

Guidance on the use of Electrical Recording Devices to record staff and/or patients

Version: 1

Summary:	This guidance provides staff with an understanding over the legalities and appropriateness of the use of mobile electrical recording devices. It also covers the use of static CCTV set up in patient's homes. It relates to the recording of staff and patients.	
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Quick Reference Guide

For quick reference, this page summarises the actions required by this policy. This does not negate the need to be aware of and to follow the further detail provided in this guidance.

This guidance provides clarity over:

- the potential legalities of staff being recorded whilst delivering services and care to patients and service users either by mobile devices or static CCTV systems [covert or overt]
- the appropriateness of service users and patients recording themselves and/or other patients when receiving care from Southern Health Foundation NHS Trust
- processes to be followed where inappropriate recording is taking place

This guidance recognises that often staff will feel uncomfortable in the knowledge that they are being filmed, but should not terminate any consultation unless there is a valid reason to do so.

Contents

	Page	
1	Introduction and Purpose	5
2	Scope and Definitions	6
3	Process/requirements	7
	3.1 Requirements	7
	3.2 Mental Health/Learning Disability in-patient facilities	7
	3.3 In-patient facilities [non Mental Health/Learning Disability]	9
	3.4 Clinic settings [including external clinic locations]	9
	3.5 Patients Home	10
	3.6 Failure to comply	10
	3.7 Potential legal action	10
	3.8 Incident reporting	11
4	Roles and Responsibilities	12
5	Training	12
6	Equality impact assessment and mental capacity	12
7	Success criteria / monitoring effectiveness	12
8	Review	13
9	References and links to other documents	13
Appendix 1	Equality Impact Assessment	14
Appendix 2	Example poster – in patient areas	15
Appendix 3	Example poster – other clinical areas	16
Appendix 4	Leaflet for patients – making recordings	17

Guidance for staff regarding the use of patient mobile devices within clinical areas

1. Introduction and Purpose

Southern Health NHS Foundation Trust recognises that the ease and ability to record interactions has increased the likelihood of staff to patient and patient to patient interactions being recorded. Mobile devices with recording facilities are widespread and ownership of them now considered the norm.

Staff should bear in mind that just because a patient or their relative wishes to record a consultation or treatment, this does not automatically breach the Data Protection Act or Human Rights; furthermore there are times when it may be considered good practice for a patient or relative of a patient to record an interaction. For example, during consultations patients are often anxious and this can act as a barrier to good communications. When receiving information patients and their relatives can often only recall small sections of any guidance or advice was shared. Being able to listen to a recording and hear what was said, again and again helps messages to be absorbed and better understood. It also increases the likelihood of guidance being followed improving patient's well-being and safety.

Likewise family members may have recording devices set up [CCTV] in their loved ones homes and these may capture recordings of staff and carers who attend to deliver care. The camera may not have been set up to specifically record the interactions; but simply by being in situ records visits.

It is also important to remember that when any patient/service user is in hospital, communication with family and friends is an essential element of support and comfort. Communication is made easier today with the widespread use of mobile phones and other electronic devices and their integrated functionality including the capability to access the internet; download and play music and/or videos; use camera and video functions to take photographs and make recordings.

The positive elements of the use of such equipment has to be balanced against the fact that the use of mobile phones can be intrusive and impact adversely on the environment of others. Patients/service users have a right to, and a need for, a peaceful environment, both during the day and night, uninterrupted by a number of different ringtones or the sound of another patient holding a discussion. There is the added risk that the mobile device/phone charger cord can itself pose as a ligature risk which is an issue particularly for Mental Health/Learning Disability units.

It must also be recognised that inappropriate and inconsiderate usage of devices can act as a trigger for violence and aggression which may be directed at staff and/or other patients/service user or visitors.

Mental Health facilities follow Department of Health, Social Services and Public Safety [DHSSPS] guidance regarding Deprivation of Liberty (DOLs) and incorporate the principles of "best interest" and "least restrictive intervention" whenever possible. However incorporation of DOL guidance needs to be balanced against the potential risk of harm to vulnerable patients (and visitors) from the inappropriate use of mobile devices, e.g. access to material that can be detrimental to their health and well-being and/or taking unauthorised photographs or video recordings which could interfere with their own or other patients' safety, dignity and privacy. This includes the taking of "selfies" where other patients may be captured within the image or recording. Furthermore there is a significant risk of patient's confidentiality being compromised.

Many NHS services and treatments can be very sensitive and any risk of being recorded and the recording being uploaded to social media may deter patients/service users from attending and seeking necessary treatment, for example attendance at sexual health and contraception services.

Therefore it is important that we control/restrict the use of electronic devices, mobile telephones and associated charging equipment within Southern Health NHS Foundation Trust services and units by taking the following factors into consideration, with the goal of providing:

- a therapeutic environment
- a safe environment
- confidentiality of service users/patients
- protection from potential from abuse from other patients or members of the public
- protecting the human rights of individuals (including DOLs)
- promotion of socially acceptable standards of behaviour
- promotion of positive contact with carers, friends and family

2. Scope and Definitions

Scope

- 2.1 This document applies to all directly and indirectly employed staff within Southern Health NHS Foundation Trust and other persons working within the organisation in line whilst being filmed by patient, relatives or other parties. Staff Behaviour relating to electronic devices is covered by SH IG 51 Audio Visual Recordings Procedure.
- 2.2 This guidance covers clinics where Southern Health employees are providing care, regardless of whether it is an NHS setting or otherwise; for example baby clinics held in a village hall or delivering care in a patient's home.
- 2.3 Southern Health is committed to the principles of Equality and Diversity and will strive to eliminate unlawful discrimination in all its forms. The Trust will strive towards demonstrating fairness and Equal Opportunities for users of services, carers, the wider community and our staff.

Definitions

- 2.4 Throughout this guidance the term 'mobile device' automatically includes mobile phones, camera phones, laptops and chargers, tablet computers and any device which connects to the internet or has the capacity to record either sound or pictures.
- 2.5 Throughout the guidance the terms patient and service user will be used – this is a person who is either an inpatient or who uses SHFT services on a regular or irregular/informal basis.
- 2.6 **CCTV** refers to Closed Circuit Television systems which can be overt [able to be seen] or covert [concealed]. SHFT does not operate any covert systems within its premises without Regulation of Investigatory Powers Act authority from the police.
- 2.7 **Data Protection Act 1998** – The recording of a consultation is likely to constitute processing of personal data under the DPA and as such it has to comply with the provisions of the DPA. There is an exemption in the DPA where personal data is processed by an individual for their own personal purposes. In such cases, the processing

does not engage the data protection principles of the act [the domestic purposes' exemption]. However, further processing of the data would have to comply with the DPA.

- 2.8 **Information Governance** – Information governance refers to the legal and procedural framework that safeguards and ensures the appropriate use of patient and personal information by an organisation. It is important to note that a patient's own private recording is not an information governance issue. As the trust is not responsible for generating or making the recording, it is not liable for safeguarding the confidentiality, integrity or security of such material.

3. **Process/requirements**

Each service and unit will have to consider the implications of this guidance and ensure that local procedures are in place to ensure that the goals are achieved. In-patient settings should include a risk assessment in admission pathways specifically related to phones/devices to ensure that patients are informed of the rules and limitations as well as the consequences of non-compliance.

Signage is included as appendices which may be used to remind patients, services users and visitors over appropriate usage and areas where mobile phones may be used and where there usage is prohibited.

This section has been divided into location types to provide guidance over situations that may occur in specific settings.

3.1 **Recording of staff**

- 3.1.1 There are no specific legal requirements that govern an individual making a personal recording of their medical consultation or treatment, either overtly or covertly, for their private use. Recordings made to keep a personal record of what the doctors said are deemed to constitute 'note taking' and are therefore permitted when undertaken for this purpose. While a patient does not require permission to record their consultation, common courtesy would suggest that permission should be sought in most cases.
- 3.1.2 The content of the recording is confidential to the patient, not the doctor or healthcare staff. The patient can waive their own confidentiality as they wish; this could include disclosing the details of their consultation with third parties or even posting and/or sharing the recording in unadulterated form on the internet through social media.
- 3.1.3 The position may, however change once a recording is no longer used as a record of the consultation, for example where the recording is disclosed or publicised in a modified way which is not connected to the consultation. This could include an instance where it is designed to cause detriment to or harass another individual captured in the recording. Any such disclosure or publication, depending on the nature and context, may attract a civil action for damages and may also be a criminal offence.

3.2 **Mental Health/Learning Disability in-patient facilities**

- 3.2.1 Except in Secure Services the majority of in-patients will be permitted to keep mobile devices/phones (excluding chargers) subject to the satisfactory completion and on-going review of the risk assessment process by the Multi-disciplinary team, including the brief risk screening tool and the comprehensive risk assessment. Controls may include the removal of all mobile devices until any identified risks have been reduced or resolved. All

mobile device/phone chargers must be submitted to staff on admission. Exceptional circumstances will be reviewed and accommodated by the Nurse in Charge.

- 3.2.2 Due to the potential ligature risks, chargers will be removed on admission and stored by nursing staff for safe keeping. All mobile devices can be charged as and when requested at a central point. All chargers in use must be Portable Appliance Tested (PAT) in line with Electrical safety Policy and must be branded. [SH HS 10].
- 3.2.3 The Trust encourages all patients to leave their valuables at home. The Trust will not be liable for patient valuables or property except where the mobile device is being stored by nursing staff in a locked safe. In such cases the property will be checked by two nursing staff and details recorded in the ward property book and the patient will be given a receipt as per the Trust Managing Patient's Property Policy [SH NCP 42].
- 3.2.4 All patients should be advised as part of their care planning that restrictions may be placed on the use of mobile devices as follows:
- The device must not be used to photograph or record the facility/unit; staff or other patients or visitors
 - The ring tone must be set to silent/vibrate
 - The device must not be loaned to others
 - The Trust will accept no liability for damage or loss of mobile phones or electronic devices other than those held in safe keeping
- 3.2.5 Mobile devices **may be** used in the following areas:
- Day room
 - Patient's bedrooms
 - Dining rooms (except during meal times)
- 3.2.6 Mobile devices **may not** be used in the following areas:
- Toilet and bathroom facilities
 - Day Care facilities
 - Recreation room
 - Corridor areas
 - Therapy areas
- 3.2.7 Any patient who is observed using their mobile device in breach of these conditions will be asked to hand their phone in to the nursing staff for safe keeping. Clear explanations will be given as to why this guidance is necessary within the ward environment. If the patient refuses to comply with the request, then the risks will be assessed and discussed within the ward Multi-disciplinary team. Actions will be agreed and recorded in the patient's care plan and discussed with the patient and reviewed regularly. The patient's use of their mobile phone may be closely monitored and supervised if necessary. If, however, the patient is using their phone for an illegal act or an act that is felt to be detrimental to their mental health it may be necessary to contact the nurse in charge for support in removing the mobile phone.
- 3.2.8 Visitors are requested not to use mobile phones whilst on in-patient wards and asked to keep them on silent during the visit to avoid disturbing the peace and quiet of the ward environment.
- 3.2.9 Where mobile phones cannot be used by patients, alternative arrangements (supervised or otherwise) are available through use of payphones or landline.

3.2.10 Each ward will have a process in place where mobile phones/devices can be charged at a central point after 10pm.

3.2.11 All ward areas are responsible for displaying information to patients, visitors and staff about this guidance and local procedures.

3.3 In-patient facilities [non Mental Health/Learning Disability]

3.3.1 The Trust encourages all patients to leave their valuables at home. The majority of patients will be permitted to keep mobile devices/phones (including chargers that have been PAT tested). The Trust will not be liable for patient valuables or property except where the mobile device is being stored by nursing staff in a locked safe. In such cases the property will be checked by two nursing staff and details recorded in the ward property book and the patient will be given a receipt.

3.3.2 All patients must be aware of restrictions being placed on the use of mobile devices as follows:

- The device must not be used to photograph or record the facility/unit; staff or other patients or visitors
- The ring tone must be set to silent/vibrate
- The device should not be loaned to others
- The Trust will accept no liability for damage or loss of mobile phones or electronic devices other than those held in safe keeping

3.3.3 All patients must be aware of the potential disturbance to other patients and should be discouraged from using their devices when others around are resting or sleeping. Nursing staff should encourage patients to move to areas where any call will not create such a disturbance to others.

3.3.4 The device must not be used for the specific recording of other patients or for taking photos or recordings where images of other patients are captured, including “selfies”.

3.3.5 All ward areas are responsible for displaying information to patients, visitors and staff about this guidance and local procedures. Where patients will not comply with this guidance or local procedures, then they must be asked to cease using their telephone. In situations where the patient lacks capacity to understand the implications of the guidance and the impact on others, then the nursing team should liaise with the family to seek their support or for them to remove the device.

3.4 Clinic settings [including external clinic locations]

3.4.1 Patients or their relatives/carers may request to record the consultation or treatment. It should be considered that any recording forms part of the patient’s records and it could be good practice to ask for a copy of the recording to be stored within the medical records. Given the fact that when anxious or fearful our ability to take in information is compromised, it could also be good practice for a patient or their relative to record the consultation to refer to at a later stage.

3.4.2 Refusing to allow the consultation could put a patient’s well-being and safety at risk.

3.4.3 Patients/service users and carers are likely to bring mobile phones and electrical devices when attending appointments or for treatment. At all times the responsibility for the device remains that of the patients and Southern Health takes no responsibility for any loss or damage.

- 3.4.4 There will be other patients present within the clinic settings and they will have a rightful expectation that their patient confidentiality is upheld. The taking of photographs and recordings may not be taken within the waiting areas or public areas; this also includes the taking of “selfies” where other patients’ may be captured in the image or recording.
- 3.4.5 Any patient, carer or person who attends with a patient should be asked to ensure that their device usage does not compromise the therapeutic environment or create a disturbance for other patients; many of who may be anxious and such disturbance may act as a trigger for violence and/or aggression.
- 3.4.5 Where patients refuse to comply, the most senior member of staff must consider the impact on other patient’s confidentiality and determine if the patient should be asked to leave.

3.5 Patient’s home

- 3.5.1 Patients may have CCTV installed with their property or use portable recording devices to record interactions or consultation with staff. While staff may feel uncomfortable with being recorded, it would be inappropriate to decline to treat a patient because the recording is being made.
- 3.5.2 The guidance documented in SH IG 51 applies

3.6 Failure to comply

- 3.6.1 The setting where any failure to comply takes place will predicate how the issue will be managed. Where we have vulnerable patients whose confidentiality is being or is likely to be breached then we have a duty to protect them. In in-patient Mental Health/Learning Disability settings this may include the removal of the device from the user.
- 3.6.2 In other in-patient units then the patient must be advised not to record or photograph other patients. Where the patient lacks capacity to understand the implications of their actions then the patient’s family, where possible, should be encouraged to remove devices.
- 3.6.3 In clinic settings where a patient or service user refuses to comply then they must be advised that failure to comply may mean they are refused treatment.
- 3.6.4 When staff become aware that inappropriate images have been uploaded to social media then they may report the “posting” as inappropriate so that the site may remove the images and narrative. Where appropriate the Security Manager and/or Information Governance Lead can provide support.
- 3.6.5 Not all recordings will be considered an offence but some postings placed on the internet and social media may constitute an offence under:
- Section 5 of the Public Order Act 1986
 - Protection from harassment Act 1997
 - Section 127 of the Communications Act 2003
 - Section 1 of the Malicious Communications Act 1988
 - S.119 Criminal Justice and Immigration Act – Causing a disturbance on NHS premises

3.7 Potential legal action

- 3.7.1 If any part of the covert or overt recording of a patient's consultation is disclosed to a third party, without the prior consent of the other recorded parties, then depending on the nature and the context of such disclosure, a criminal offence may be committed, civil legal action may be taken, or a breach of DPA may occur.

Criminal Offences

- 3.7.2 Criminal offences could arise from unauthorised disclosure, depending on how that disclosure or publication is made. However, the most likely offences could include:
- an offence contrary to section 1 of the Protection from Harassment Act 1997,
 - an offence contrary to section 4, 4A or 5 of the Public Order Act 1986,
 - an offence contrary to section 1 of the Malicious Communications Act 1988, or
 - an offence contrary to section 127 of the Communications Act 2003.
- 3.7.3 This list is not exhaustive and the specific offence charged would depend on the facts. Specific advice can be obtained from the Trust Security Team or Head of Legal Services, Risk & Patient Safety.
- 3.7.4 **Civil action** - Defamation – actions for libel can be brought into the High Court for any published statements which are alleged to defame a named identifiable individual [or individuals; under English law companies are legal persons, and allowed to bring suit for defamation] in a manner which causes them loss in their trade or profession, or causes a reasonable person to think worse of him, her or them. A statement can include an implication; for example, a photograph with an accompanying headline implying wrongdoing or incompetence] could be held as a personal allegation about the individual featured in the photograph.

Civil remedies

- 3.7.5 **Injunctions** – injunction is a civil court order which orders a person to “stop” or to “do” a particular act or thing. A breach of injunction is generally punishable as contempt of court and in some cases can lead to imprisonment. Interim injunctions can be sought to restrain publication where it is known that someone intends to publish defamatory material.

To obtain an interim injunction the aggrieved party must be able to show that they have a substantive cause of action. Injunctions are an ‘equitable’ remedy, which means the court is never obliged to grant them but will exercise its discretion to do so taking into account the conduct of the parties and all the relevant circumstances.

An interim injunction to restrain publication would be likely where a hospital or service becomes aware of someone's intention to publish something defamatory about staff at that organisation. It is unlikely to apply in circumstances where such a recording of a consultation has already been disclosed or published. In this situation, seeking damages may be the most likely remedy. Further advice on injunctions can be obtained from the Head of Legal Services, Risk & Patient Safety or Security Team.

- 3.7.6 **Damages** – are the main means by which somebody who has been defamed can seek redress. General damages are claimed to compensate for a loss of reputation, and special damages to compensate any financial loss incurred as a result of the defamation.

3.8 Incident reporting

- 3.8.1 All incidents where a patient or visitor has photographed or recorded another patient/service user, other than their own family/friend, then this must be reported using Ulysses safeguard to provide a record of the incident and an audit trail. The report must include details of the actions taken as a result of the incident – for example, removal of the device; removal of the patient; improved signage; expectations and consequences set on admission.
- 3.8.2 Staff who have been recorded during a consultation and treatment may record the incident by submitting a Ulysses incident report so that the incident is documented.

4. Roles and Responsibilities

4.1 Managers should ensure that:

- where necessary local procedures have been drafted and are in place for their service/department and that these are available and understood by all staff working in the area
- where a patient refuses to comply with published guidance that staff are supported in applying the procedures in order to protect other patients and visitors, in particular their confidentiality
- appropriate signage is in place to make patients and visitors aware of the restrictions to mobile and electronic device usage

4.2 All staff are empowered to:

- ensure that patients and visitors are aware of the procedures and restrictions
- challenge the misuse of mobile/electronic devices on site

Staff must only use their personal devices as per guidance in

5. Training

- 5.1 There are no specific training requirements for this guidance but all staff should ensure that they are in date with regards to training relating to managing conflict and aggression as this will support them in managing potentially challenging behaviour that may be triggered by asking a person to stop recording or using their device in a way that causes upset or offense.

6. Equality Impact Assessment and Mental Capacity

- 6.1 Include a statement summarising the outcome of the Impact Assessment that was conducted in relation to this document, making reference to the Impact Assessment form which must be appended to the document.

7. Success Criteria / Monitoring Effectiveness

- 7.1 This guidance should support the clinical teams in protecting their patients and service users. Its success can be measured by the number of breaches or potential breaches that are successfully prevented.

- 7.2 The guidance and its effectiveness will be reviewed on an annual basis by the Security Team/IG lead in conjunction with service leads by auditing reported incidents. Details of breaches, together with best practices and learning will be presented as part of the Security Team quarterly and annual reports. Risk issues will be escalated in line with the SHFT Risk Management Guidance and Strategy.

8. Review

- 8.1 This document may be reviewed at any time at the request of either at staff side or management, but will automatically be reviewed two years after initial approval and thereafter on a biennial basis unless organisational changes, legislation, guidance or non-compliance prompt an earlier review.

9. References and links to other documents

Using mobile phones in NHS hospitals – DOH January 2009



Mobiles in Hospitals
DOH.pdf

The Healthcare Commission – core standards *Website:*
www.healthcarecommission.org.uk

Policies

SH IG 18 DPA and Confidentiality Policy
SH HS 10 Electrical safety Policy
SH NCP 42 Managing Patients' Property Policy

Equality Impact Assessment

<u>Step 1 – Scoping; identify the policies aims</u>	Answer
1. What are the main aims and objectives of the document?	To protect patients privacy, dignity and confidentiality
2. Who will be affected by it?	All patients and service users
3. What are the existing performance indicators/measures for this? What are the outcomes you want to achieve?	It is a legal requirement, but currently there are no formal policies in place to protect patients and service users from potential breaches.
4. What information do you already have on the equality impact of this document?	Aware that postings of some vulnerable patients have been made on social media by another patient.
5. Are there demographic changes or trends locally to be considered?	No
6. What other information do you need?	None

<u>Step 2 - Assessing the Impact; consider the data and research</u>	Yes	No	Answer (Evidence)
1. Could the document discriminate unlawfully against any group?		X	
2. Can any group benefit or be excluded?	X		Potentially vulnerable patients or service users can benefit by their confidentiality being protected.
3. Can any group be denied fair & equal access to or treatment as a result of this document?		X	
4. Can this actively promote good relations with and between different groups?	X		
5. Have you carried out any consultation internally/externally with relevant individual groups?		X	
6. Have you used a variety of different methods of consultation/involvement	X		
Mental Capacity Act implications			
7. Will this document require a decision to be made by or about a service user? (Refer to the Mental Capacity Act document for further information)	X		It may result in a service user having their device removed for a period of time.

If there is no negative impact – end the Impact Assessment here.

<u>Step 3 - Recommendations and Action Plans</u>	Answer
1. Is the impact low, medium or high?	
2. What action/modification needs to be taken to minimise or eliminate the negative impact?	
3. Are there likely to be different outcomes with any modifications? Explain these?	

Step 4- Implementation, Monitoring and Review	Answer
1. What are the implementation and monitoring arrangements, including timescales?	
2. Who within the Department/Team will be responsible for monitoring and regular review of the document?	

Step 5 - Publishing the Results	Answer
How will the results of this assessment be published and where? (It is essential that there is documented evidence of why decisions were made).	

****Retain a copy and also include as an appendix to the document****

Patient and visitor information – the use of mobile telephones and recording devices

We welcome patients and visitors to use their mobile devices within our sites and understand that they are a way of keeping in touch. However please be aware that others may be feeling unwell or resting and use of mobile devices can be distracting and disturbing.

Avoid causing a disturbance by:



- Keeping ring tones on silent, vibrate or low volume
- Using the device in areas away from others

The taking of recordings or images of other patients is strictly forbidden as this may breach their confidentiality and may result in a device being removed.

Thank you for your understanding.

Patient and visitor information – the use of mobile telephones and recording devices

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Avoid causing a disturbance by:



- Keeping ring tones on silent, vibrate or low volume
- Using the device in areas away from others

The taking of recordings or images of other patients or attendees is strictly forbidden as this may breach their confidentiality. If you fail to comply then this may result in your being asked to leave the premises.

Thank you for your understanding.

Patient information regarding the making of recordings

Overt patient recordings

Although we cannot place restrictions on a patient wishing to record notes of a consultation or conversation with a health professional, where it is felt necessary by the patient to do so, we ask that:

- Any recording is done openly and honestly to avoid damaging the therapeutic relationship
- The recording process itself does not interfere with the consultation process or the treatment or care that is being administered
- You understand that a note will be made in your health records stating that you have recorded the consultation or care being provided
- You are reminded of the private and confidential nature of the recording and that it is your responsibility to keep it safe and secure
- The recording is only made for personal use
- You are aware that the misuse of any recording may result in criminal or civil proceedings
- You are discouraged from undertaking recordings in the first place unless it is deemed necessary and to ensure that there is a clear understanding of advice, guidance and instructions provided.

Covert patient recordings

Although we cannot place restrictions on a patient wishing to covertly record a consultation or conversation with a healthcare professional, where we become aware that covert recordings are being made, we must remind patients that:

- We promote open and honest recording of consultations where it is deemed necessary by patients
- We will take proactive steps to investigate any concerns that the patient or their family may have with regards to the patient's care to avoid them feeling the need to install covert recordings
- Staff can provide a written record summary, and/or verbatim record [if practical] of their consultation
- As a patients, you are entitled to see your notes, if you so wish by formally asking the healthcare professional in charge of the consultation, or to request a paper copy of their medical notes formally through a Subject Access Request [SAR] made under the Data Protection Act 1998
- If you are unhappy with your treatment or care you may raise a complaint.