

# Guidance for use of audio and video recording of assessments and / or meetings

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December 2022

## Contents

| No. | Section                                      | Page no. |
|-----|--|----------|
| 1.  | Background                                   | 3        |
| 2.  | Purpose                                      | 3        |
| 3.  | Scope  | 3        |
| 4.  | Key documents and legislation                | 3        |
| 5.  | Responsibilities                             | 4        |
| 6.  | Principles                                   | 4        |
| 7.  | Audio and Video recordings by clinical teams | 5        |

## 1. Background

Many NHS organisations have been increasingly aware of the use of recording by clients (the term client will be used for all those individuals' requiring assessments who interact with ICS services), whether this is for a GP consultation, acute hospital treatment or clinical assessments of any kind. It has been recognised by NCL ICB, as well as national NHS organisations, that staff need guidance and advice about individuals and / or their representatives recording.

Unlike clinicians, who are required to obtain consent or document a best interest decision to make audio or visual recording of individuals they are treating or assessing, clients and /or their representatives do not require clinicians' permission to record consultations, assessment or meetings or any kind.

Recordings by clients and / or their representatives, covertly or overtly, in order to keep a record of what was said, are considered personal "note taking".

## 2. Purpose

This guidance sits as an adjunct to NCL ICB Continuing Care (CC) and Continuing Healthcare (CHC) Policies and Standard Operating Procedures as well as any other provider policies, to provide clarification to clinical and non-clinical staff dealing with situations where an individual and / or their representative have requested to record the meeting or concerns regarding recording of meetings covertly.

This guidance will also be used in the development of a client / representative leaflet to inform them of the structure and expectations of meetings / assessments.

## 3. Scope

The guidance for use of audio and video recording of assessments and / or meetings is for the use of CC, CHC and Complex Individualised Commissioning staff in relation to the covert and / or overt recording of meetings and assessments by individuals and their representatives.

## 4. Key documents and legislation

NHS Protect - Patients recording NHS staff in health and social care settings - [https://www.proceduresonline.com/barnet/fs/files/patient\\_record\\_nhs.pdf](https://www.proceduresonline.com/barnet/fs/files/patient_record_nhs.pdf)

Malicious Communications Act 1988 - [https://www.legislation.gov.uk/ukpga/1988/27/pdfs/ukpga\\_19880027\\_en.pdf](https://www.legislation.gov.uk/ukpga/1988/27/pdfs/ukpga_19880027_en.pdf)

Communications Act 2003 - <https://www.legislation.gov.uk/ukpga/2003/21/contents>

Data Protection Act 2018 - <https://www.gov.uk/data-protection>

Regulation of Investigatory Powers Act 2000 -

<https://www.legislation.gov.uk/ukpga/2000/23/contents>

Records Management Code of Practice 2021 -

<https://transform.england.nhs.uk/information-governance/guidance/records-management-code/records-management-code-of-practice-2021/>

Encryption Guide for NHSmail July 2022 Version 9 [https://s3-eu-west-](https://s3-eu-west-1.amazonaws.com/comms-mat/Training-Materials/Guidance/encryptionguide.pdf)

[1.amazonaws.com/comms-mat/Training-Materials/Guidance/encryptionguide.pdf](https://s3-eu-west-1.amazonaws.com/comms-mat/Training-Materials/Guidance/encryptionguide.pdf)

Attachments guide for NHSmail May 2022 Version 7 [https://s3-eu-west-](https://s3-eu-west-1.amazonaws.com/comms-mat/Training-Materials/Guidance/attachmentsguide.pdf)

[1.amazonaws.com/comms-mat/Training-Materials/Guidance/attachmentsguide.pdf](https://s3-eu-west-1.amazonaws.com/comms-mat/Training-Materials/Guidance/attachmentsguide.pdf)

Freedom of Information (FOI) Act 2000 -

<https://www.legislation.gov.uk/ukpga/2000/36/contents>

Environmental Information Regulations (EIR) 2004 -

<https://www.legislation.gov.uk/uksi/2004/3391/contents/made>

UK General Data Protection Regulations 2018 (UK GDPR) - [https://uk-](https://uk-gdpr.org/#:~:text=The%20EU%20General%20Data%20Protection,by%20organisatio)

[gdpr.org/#:~:text=The%20EU%20General%20Data%20Protection,by%20organisatio](https://uk-gdpr.org/#:~:text=The%20EU%20General%20Data%20Protection,by%20organisatio)  
[n%20around%20the%20world.](https://uk-gdpr.org/#:~:text=The%20EU%20General%20Data%20Protection,by%20organisatio)

NCL related policies – on NCL ICB intranet

- Confidentiality Policy
- Information Governance Policy
- Information Security Policy
- Information Management Policy

## 5. Responsibilities

The NCL ICB Assistant Directors of CHC are responsible for publishing, monitoring the implementation of and updating the Guidance for use of audio and video recording of assessments and / or meetings.

All staff working for or on behalf of NCL ICB including those on permanent or fixed term contracts, interims, self-employed contractors / consultants, Governing Body members and volunteers are responsible for complying with the NCL ICB Guidance for use of audio and video recording of assessments and / or meetings.

All NCL ICB line managers are responsible for ensuring their teams comply with the NCL ICB Guidance for use of audio and video recording of assessments and / or meetings.

## 6. Principles

There are no specific legal requirements that govern an individual making a personal recording, either covertly or overtly.

Recordings made for personal records are deemed to constitute “note taking” and are therefore permitted and do not fall under the Data Protection Act 2018.

Although clients and / or representatives do not require permission to record the assessment or meeting, common courtesy would suggest that permission is sought.

The content of any recording made by an individual and / or their representative is confidential to them only, although they can waive their confidentiality to share third parties and share unadulterated on any social media sites of their choosing.

However, this right changes if the recording is no longer being used as a record of a meeting, especially if it is modified in anyway. This is particularly pertinent if the recording is used in a way that it is designed to cause detriment or harassment of another individual captured in the recording. Use of a recording on these terms may lead to civil action for damages or may in fact be a criminal offence and could be considered a breach of the Data Protection Act 2018.

Covert recordings may be rated as inadmissible in court.

The Human Rights Act will need to be considered in regard to recording of meetings as the use of a recording maybe considered illegal under UK General Data Protection Regulations (UK GPDR.)

Recordings cannot be published without agreement of all attendees as this is considered an infringement of individual rights

Sharing of the recording without due consent could be considered a criminal offence depending on how the publication was made. The most likely offences may be considered:

- contrary to section 1 of the Protection from Harassment Act 1997
- contrary to section 4, 4A or 5 of the Public Order Act
- contrary to section 1 of the Malicious Communications Act 1988
- contrary to section 127 of the Communications Act 2003

However specific legal advice should be sought by the ICB when relevant.

## 7. Audio and Video recordings by clinical teams

In accordance with the NHSE Records and Management Code of Practice 2021 the following must be considered when client interactions are captured via audio and / or visual recording.

- The clinical appropriateness to use audio or visual recording methods
- Signed consent is required to record an assessment
- Recorded on Microsoft Teams whether the assessment is completed via Microsoft Teams or face to face
- Transparency to the client and / or representative regarding the purpose and use of the recording, providing understanding how the contents will be utilised, stored and destroyed
- The medium by which the recording is made and ensure it is able to be viewed throughout the retention period

- The retention of the recording. The Records Management Code of Practice 2021 states “if the recording is going to be kept elsewhere then there is no reason to keep the original recording, providing the version in the main record is the same as the original or there is a summary into words which is accurate and adequate for its purpose”. In practice this means, for example, that once the assessment has been written and the content agreed by the client and / or representative then the recording can be deleted, providing they have been informed of the process.
- Audio and visual recordings are not able to be stored on Care Track however should be transferred from Teams to a password protected folder on the NCL shared drive under CC / CHC or other relevant area. Where clinical teams, working on behalf of the ICB, sit in provider organisations, the ICB will work with the provider to ensure recordings are stored appropriate and securely on their IT systems.
- Any files retained on the NCL drive will be subject to the usual spot check access audit processes

If a meeting is recorded for the purpose of minute taking then, once the minutes have been written, shared, and agreed as a true reflection of the meeting then the recording will be disposed of.

In Accordance with the NCL ICB Confidentiality Policy July 2022 “Transferring patient information by email to anyone outside the ICB’s network may only be undertaken by using encryption as per the current NHS Encryption Guidance or through an exchange within the NHS Mail system (i.e. from one NHS.net account to another NHS.net account or to a secure government domain e.g. gsi.gov.uk), since this ensures that mandatory government standards on encryption are met. Sending information via email to clients is permissible, provided the risks of using unencrypted email have been explained to them, they have given their consent and the information is not person-identifiable or confidential information.”

In practice this means any recordings can be shared via NHS.net. Recordings sent to an unsecure email address must be done using {secure} or via Egress. The file size for transfer is 100MB therefore it may be necessary to decrease the quality of the recording to allow to be sent via email. Alternatively, for files over 100MB, discuss potential solutions with the IG team.

Figure 1. Process for recording and sharing files when clinical teams are making the recording

