DATA PROTECTION – CAPTURING PHOTOGRAPIC/VIDEO/FILM IMAGES

1. Introduction

Whenever individuals as **data subjects** can be identified by their photographic/video/film image this will be classed as **personal data** and should only be used for the purposes for which they were collected. Photographic images are one of the oldest modern methods of uniquely identifying people. The **General Data Protection Regulation 2016** (GDPR) and **Data Protection Act 2018** (DPA) will apply to the University's collection, use, storage and retention of these images under its responsibility as a **Data Controller**. Individuals must be informed when an identifiable image of them will be or has been captured, and a legal basis must be found before the image is used in any way.

There may be other legal aspects to consider when using an image; individuals have a right to a private life under the Human Rights Act 1998 and the inappropriate use of an image could be considered an invasion of privacy and there may be copyright or moral rights to consider.

Sensitive personal data consists of information on someone's racial or ethnic origin, political opinions, religious beliefs, trade union activity, physical or mental health, sexual life or any offences committed. Photographic/video/film images can often contain some of this information, so in certain circumstances, these images can also be classed as sensitive personal data which requires additional data protection requirements.

The **rights of individuals** in the collection and use of their image must be respected, these include the rights to access their personal data; request rectification; object to processing and have their personal data erased.

This also includes the individual (data subjects) **right to be informed** of what you intend to do with regards the processing of their personal data which in this instance will be the photographic/video/film image that identifies them.

This includes the capture, purpose, use, storing and distribution of these images such as; where it will be held; whom will have access; whom it will be shared with; including if they will be published in print or on-line through the use of notices.

The purpose of a notice is to enable data subjects to make an informed decision about how they want their personal data to be used. It is important to make the notice age-appropriate and presented in a way which is easy to understand.

If you are commissioning photography or taking your own image or video of individuals for University use then you need to ensure that you have clearly established the **legal basis** for holding and processing the images which will include the capture, purpose, use, storing and distribution or sharing of the image. You will need to ensure there are processes in place that evidence compliance with these requirements, the safeguards that are in place with regards the processing and management of the images that also enable the deletion or destruction if consent is withdrawn.

2. Data Protection legislation - Legal Basis

When taking photographic/video/film images of individuals, the legal basis may be 'legitimate interest', 'consent' and 'contractual obligation'. If you use any of these as the legal basis you must ensure that it valid and used correctly and that it takes into account, the individual's data protection and privacy rights and any risks.

Legitimate interests are demonstrated through a three-part test: purpose, necessity and balance and a Legitimate Interest Assessment Template is available at **Appendix 1**.

You should avoid 'legitimate interests' for processing that could cause harm to people or if you plan to use personal data in ways people do not understand and would not reasonably expect, or if you think people would object after it was explained to them.

The rules of **consent** are; freely given; specific and informed; active opt-in; verifiable and withdrawable. You must have a verifiable audit trail to show evidence of compliance with the consent rules and this must be validly collected and stored appropriately. You must have the individuals consent before the image is processed or used in any way by the University. You must not exploit any imbalance of power in the relationship, between you and the individual, that forces them into providing consent.

Under no circumstances should an image be used if consent has been explicitly refused.

You need to ensure that this consent is in writing by the use of an appropriate and granular consent form that enables individuals to consent separately to different types of processing rather than bundled together. These must be clearly distinguishable from the rest of the text of the document or form you use; it needs to be separate from other terms and conditions and easily identifiable as a request for consent; it must name the data controller such as the University and include any other third-party data controller whom is relying on this consent to process their data; the consent form must be kept for the life that you hold the image as evidence of consent.

They should also be informed of whom to contact if they wish to withdraw their consent and you must have a clear process in place in order to comply with this request. The University must respect the wishes when they withdraw their consent and the consent is deemed to be valid up to the point of withdrawal and the University may not be able recall documents in which an image has already occurred but must not make further use of the image

If children and young people are clearly recognisable in an image, consent from a parent or legal guardian must be obtained.

Consent will need to be reviewed regularly to check the relationship, processing and purposes have not changed and processes should be in place to refresh consent at appropriate intervals.

Taking and publishing a photographic/video/film image may be part of a **contract**, for example the keynote speaker at a conference or as part of a contract with the individual that requires provision of the image.

3. Capturing photographic/video/film images

Personal use

Photographic/video/film images taken purely for personal use are not subject to the GDPR or DPA. If a member of staff takes an image at a University event for their own personal use, they do not have to obtain consent. If this image is later supplied to the University for corporate use, then it becomes subject to GDPR and DPA and cannot be used without consent.

Posed images

In situations where an individual or a group of people are the main focus of the image, consent must be sought before the image is taken. The potential subjects should be told where and for what reason the image may be used and be given the chance to opt into the photograph or move away.

Images of crowds

Generally, you will not need to obtain explicit consent for wide shots that are not focusing on specific individuals and where no-one is clearly identifiable in the image. This applies to any individuals, students and staff whose images are incidental detail such as in crowd scenes, ceremonial occasions or general campus scenes.

Images must not be used out of context, and there must be no reason to consider that damage or distress could potentially be caused to the people appearing in the image.

If crowd shots are taken during an event or conference and the legal basis is 'legitimate interest' and individuals are not identifiable you must include a notice to inform the attendees of the following points:

- Give a notice in writing that photographic/video/filming will be taking place at the event, how the images will be used, and that people should make themselves known if they do not want to appear in publicity materials;
- Provide a clear opt-out and a verifiable evidence audit trail would need to be kept of the information that you provided to the data subjects (e.g. email, posters, etc.);
- If you use an event invitation card or registration form, then this notice must be included in the invite or form, you can also use notices displayed at events;
- Include information about the photography in printed programmes or publicity material.

Good practice would be to ensure that the photographer is identified; people in the foreground of these shots who are within earshot of the photographer are informed verbally and given the opportunity to move away if they wish. Images should be taken from the least obtrusive angles. It may be that not everyone is facing away and that context is considered, for example; a wide group shot of students queuing to join a sports society may have different privacy implications to a wide group shot of people wanting to speak to our welfare or financial support teams.

Images of children and young people

Children, young people, their parents or legal guardians may not be comfortable with images of themselves or their children being collected, used, held, distributed or shared. This means that extra care should be taken when you are taking or commissioning photographic/video/film images of children and young people for the University's use. Further advice is available on the NSPCC website.

You must also consider the privacy, data protection and any other legal implications (such as copyright) and any associated risks to ensure appropriate safeguards are in place and that these safeguards take into account any potential for misuse of these images.

You need to have a **lawful basis** for processing any child's personal data and must use 'consent' as a legal basis. You must comply with the rules of **consent** are; freely given; specific and informed; active opt-in; verifiable and withdrawable. Consent is defined as a freely given, informed and unambiguous indication of an individual's wishes by a statement or clear affirmative action that signifies agreement to the processing of personal data. Children, young people, their parents or legal guardians must also be made aware of whom to contact if they wish to withdraw their consent and that you have a clear process in place in order to comply with this request. You must ensure that children, their parents or legal guardian understand what's been consented to and that you do not exploit any imbalance of power in the relationship between you the children, their parents or legal guardian.

Where the child or young person is identifiable when taking these images, you must get consent from whoever holds parental or legal guardian responsibility for the child. The age where parental responsibility ends is lower in Scotland, at 16 years old, comparable with 18 years old for the other nations of the United Kingdom. If it is not possible to obtain consent, then the ability to take and use any image will be completely restricted where a child is identifiable. Furthermore, even though it may appear that the child will not be identifiable, a school uniform, for example, might make them identifiable.

Consent is only meaningful when children, their parents, legal guardians are made fully aware and understand the purpose, use, storage and distribution of these images and potential risks.

Children and young people have the same rights as adults over their personal data These include the rights to access their personal data; request rectification; object to processing and have their personal data erased. In particular fairness should be central to all your processing of children's personal data and children and young people, between 12 and 18 years of age, should be consulted about the use of their image, and involved in the consent process. You must ensure that notices are clear for children so that they are able to understand what will happen to their personal data, and what rights they have.

There should be clear and relevant notices in place before and at the time of capturing images, that there is a choice to opt-out and the images can only be used for the purposes for which they were collected. It not appropriate to rely on notices which children, their parents or legal guardians may not fully understand Children, young people, their parents or legal guardians must also be made aware of whom to contact if they wish to withdraw their consent and that you have a clear process in place in order to comply with this request. A consent form for the capture of images of children and young people is available at Appendix 2.

Images for ID purposes

Images are taken/provided by staff and students for identification purposes, as part of the University's contract with them to ensure their safety and security and to prevent fraudulent activity (e.g. exam or other identification). However, use of image beyond these purposes requires consent.

Photographs taken for journalistic purposes may be exempt from some parts of the Data Protection Act, although individuals may still have some concerns about their image appearing in the press and should therefore still be warned in advance of the photograph being taken.

Images supplied by third parties

If images are supplied by third parties, whether by an institution, individual or an agency, the provider of the images must be able to confirm that any clearly identifiable individuals have consented to distribution and subsequent use of the photograph. It is ultimately the University's responsibility to ensure that permission has been obtained.

4. Use of previously captured images

Data Protection only applies to living individuals. If you are re-using an old image and are certain that no-one shown in the image is still living, it does not fall under the provisions of GDPR or DPA, but you must make a judgement if the use is appropriate. If there is doubt over whether individuals shown in the image are alive or dead, estimate their age at the time the image was taken and assume a lifespan of 100 years.

If you would like to use images for which no consent was sought at the time (for example, a photograph taken before data protection or other relative legislation came into force) or for which you are unsure whether consent was given, you must make reasonable efforts to gain consent. If it is impossible to trace the subject and gain consent you should consider whether they were aware that their photograph was being taken. You may also be able to assess whether the subjects of the photograph could have reasonably expected it to be re-used by the University. If use of the image could cause damage or distress to the subjects, either because of the way in which they have been photographed or because of the way in which you intend to use the photograph, you should not use the photograph. Always seek the advice of the Data Protection Officer before using an image of an individual which has been obtained without their consent.

Appendix 1

Leeds Beckett University - Legitimate Interest Template

Identifying a Legitimate Interest		
Question	**Response**	**Guidance**
1. What is the purpose of the processing?		Identify a legitimate interest.
2. Is the processing necessary for a specific objective?		If the processing operation is required to achieve a legitimate business objective, then it is likely to be legitimate.
3. Is the processing necessary to meet one or more specific objectives of a third party, if applicable?		While you may only need to identify one legitimate interest, it may be useful to list all interests in the processing, including those of a third party.
The Necessity Test		
Question	**Response**	**Guidance**
4. Why is the processing activity important to Leeds Beckett University (LBU)?		Even if LBU's interest in processing personal data for a specific purpose is obvious and legitimate and based on its objectives, it must be a clearly articulated and communicated to the individual.
5. Why is the processing activity important to other parties to whom the data may be disclosed?		
6. Is there another way of achieving the objective?		If there isn't, then it is likely that the processing is necessary; or: • If there is another way but it would require disproportionate effort, then the processing is still necessary; or • If there are multiple ways of achieving the objective, then a DPIA should have identified the least intrusive means of processing the data which would be necessary; or • If the processing is not necessary, then legitimate interests cannot be relied on as a lawful basis for that processing activity.
The Balancing Test		
Question	**Response**	**Guidance**
7. Would the individual expect the processing activity to take place?		If individuals would expect the processing to take place, then the impact on the individual is likely to have already been considered by them and accepted. If they have no expectation, then the impact is greater and is given more weight in the balancing test.

8. Is the processing likely to negatively impact the individual's rights? If so, how?		If processing would undermine or frustrate the ability to exercise those rights in future that might well affect the balance.
9. Is the processing likely to result in unwarranted harm or distress to the Individual?		
10. What would happen if the processing did not occur? Would there be a prejudice to LBU or third party? If so, how?		
11. Is the processing in the interests of the individual to whom the personal data relates?		
12. What is the connection between the individual and the organisation?		For example: • existing student, • alumni, • employee or contractor.
13. What is the nature of the data to be processed? Does data of this nature have any special protections under data protection legislation (i.e. special category or criminal convictions/offences personal data)?		If processing special categories of personal data, an Article 9 or Article 10 condition (as applicable) must be identified as the lawful basis of processing.
14. Is there any imbalance in who holds the power between the LBU and the individual?		Does the individual have a choice regarding the processing of their personal information? If the organisation has a dominant position, this will tip the balance slightly against the use of legitimate interests. LBU will need to consider how it addresses any imbalance of power to ensure individuals' rights are not impacted.
15. Can the individual control the processing activity in any way? Can the individual opt out easily?	Yes ☐ No ☐ Partly ☐ Explain:	Giving the individual increased control or elements of control may help LBU rely on legitimate interests where otherwise they could not. If individual control is not possible or not appropriate, explain why.
Outcome		
Outcome of Assessment: Click here to enter text.		
Decided by:		
Date:		

Appendix 2

CONSENT FORM

VIDEO AND PHOTOGRAPHY

CHILDREN AND YOUNG PEOPLE



A copy of this form should be retained by the model, the photographer and the commissioning school or service. Leeds Beckett University produces a range of published materials and online information. The University often takes photographic/video/film images of subjects in order to enhance and illustrate its materials and make them more motivating and inspiring to its audiences. For children and young people under 18 years of age, full parental/guardian consent is required. As it is mandatory for the University to obtain permission prior to each photographic/video/film session it is necessary for each child to have a copy of this form fully completed and signed by the parent/guardian prior to the relevant photographic/video session. For children and young people between 12 and 18 years of age, who have sufficient understanding of the consent process and its implications for them, the child/young person should be involved in completing the form and their consent should be sought. The child/young person may also sign the form.	**Commissioning School/Service details:**	
	Contact Name	
	School/Service Department	
	Phone	
	Email	
	Address	
	Photographer's/Film-maker's details:	
	Name	
	Company	
	Phone	
	Email	
	Address	

Description of photo/video or film shoot

Commissioning School/Service	
Date	
Details	

CONSENT FORM
PHOTOGRAPHY, VIDEO AND FILM
CHILDREN AND YOUNG PEOPLE

We require your permission/consent before we take any images of your child/young person.

The following conditions apply:

1. We will not include details such as personal email or postal addresses, or telephone numbers of any child/young person in our publicity material.
2. If we use images of individual children, we will not use the name of that child in the accompanying text or photo caption.

May we use the image of your child/young person in publicity material produced by Leeds Beckett University for the following purposes?

Please tick either Y (Yes) or N (No) in the following tick boxes:

In printed publications		In video format		On websites/in electronic format. Please note that websites can be viewed throughout the world, not just in the UK where UK law applies.		For indoor/outdoor display stands		We regularly send publicity material about our services, including images/photographs where appropriate, to news media, including local press. Can we use the image of your child/young person in this way?	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No

Child/Young Person's details:

Name of Child/ Young Person		Signing this form gives agreement for the child/young person named to take part in a photographic/video/filming session for Leeds Beckett University, thereby giving consent to the use of the material by the University, and the photographer, in any of its media applications, which reasonably promote or advertise the aims of the University. The images will not be used for any other purpose nor for any purposes that have been objected to in the previous table above. For the purposes of the Data Protection Legislation (General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018 (DPA), both the
School name		
School address		
Name of Parent/Guardian		

Address of Parent/Guardian		photographer and the University are data controllers. I consent to the photographer and the University: (a) storing and using copies of the images/photographs for the purposes described above; (b) storing my contact details in their databases in case they need to contact me; or (c) transferring the photographs outside the European Economic Area (EEA) for the purposes described overleaf. I understand that images on websites can be viewed throughout the world and not just in the United Kingdom and that some overseas countries may not provide the same level of protection to the rights of individuals as EU/UK legislation provides. I understand that some images or recordings may be kept permanently once they are published and be kept as an archive of University life. Leeds Beckett University is committed to processing information in accordance with the General Data Protection Regulation. The personal data collected on this form will be held securely and will only be used for administrative purposes. You can ask the University's School or Service, as detailed in this consent form, to stop using your child's/young person's images at any time, in which case it will not be used in future publications but may continue to appear in publications already in circulation. If you have concerns about the use of these images this should be raised with the University's Information Compliance Team at infocompliance@leedsbeckett.ac.uk or Data Protection Officer at dpo@leedsbeckett.ac.uk. If you have concerns about how the University has processes personal data you have the right to contact the Information Commissioner's Office and can make a complaint against the University regarding data protection concerns https://ico.org.uk/make-a-complaint/your-personal-information-concerns/
Parent/Guardian Telephone		
Parent/Guardian Email		

By ticking the box below, I give my consent and permission to Leeds Beckett University (and any individuals, entities or others acting under its authority or on its behalf) to store, edit, publish or use my child's/ young person's photographic/ video/ film images both internally and externally for the purposes of promoting the University and the student experience more generally, in digital and printed form as indicated in this consent form. Please note that all photography/ video/ film footage used on our website are accessible from outside the EEA.

☐ Please tick this box if you consent to Leeds Beckett University taking photographs and/ or recording images of your child/ young person in the formats and for the purposes stated within this consent form.

I release and discharge the photographer/ film-maker and the University (and any individuals, entities or others acting under its authority or on its behalf) from any and all claims and demands arising out of or in connection with the use of the photographs, including, without limitation, any and all claims for invasion of privacy, right of publicity and defamation.

I have read this consent form carefully and fully understand its meanings and implications.

Signature of Parent/ Guardian:	
Signature of child/ young person if between 12 and 18 years old:	
Date:	

CONSENT FORM
PHOTOGRAPHY, VIDEO AND FILM
ADULTS

NOTICE

Leeds Beckett University (the University) produces a range of published materials and online information. The University often takes photographic/video/film images of subjects in order to enhance and illustrate its materials and make them more motivating and inspiring to its audiences or as part of a contract with students, staff and other individuals in order to be able to provide access to services.

For the purposes of the Data Protection Legislation (General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018 (DPA) Leeds Beckett University is the organisation responsible for looking after your personal data (the "Data Controller"). We will process your personal data in accordance with GDPR and DPA and this notice and the University's privacy notices explain how Leeds Beckett University (the University) will use your photograph(s)/ video/ film images for marketing and promotional activities and the range of marketing channels the University may use. This includes, but is not limited to print and digital media formats including:

- Magazines and publications to promote the University and our Academic Schools, student life and the student experience
- University websites and associated microsites
- Direct mail and e-marketing
- Posters and interactive posters
- Banners
- TV Advertising and out of home
- Leeds Big Screen
- Plasma screens and TVs across the University
- PC desktops
- Film
- Social media across all platforms such as Facebook, Twitter, Instagram, LinkedIn, Snap Chat, and Vero
- You Tube

Please note the University offers a number of specialist services, such as: Student Wellbeing and Mental Health, Financial and Disability advice. We may use your photograph to support the promotion of these Services with your consent.

STORAGE

The photograph(s)/ video/ film images will be stored on the University's secure network, access is controlled and limited, and University staff receive training on data protection and how to handle data securely.

RETENTION

The photograph(s)/ video/ film images will be held for a duration of three years. If we wish to continue using the photograph(s)/ video/ film images after this time, we will contact you to obtain consent. We will not sell or share the photograph(s)/ video/ film images to third parties for their commercial purposes.

Where your image is used in publications you can ask the University to stop using your photograph(s)/ video/ film images at any time, in which case they will not be used in future publications but may continue to appear in publications already in circulation. You can ask the University to stop using your photograph(s)/ video/ film images by contacting the School or Service whom have captured your image. If you have any concerns about the use of your email you can raised these by emailing: infocompliance@leedsbeckett.ac.uk.

Where we use your image for the provision of a staff or student contract, we may need to continue to use the image as part of contract compliance requirements.

SHARING YOUR DATA

Sometimes to achieve the purposes for which we are processing your photograph(s)/ video/ film images we may need to share these with other organisations based within the European Union, or if outside the European Union, based in countries that have data protection adequacy status as they comparable levels of protection and we have .

When this is required, we will securely transfer the photograph(s)/ video/ film images to third parties acting on behalf of or engaged by the University for marketing and promotional purposes only. Key countries where we are actively marketing and promoting the University to international students can be found here: www.leedsbeckett.ac.uk/international-students/countries/

Please note that all photograph(s)/ video/ film images used on our website are accessible from outside the European Economic Area (EEA).

LEGAL BASIS FOR PROCESSING

The legal basis under which processing of personal data may take place may be your 'consent' (Article 6(1)(a)), where we have a 'contract' (Article 6(1)(b)) with you that requires an image or 'legitimate interests' (Article 6(1)(f)) where there is a legal basis for processing personal data for the purposes of photography and filming where this is for future promotion of the University.

Leeds Beckett University's Data Protection Policy and Privacy Notices which are updated from time to time are publicly accessible at: www.leedsbeckett.ac.uk/public-information/data-protection/
If you have concerns about your rights (as detailed below) and the use of these images, these can be raised with the Information Compliance Team: infocompliance@leedsbeckett.ac.uk or with the University's Data Protection Officer: dpo@leedsbeckett.ac.uk . You also have the right to complain to the Information Commissioner's Office whom is the UK's Data Protection Authority and for further information please visit: https://ico.org.uk/

YOUR RIGHTS AND HOW TO EXERCISE THEM

As a person whose personal data (an image) we are processing, you have rights in respect of that personal data:

- To withdraw consent;
- To access your personal data that we process;
- To rectify inaccuracies in personal data that we hold about you if it is inaccurate or incomplete;
- To request the deletion or removal of your personal data where there is no compelling reason for its continued processing;
- To object to certain processing of your personal data
- To restrict the processing of your personal data in certain ways;

If you require more information on any of the above please visit: https://www.leedsbeckett.ac.uk/partners/compliance-legal/data-protection/ or you can contact the University's Information Compliance Team at: infocompliance@leedsbeckett.ac.uk

AGREEMENT

The legal basis under which processing of personal data may take place may be your 'consent' (Article 6(1)(a)), where we have a 'contract' (Article 6(1)(b)) with you that requires an image or 'legitimate interests' (Article 6(1)(f)) where there is a legal basis for processing personal data for the purposes of photography and filming where this is for future promotion of the University.

Leeds Beckett University's Data Protection Policy and Privacy Notices which are updated from time to time are publicly accessible at: www.leedsbeckett.ac.uk/public-information/data-protection/
The University will collect the following categories of personal data: personal details, email, mobile, staff/student ID number, education and course details, societies and clubs you joined, job title, career highlights, visual images, video, obtained from:

Description of photo/video/film shoot:

Details:	
Contact Name:	
Contact Email:	
Date:	
Commissioning School/Service:	

By ticking the box below I give my consent and permission to Leeds Beckett University (and any individuals, entities or others acting under its authority or on its behalf) to store, edit, publish or use my personal data which includes my name, course, job title, and photograph(s)/ video/ film images both internally and externally for the purposes of promoting and marketing the Leeds Beckett University throughout the world using the marketing channels as detailed and set out in this notice.
Please tick the box if you consent to Leeds Beckett University taking photographs and/or recording images of you for the purposes stated above. ☐

I release and discharge Leeds Beckett University (and any individuals, entities or others acting under its authority or on its behalf) from any and all claims and demands arising out of or in connection with the use of the photograph(s)/ video/ film images, including without limitation, any and all claims for invasion of privacy, right of publicity and defamation.

I have read this consent form carefully and fully understand its meanings and implications.

Name:	
Email:	
Mobile:	
Course title: *(for Leeds Beckett students only):*	
Job title: *(for Leeds Beckett staff only):*	
Student or Staff ID:	
Date:	
Signature:	

Thank you for agreeing to have your photograph taken or agreeing to take part in our video or filming.