

AUDIO VISUAL RECORDING POLICY

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| Version number : | 1.3 |
| Consultation Groups | Members of IGSG |
| Approved by (Sponsor Group) | Information Governance Steering Group |
| Ratified by: | Quality Committee |
| Date ratified: | 16 th December 2020 |
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| Implementation Date : | December 2020 |
| Last Review Date | November 2020 |
| Next Review date: | November 2023 |

| Services | Applicable |
|---------------------------|------------|
| Trustwide | x |
| Mental Health and LD | |
| Community Health Services | |

Version Control Summary

| Version | Date | Author | Status | Comment |
|----------------|---------------|--|---------------|---|
| 1.0 Final | July 2012 | Head of information Governance | Final | New policy incorporating therapy & family services procedures |
| 1.1 | October 2015 | Head of information Governance | Final | Annual review ensuring continued compliance |
| 1.2 | July 2019 | Associate Director of Information Governance | Final | Changes to comply with CQC hidden recording advice |
| 1.3 | November 2020 | Associate Director of Information Governance | Final | Additional wording on images during clinical consultation |

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1.0 Introduction

The policy sets out the framework in which audio visual recordings may be used and stored, outlines standards for gaining consent and provides limited advice on the use of audio visual recordings by patients or other third parties

2.0 Purpose

Its purpose is to ensure the safe and effective use, storage and disposal visual and audio recordings.

It covers all forms of digital and conventional audio visual recordings including audio recordings, video recordings, photography and any other media. The policy excludes CCTV which is covered in the Closed Circuit Television Policy

3.0 Duties

All individuals including temporary and permanent staff, contractors, students, volunteers and non-executive directors must adhere to this policy. Failure to do so may result in disciplinary action.

Managers at all levels are responsible for ensuring individuals they are responsible for are aware of and adhere to this policy.

All individuals having access to audio visual recordings must understand and comply with data protection and human rights law, Confidentiality Code of Conduct and all Trust information governance policies.

Individuals using audio visual recordings in the course of their work must ensure the recording is appropriate, must seek the explicit consent of the data subject(s) prior to commencement of the recording and must follow the Trust standards in Section 6.0 of this Policy for the processing (storage, use and sharing) of the information

Service users and other individuals must give explicit consent for audio visual recordings to take place.

Service users and other individuals wishing to undertake their own audio visual recordings must seek the explicit consent of the Trust. In some circumstances consent may not be given.

On request, the Information Governance Manager will provide advice on when it is acceptable to use audio visual recording, advice on consent, processing and retention and deletion of recordings. The Assistant Director for ICT will provide technical advice when required.

4.0 Acceptable uses

Recordings may sometimes be used for more than one purpose. The following are acceptable uses:

- Clinical – to monitor therapeutic change over time, give feedback, enable patients and their carers / families to observe and learn from their actions / interactions, support training (such as parenting skills) and facilitate clinical involvement of the wider team
- Teaching – to illustrate clinical signs and demonstrate interviewing / counselling techniques

- Training – to provide ongoing training for the clinical team and for clinical supervision purposes
- Research – as a defined aspect of an approved research project or study
- Incident investigation and feedback – to ensure the correct recording of information in circumstances where there is a requirement to ensure absolute accuracy or in feedback meetings where the presence of a minute taker may be insensitive and intrusive
- Administrative support – to allow recording of a meeting without the need for attendance by a minute taker

5.0 Consent

5.1 Seeking consent

Consent must always be sought prior to recording taking place. A model consent form for use in recording therapy sessions is attached at Appendix A. Seek the advice of the Information Governance Manager where other types of consent forms are required.

Where possible the individual / family should be given an explanatory letter in advance explicitly stating the request can be declined without any detriment to their treatment. This allows time for the individual / family to consider how they wish to respond and if they give consent, what will be happening and what is expected of them

At the session the reasons for making a recording, the right to confidentiality and how confidentiality is protected should be explained. The individual should be told why the recording is taking place and what will be done with the information, how the session will be recorded and how the information will be given to the individual

Where an individual is receiving a course of sessions it is acceptable to use one consent form for the course of treatment provided the individual is asked at each session if they are willing for each new session to be recorded. This must be noted on the consent form.

Explicit consent must always be obtained. In instances where the recording is to be used for more than one purpose (as outlined above in Section 4.0) explicit consent must be obtained for each purpose. It must be explained that further consent will be sought if at a later stage there is an intention to use the recording for a different purpose

If explicit consent is not given or there is ambivalence or uncertainty the session must proceed without the use of audio visual recording to allow time to address and resolve any concerns

If the individual does not wish to have a session recorded they should be advised this will not prevent them receiving care and will not alter their level of care although they may receive less benefit if they are unable to recall their sessions. In such cases it may be appropriate to offer written summaries

Even if an individual consents to a recording, the person recording the session may use their discretion to pause or discontinue the recording if they believe this is in the individual's best interests and will explain why this is the case.

Where explicit consent is given and the individual during the session expresses concern or appears discomforted at the recording taking place, the recording should be stopped to allow discussion about the recording to take place. It is never acceptable to place individuals under pressure to consent. Should the individual wish, the recording can be stopped at any time. For example if they wish to discuss a sensitive area of their care and do not want the discussion recorded. Depending on the individual's preferences:

- The recording is discontinued and the recording deleted

- The recording made so far is deleted but the remainder of the session continues to be recorded
- The recording is paused and continued later in the session when the individual agrees it is appropriate to do so
- The recording is discontinued but the recording made so far is kept
- The recording is deleted at the end of the session

The individual must be made aware that once the recording is handed over to them, the Trust bears no responsibility and it is the individual's sole responsibility to ensure it is not lost or used by a third party. For avoidance of doubt, the date the recording is handed over should be recorded on the consent form

5.2 Family / group consent

All members of a family / group must consent to the recording being made. Consent can be revoked at any time during or after a session by family or group members with the capacity to consent. In a family disagreement withdrawal by even one member with capacity will revoke consent for that session. In group sessions the recording may be retained provided all information relating to the person withdrawing consent is securely deleted and there are no remaining references or discussions on the recording that could identify that person by default.

5.3 Retention of consent forms

Signed consent forms for service users should be kept in the case notes (where the service uses full clinical RiO the consent form should be scanned into RiO). Individuals should also be given a copy of their signed consent form.

5.4 Consent for teaching or training purposes

Recordings made exclusively for the purposes of teaching, examination or training are not regarded as medical records. Parts of the recording that identify the individual / family such as last names or addresses should be erased before use.

If it is intended to use a recording that was originally made for clinical purposes then consent must be sought for the change of use.

Participants in teaching, training or supervision sessions must be reminded of the need for confidentiality and where appropriate sign a confidentiality agreement.

5.5 Consent for research purposes

Research ethics committees require that specific consent forms are drawn up and completed where research is involved.

6.0 Recording process and storage

6.1 Recording process

All services must have their own local internal process for audio visual recording based on the points contained in this policy.

All recordings should begin with a statement that the session / meeting is being recorded, the date and time, the service user's initials and date of birth or the meeting name. Never state a service user's full name or address in case they are given a copy and subsequently lose it. Service users / family members should be asked to confirm they consent to the recording.

At the end of the recording service users / family members should be given the opportunity to confirm they are happy with the recording.

Where the recording will include person identifiable information and where a device is technically available, encrypted recording devices should be used.

Recording over video tapes is not permissible. A professional tape wiper must be used between each recording. In exceptional circumstances if a professional tape wiper is unavailable, the tape must be re-winded by pressing play and record together without any connection to the source to allow the tape to record to the end.

When a copy of the recording is to be given to a service user, once the recording is complete the copy may be made on an unencrypted device (CD / DVD / unencrypted USB etc) provided the service user accepts full responsibility for its safekeeping.

Some services may wish to provide service users with MP3 players specifically for the purpose of listening to copies of recordings. Service users must sign a declaration stating receipt of the MP3 player, that any damage must be paid for and that the MP3 player is the property of the Trust and must be returned on completion of the episode of care. Otherwise they may provide their own MP3 player or unencrypted USB device.

Copies of audio visual recordings for the use of the service user to support their care can only be given to the service user. They must be collected in person and must be signed for. Copies for adult service users cannot be collected by neighbours / relatives. Copies of family therapy sessions will only be given to a competent child or the person with parental responsibility. Under no circumstances should copies be emailed to service users as the email route is not secure.

Generally multiple copies should not be made.

6.2 Storage and retention

Audio visual recordings made for clinical purposes are part of the clinical record and as such should be filed in the clinical record. They should be retained, reviewed and eventually deleted according to the Records Management NHS Code of Practice retention schedules and Trust records policies.

Audio visual recordings cannot currently be uploaded to RiO and should therefore be kept separately but this is constantly being reviewed.

When a transcript is made for clinical purposes the recording should be deleted.

In some circumstances the recording may be deleted after an episode of care provided the service user requests or consents to its deletion.

Audio visual recordings which are known to or may have evidential significance in the future may not be erased.

Audio visual recordings used for the purposes of teaching, training and supervision may be erased at the discretion of the clinician.

Audio visual recordings should be saved on to an appropriate folder on the relevant network drive and the original recording on the recording device deleted. In no circumstances should the recording be stored on a C drive or an unencrypted storage device (e.g. an unencrypted USB stick).

Where the recording is saved on to the network drive and proves difficult to open due to the size of the recording and the network speed, discussion should take place with the Assistant Director for IT to see if a technical solution is available.

Where the recording is intended to be used in supervision, it may temporarily be stored on a Trust provided encrypted USB stick to allow for the safe transfer of confidential information. Further copies may not be made.

Where an audio visual recording is stored on a temporary device it must always be stored securely and locked away when not in use.

6.3 Deletion

Video tapes must be professionally wiped or otherwise erased as in Section 5 above.

DVDs or CD hard copies that cannot be erased must be physically destroyed.

6.4 Requests for access to audio visual recordings

Requests for access to audio visual recordings should be treated in the same way as requests for access to any other personal information and dealt with according to the Data Protection Act 2018, Access to Health Records Act 1990 or the Freedom of Information Act 2000. Particular attention must be taken regarding the potential sensitivity of audio visual recordings. This means consent must be sought from the individual(s) prior to disclosing information unless there is a legal basis for sharing (such as a serious crime) or the seeking of consent could put someone at risk (such as a disclosure for child protection purposes).

In considering requests for access to audio visual recordings the right to confidentiality of third parties must taken into account, particularly for family therapy sessions. Where the third party has not given consent for the viewing / disclosure, the third party information should be redacted. When a viewing takes place, a health professional should be available to provide support and explanation.

7.0 Recording by service users and members of the public

7.1 Requests to record meetings or clinical sessions

Occasionally service users or other individuals may ask to record a meeting or clinical session to help them retain information or aid their therapy. Data Protection law allows processing of information to take place for domestic purposes. This means the Trust should consider each case on its own merits to establish if it is appropriate to allow the recording to take place.

It may often be considered inappropriate to allow a recording, particularly where references may be made to third parties or for example, where visual interaction with a service user would not be apparent in an audio recording. Service users should be advised that clinical sessions are fully documented and a written copy can be provided to the service user.

When a request is agreed to, the individual should be discouraged from making their own recording. The Trust should offer to make the recording and give a copy to the individual to ensure the copy is accurate and unadulterated. The individual must give explicit consent as in Section 5 above, be advised the recording is for personal use only and advised the Trust accepts no responsibility for the safekeeping of the copy once it has been handed to the individual. The individual must also be advised that the recording should not be used for litigation purposes.

Nonetheless the Trust recognises that some service users may simply want to record sessions to aid their memory or understanding. This is acceptable provided the clinician agrees and makes it clear the recording is for personal use only as above.

7.2 Hidden recording or recording without consent

Hidden recording or recording without consent can affect people's privacy and dignity and can have legal consequences. Anyone (including staff) who is worried about an individual or group of individuals' care should first be encouraged to raise it with the service, or if this is not possible, with the Trust's PALS and Complaints team. Staff can also raise concerns with

the Trust's Freedom to Speak Up Guardian. The Trust will always investigate any concerns that are raised with them.

If consent to record is not given and hidden recording takes place by staff, visitors or patients it should be noted that anyone being recorded has the right to take legal action as the recording may infringe their right to privacy. The Information Commissioner could also investigate and take enforcement action.

However, if hidden recording does take place permission should always be given by the person whose care has raised concerns. They should be told who the recording will be shared with and why. It is important they agree. Just because they do not object does not mean they agree to it. If they do not have the capacity to make that decision it is important that the individual who wants to do the recording acts in their best interests. Staff should seek the advice of the Mental Health Law team in cases where it is unclear if an individual has the capacity to consent to being recorded.

If anyone is found to be making a recording without the permission of the Trust, the individual will be advised this contravenes the right to confidentiality of any individuals being recorded. The recording device may be taken from the individual and in some circumstances the recording may be confiscated. If the Trust removes a recording device it will be returned without being damaged. We will not refuse to care for someone because hidden recording has taken place.

If the making of a hidden recording is discovered after the recording has been made, the individual may be asked to destroy it. If it has already been published (for example on Facebook, YouTube), the individual may be asked to immediately remove the recording and notify the Trust when it has been done. In some circumstances where this is not done the Trust may take legal action against them.

7.3 Images taken during clinical consultation

An individual's dignity and respect must be considered at all times when photographs or other recordings are made. Whilst these are particularly useful for community health patients (for example to record a pressure ulcer) the need for an image must be balanced against the right to confidentiality. Images should therefore depict the minimum amount of information possible. No other parts of an individual's body should be photographed other than that essential for diagnosis and care. Where it is necessary to upload an image to the clinical system the image should be appropriately confined to the absolute minimum necessary.

8.0 Staff meetings

Note that consent does not have to be sought when recording meetings such as staff meetings / formal meetings as attendees are not attending the meeting in a personal capacity. However as a matter of courtesy and good practice attendees should be made aware that the meeting is being recorded.

Consent must be sought to record one to one sessions, appraisals, sickness, capability, disciplinary or similar sessions as these are personal meetings.

Appendix A. Model consent form for recording therapy sessions

Consent form for recording therapy session

| | |
|--------------|------------|
| Name: | ID: |
|--------------|------------|

The purpose of making an audio visual recording is to assist our work with you and help you get most benefit from your therapy.

Tick as appropriate:

The recording may be used for:

- Therapeutic / clinical use
- Supervision purposes / ongoing training
- Teaching
- Research

We may view the recordings in our sessions with you.

Recordings for teaching purposes will be shown in confidence. Anyone seeing them will give an undertaking not to discuss the recording outside the teaching session. In the unlikely event any participant knows you / your family, they will be asked to leave the session

Consent to make audio visual recordings of my therapy sessions

I / We give permission for my clinician / therapist to make recordings of my therapy sessions for this course of therapy only

I / We understand I will be given a copy of these recordings for my personal use as part of my therapy

I / We accept I am responsible for keeping my recording safe, destroying it when I have no further use for it and that the Trust has no responsibility for it once it is given to me

I / We understand my clinician / therapist may use copies of my recordings to improve the quality of my treatment by reviewing the recordings themselves and with other colleagues in the team who will also maintain confidentiality

/ We understand if my clinician uses copies of my recordings to improve the quality of my treatment with colleagues outside the team, my consent will be asked for beforehand

I / We understand my therapist / clinician may show a copy of my recording to their supervisor / academic training institute for supervision purposes

I / We understand I have the right to withdraw my permission to make recordings at any time before, during or after the sessions and that I can ask my therapist / clinician to stop the recording at any time

I / We understand I can ask my clinician / therapist before, during or within a reasonable time after the sessions to destroy the recording

Please note that all family members in a family therapy session must sign and date this form

Signature:

Date:

Clinician name:

Clinician signature:

Clinician date:

Withdrawal of consent

I / We withdraw my consent for an audio visual recording to be made

Signature:

Date:

Receipt of MP3 Player

| |
|--------------|
| Name: |
|--------------|

| | |
|--------------|--------------|
| Date: | Time: |
|--------------|--------------|

Please
Initial
in boxes

I have received the MP3 player serial number:-
.....

I understand that the MP3 player is to be used for recording therapy sessions. It is my sole responsibility to keep safe and I must return it when my episode of care is complete.

Signed:

Date.....

Therapist / Clinician:.....