



Position statement regarding use and storage of potentially sensitive images

“It is the stance of the Leeds Information Governance Steering Group (LIGSG) that any decision as to what should be retained in the record (or requested from a patient) should be made using a clinician’s judgement and training under principles of “clinical best practice” and that digital images can, and should, be handled in the same way as any other confidential medical information held within or added to an individual’s medical records, and their sharing and transmission should be both secure and on a strict need-to-know basis.

All the normal caveats apply in regards to the legislative and statutory regulations that govern the management of health records.”

With regards to concerns about sending and storage of potentially sensitive images, if there is a **legitimate** reason for needing the image e.g. for medical diagnosis then the likelihood of clinicians being subject to offences regarding “indecent images” are remote in the extreme, **however clinicians may want to consider in such cases whether it is more appropriate to carry out a video consultation** rather than requesting or storing images.

The legislation

The primary pieces of legislation in regards to obscene images all contain a caveat in regards to “legitimate reason” (see examples below) which would cover medical reasons.

Under section 160 of the Criminal Justice Act 1988 :

160 Possession of indecent photograph of child

(2)Where a person is charged with an offence under subsection (1) above, it shall be a defence for him to prove—

(a)that he had a legitimate reason for having the photograph in his possession;

Section 1 of Protection of Children Act 1978:

Indecent photographs of children.

(4)Where a person is charged with an offence under subsection (1)(b) or (c), it shall be a defence for him to prove—

(a)that he had a legitimate reason for distributing or showing the photographs or (as the case may be) having them in his possession; or

Section 62 of Coroners and Justice Act 2009:

Defences

(1)Where a person is charged with an offence under section 62(1), it is a defence for the person to prove any of the following matters—

(a)that the person had a legitimate reason for being in possession of the image concerned;