in health and social care settings*'.<sup>9</sup> NHS Protect was closed in November 2017 and its functions taken over by the NHS Counter Fraud Authority. This NHS Protect document refers to the legal context of audio and video recordings of NHS staff and contains much relevant advice. Some of the key points within this document are included in the SCOR guidance in section 5.

2.14 Ensuring explanation and clear understanding before commencement of diagnostic imaging examinations or treatment can be very helpful in avoiding problems that can sometimes arise, as can the provision of pre-examination information explaining policy, particularly in the case of obstetric ultrasound (see section 4.2 for considerations in obstetric ultrasound).

### **3. General Data Protection Regulations, 2018**

3.1 Any local policy regarding the data protection implications of patients making their own recordings of diagnostic imaging, clinical discussions or treatment should have the support of the employer.

3.2 Policies should be developed in consultation with the Trust/Board data protection officer to ensure that they are compliant with the requirements of the 2018 General Data Protection Regulation (GDPR). The recording of a consultation is likely to constitute processing of personal data under the GDPR and as such has to comply with the provisions of the Regulation. There is, however, an exemption from the regulation where personal data is

processed by individuals for their own personal purposes. In this situation, since the Trust/Board is not responsible for generating or making the recording, it is not liable for safeguarding the confidentiality, integrity or security of such material.<sup>9</sup>

3.3 If a recording is made by or on behalf of a patient with their consent then the ownership is with them and they may do with it as they wish.<sup>9</sup> This could include disclosing the details of their consultation with third parties or sharing on social media sites. It may be possible to ask them to share this data for storage on their medical record but this will often be difficult in practice as mobile phones etc. will not be compatible with Picture Archiving and Communication Systems (PACS) or other digital radiology systems and may entail considerable time and effort to include.

#### **4. Examples of Requests from Service Users to Record Diagnostic Examinations, Clinical Discussions and Treatments**

##### **4.1 Clinical Discussions**

It is common for service users to ask to record a clinical discussion which may be associated with an attendance for diagnostic imaging or radiotherapy treatment and there may be good reasons for them to do so (see section 2 for discussion and rationale).

##### **4.2 Obstetric Ultrasound**

There are special considerations relating to requests to record obstetric ultrasound examinations which are discussed more fully in the SCoR Guidance document '*NHS Obstetric Ultrasound Examinations. Guidance on Sale of Images, Fetal Sexing, Commercial Considerations and Requests to Record*'.<sup>1</sup>

Requests to record, e.g. using a mobile phone or other digital recording device, are usually made to provide a record for 'social' and not clinical discussion reasons. Such requests can be a major cause of distraction in a highly litigious area of practice and at a time when a very high level of concentration is required on the part of the sonographer. Images and audio recordings that include the sonographer may later be shared on social media without consent and can prove impossible to remove.

##### **4.3 Diagnostic Imaging**

Parents may sometimes ask to take pictures of their children having an x-ray/scans for trauma or other diagnosis and also take a picture of the resultant image on the display screen. These may later be shared with family and friends and may be shared on social media. Adult patients may also ask to take such pictures as a record of their attendance and to perhaps later share with others, including via social media. Local policies should take account of these situations and others that may be considered likely to arise. There may already be existing local policies on patients making audio and video recordings that can be referred to, for example the video recording of a birth.

##### **4.4 Radiotherapy**

Patients may ask to photograph or video the team of radiotherapy professionals and students who have been involved in what may have been a long treatment programme for that particular patient.

There may also be requests to take images of the equipment or treatment areas that includes staff members.

## **5. SoR Guidance**

- 5.1 There can be good reasons why a patient wishes to record a clinical discussion, consultation or treatment. Patient recordings which are made either overtly or covertly in order to keep a personal record of what is said are deemed to constitute personal 'note taking'.<sup>9</sup> SoR guidance is that the same principle is likely to apply to requests to make an audio or video recording of a diagnostic imaging examination. Permission is not required to do so, but common courtesy suggests that agreement should be sought via a verbal request.
- 5.2 Departments should have policies and procedures in place relating to the audio and video recording of diagnostic imaging examinations, clinical discussions and treatments. There are likely to be various scenarios where requests to make video and/or audio recordings by patients need to be considered. These policies and procedures should take into account local and national guidelines (e.g. NICE Guidelines<sup>3</sup>) and advice from professional bodies, regulators and other relevant organisations.
- 5.3 There are special considerations for obstetric ultrasound examinations as discussed in section 4.2 that must be fully taken into account when developing local policies. Further information can be found in the SoR guidance document '*NHS Obstetric Ultrasound Examinations. Guidance on Sale of Images, Fetal Sexing, Commercial Considerations and Requests to Record*'.<sup>1</sup>
- 5.4 When formulating local policy the views and concerns of members of the professional workforce and students both as a group and individually should be taken into account.
- 5.5 Any recording by a patient or on their behalf and with their permission should be done honestly and openly.
- 5.6 The recording process must not interfere with the diagnostic imaging examination, screening or treatment.
- 5.7 Patients should be informed that a note will be made in their health record stating that they have recorded the diagnostic imaging examination, clinical discussion or treatment being provided.<sup>9</sup>
- 5.8 Departments should include relevant patient liaison groups in the development and delivery of local policies and procedures and ensure they are made available to the public.
- 5.9 Requests to record have the potential to extend the time of the diagnostic imaging examination, screening or treatment which may be contrary to published safety advice and guidance associated with that procedure or treatment. Risks to patients must not be increased by recording or photographing, e.g. radiation protection measures must be adhered to where these apply.
- 5.10 Departments should consider how staff might respond to situations where videoing and/or audio recording begins or continues without prior discussion and contrary to any locally

agreed policy. This should include any records to be kept and any advice to be given to the patient or service user about the status of the recording/images.

- 5.11 No part of a covert or overt recording of a patient's clinical discussion or consultation should be disclosed to a third party without the prior consent of the other recorded parties.<sup>8</sup> This includes the sharing of a recording on social media.
- 5.12 Local policy should refer to the fact that misuse of recorded material, such as where it is used to cause detriment to or harass any individual, may constitute a civil or criminal offence.
- 5.13 The legal perspective where images and discussions recorded by a patient may be referred to in the event of litigation should be considered.<sup>7</sup>
- 5.14 Considerations arising from the 2018 General Data Protection Regulation will need to be agreed and discussed at a local level with the Trust/Board data protection officer.
- 5.15 A clear explanation and understanding before commencement of the diagnostic imaging examination or treatment can be very helpful in avoiding problems that can sometimes arise, as can the provision of pre-examination information explaining policy, particularly in the case of obstetric ultrasound.
- 5.16 Once agreed, policies and procedures should be followed by all and supported by department and Trust/Board management as part of an organisation's overarching governance framework. Policies should be updated frequently and have a review date.

## References

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