**Audio-visual Recording Policy**

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# Introduction

## Policy statement

Audio and visual recording can be a valuable component of effective practitioner learning and development in general practice. The purpose of this policy is to outline the purpose(s) for making such recordings and how staff at [insert practice name] will make the recordings appropriately. The policy will cover:

* Consent
* Confidentiality
* Asset security

## Status

The practice aims to design and implement policies and procedures that meet the diverse needs of our service and workforce, ensuring that none are placed at a disadvantage over others, in accordance with the Equality Act 2010. Consideration has been given to the impact this policy might have in regard to the individual protected characteristics of those to whom it applies.

This document and any procedures contained within it are non-contractual and may be modified or withdrawn at any time. For the avoidance of doubt, it does not form part of your contract of employment.

OR [delete as applicable]

This document and any procedures contained within it are contractual and therefore form part of your contract of employment. Employees will be consulted on any modifications or change to the document’s status.

## Training and support

The practice will provide guidance and support to help those to whom it applies understand their rights and responsibilities under this policy. Additional support will be provided to managers and supervisors to enable them to deal more effectively with matters arising from this policy.

# Scope

## Who it applies to

This document applies to all employees of the practice. Other individuals performing functions in relation to the practice, such as agency workers, locums and contractors, are encouraged to use it.

## Why and how it applies to them

This document has been produced to provide those clinical staff who would benefit from the audio-visual recording of consultations at [insert practice name] with the necessary information to ensure that the documented processes are followed, thereby ensuring compliance with the General Data Protection Regulation (GDPR) and other legislative acts.

# Definition of terms

## Audio-visual

Involving the use of recorded pictures and sound, or the equipment that produces them.[[1]](#footnote-1)

## General Data Protection Regulation

The GDPR replaced the Data Protection Directive 95/46/EC and has been designed to harmonise data privacy laws across Europe, to protect and empower all EU citizens’ data privacy and to reshape the way in which organisations across the region approach data privacy. The GDPR became applicable as law in the UK on 25th May 2018.

## Voluntary consent

The decision to consent, or not to consent, must be made by the individual and must not be influenced by healthcare professionals, friends or family members.

## Explicit consent

Explicit consent is required for purposes other than the provision of direct care. To conform to the GDPR, consent must be freely given, specific, informed and an unambiguous indication of the data subject’s agreement.[[2]](#footnote-2)

## Confidentiality[[3]](#footnote-3)

All identifiable patient information, whether written, computerised, visually or audio recorded, or simply held in the memory of health professionals is subject to the duty of confidentiality. This includes:

* Any clinical information about an individual’s diagnosis or treatment
* A picture, photograph, video, audiotape or other image of the patient
* Anything else that, directly or indirectly, might lead to identifying the patient

# Equipment

## Equipment

Audio-visual recording is to be undertaken using only the practice video camera which is registered in the practice asset register. Staff authorised to make recordings at [insert practice name] are **not** permitted to use personal devices such as mobile phones, tablets or cameras to make recordings.

The practice video camera is: [insert camera make and model].

## Equipment storage

The practice video camera and ancillaries when not in use are stored [insert location], the key for which is held by [insert individual and location]. The practice manager or nominated deputy will ensure that the video camera is signed out to the relevant clinician upon request.

On completion of the recording, the video camera is to be returned and signed in by the practice manger or nominated deputy.

Under no circumstances is the camera to be removed from the practice premises.

## Equipment preparation

The video camera must be tested prior to use to ensure functionality. Furthermore, the date and time on the video camera must be accurate.

# Principles for audio-visual recording

## GMC guidance

Prior to making any recording, the trainer or trainee must:[[4]](#footnote-4)

* Give patients the information they want, or need, about the purpose of the recording
* Only make recordings when the appropriate consent has been given
* Stop the recording if the patient requests so, or if the recording is causing distress

Audio-visual recordings may be used where the patient is identifiable, so long as a record of consent is evident for the recording to be made and used for future teaching purposes; this must be clearly explained to the patient(s) and if they do not consent to the secondary use of the recording, this is not permitted.

# Consent

## Consent

Consent is appropriate if data processors are in a position to “offer people real choice and control over how their data is used”.[[5]](#footnote-5) The GDPR states that consent must be unambiguous and requires a positive action to “opt in”, and it must be freely given. Data subjects must be made aware that they have the right to withdraw consent at any time.

Prior to any audio-visual recordings being made, consent must be obtained and recorded. It is the responsibility of the clinician carrying out the procedure or examination to obtain consent from the patient. It is essential that the patient understands why the recording is being made, and the purpose(s) for which it will be used.

## Consent for children and young people

Young people aged 16-17 are presumed to be capable of consenting to medical examinations, treatments or procedures. As per adults, consent will only be deemed valid if it is given voluntarily by an appropriately informed young person.

Children under 16 may have the capacity to consent to some examinations, treatments and procedures but not others. Therefore, parental consent should be sought and recorded accurately when it is deemed they are not Gillick competent.

## Lack of mental capacity

Patients who do not have the capacity to make an informed, voluntary decision are protected under the Mental Health Act (MHA) 2005. The MHA only applies to those patients living in England and Wales.

A person is defined as lacking capacity if ‘they are unable to make a decision for themselves because of an impairment or disturbance in the functioning of their mind or brain’.

## Recording consent

Consent is to be clearly identifiable and separate from other comments entered into the healthcare record. The consent form at Annex A is to be used to record patient consent.

# BMA guidance

## Doctor requirements

The BMA states that when using visual or audio recordings, doctors must:[[6]](#footnote-6)

* Give patients the information they want, or need, about the purpose of the recording
* Make recordings only where there is appropriate consent or other valid authority for doing so
* Ensure that patients are under no pressure to give their consent for the recording to be made
* Where practicable, stop the recording if the patient requests this, or if it is having an adverse effect on the consultation or treatment
* Anonymise or code the recordings before using or disclosing them for a secondary purpose, if this is practicable and will serve the purpose
* Disclose or use recordings from which patients may be identifiable only with consent or other valid authority for doing so
* Make appropriate secure arrangements for storing recordings
* Be familiar with, and follow, the law and local guidance and procedures that apply

# Recording a consultation

## The process

To ensure compliance with the referenced legislation, the clinician must:

* Explain to the patient the purpose of the request to make the recording
* Ensure the patient understands why the clinician wishes to make the recording
* Ensure consent has been given freely, without influence
* Obtain the patient’s signature on the practice consent form (Annex A)
* Advise the patient that it is their right to withdraw their consent at any time
* Ensure consent is recorded

Once the clinician has satisfied themselves that the above actions have been completed, they will set the video camera to record and commence the consultation as they would for any other consultation.

At the end of the consultation, the patient should be offered the opportunity to review the consultation and to reaffirm whether they are happy for the recording to be used for future teaching purposes (if they previously had consented to this), or if they wish the recording to be used solely for the purpose of training in relation to this consultation.

## Deletion of audio-visual recordings

Following the consultation and subsequent review between the trainer and trainee, the recording is to be deleted from the device’s SD card. No copies are to be made or retained by either party unless the patient has consented to the use of the recording for future teaching purposes (see below).

## Storing audio-visual recordings

If recordings are to be used in the future for training purposes, it is advised by the GMS that doctors must be satisfied “that there is agreement about the ownership, copyright, and intellectual property rights of the recording”.4  Recordings should only be retained for as long as necessary and should also be included in the data-mapping process. (See GDPR Policy for further information about data mapping.)

## Patients recording consultations

There is no extant legislation which provides detailed guidance about patients making personal audio recordings of consultations with GPs or other clinicians, nor does the patient have to request permission to do so. However, it is deemed courteous if they advise the clinician that they would like to record the consultation.

The information contained within the audio recording made by the patient is confidential to the patient, not the clinician. The patient can waive their own confidentiality should they so wish; this includes disclosing the consultation with third parties and/or posting the recording on the internet, using social media sites.[[7]](#footnote-7) The latter is, however, governed by NHS Protect’s document ‘Misuse of social media to harass, intimidate or threaten NHS staff’.

Patients must be advised that should they disclose the consultation to third parties without obtaining the consent of those recorded, this may constitute a criminal offence, or a data breach depending on the context of the disclosure.

The following should be explained to patients:7

Whilst [insert practice name] cannot place restrictions on a patient wishing to record notes of a consultation or conversation with a member of the clinical team, when it is felt absolutely necessary by the patient to do so, we as a team expect that:

* Any recording is done openly and honestly
* The recording process does not interfere with the consultation process or the treatment or care being administered
* The patient is aware that an entry will be made in their healthcare record that they have recorded the consultation (or care being provided)
* The patient understands the private and confidential nature of the recording and that it is their sole responsibility to ensure it is kept safe and secure
* The recording is being made for personal use only
* Any misuse of the recording, including use it to harass, intimidate or threaten practice staff, may result in criminal or civil proceedings

At the end of the consultation, the clinician can ask the patient to provide a copy of the recording if they wish; this can then be added to the patient’s healthcare record to form a permanent record of the consultation and what was discussed.

# Summary

Audio-visual recording is a common and useful tool in general practice, which enables trainees to learn and develop. Adhering to the guidance in this policy will ensure that the procedure is effective and compliant with extant legislation.

# Annex A – Consent form for audio-visual recording

|  |
| --- |
| **Patient consent for audio-visual** |

|  |  |  |  |
| --- | --- | --- | --- |
| **Patient details** | | | |
| **Surname** |  | **Forename** |  |
| **Title** |  | **Date of birth** |  |
| **Patient ID No.** |  | **NHS No.** |  |

I confirm that I have chosen to allow the clinician to make an audio-visual recording to support learning and development at [insert practice name].

I confirm that the process has been explained to me including:

* The reason for the audio-visual recording being made
* The benefits of the recording (trainee GP development)
* How the recording will be used

I acknowledge that the clinician has explained to me that I can withdraw my consent at any time.

Please ✓ which of the following statements apply:

I consent to audio-visual recordings being made 🞎 for the sole purpose of learning in relation to this consultation

I consent to audio-visual recordings being made and used for internal training at the practice 🞎

|  |  |  |  |
| --- | --- | --- | --- |
| **Patient’s name** |  | **Date** |  |
| **Signature** |  | | |

|  |  |  |  |
| --- | --- | --- | --- |
| **Clinician details** | | | |
| **Surname** |  | **Forename** |  |
| **Title** |  | **Registration No.** |  |

I have explained the purposes for which audio-visual recordings have been made 🞎

The patient has consented to having audio-visual recordings made as detailed above 🞎

|  |  |  |  |
| --- | --- | --- | --- |
| **Clinician’s name** |  | **Date** |  |
| **Signature** |  | | |

1. [Cambridge Dictionary](https://dictionary.cambridge.org/dictionary/english/audio-visual) [↑](#footnote-ref-1)
2. [BMA GPs as data controllers under the GDPR](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=7&ved=0ahUKEwjH1c2p683bAhVoKcAKHWzIAQMQFghoMAY&url=https%3A%2F%2Fwww.bma.org.uk%2F-%2Fmedia%2Ffiles%2Fpdfs%2Femployment%2520advice%2Fethics%2Fgps-data-controllers-under-gdpr-mar2018.pdf%3Fla%3Den&usg=AOvVaw31JOTJSIlR7y9BCae7OFfA) [↑](#footnote-ref-2)
3. [BMA Confidentiality](https://www.bma.org.uk/advice/employment/ethics/medical-students-ethics-toolkit/9-confidentiality) [↑](#footnote-ref-3)
4. [GMC – Making and using visual and audio recordings of patients](https://www.gmc-uk.org/-/media/documents/making-and-using-visual-and-audio-recordings-of-patients_pdf-58838365.pdf) [↑](#footnote-ref-4)
5. [ICO Consent](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/) [↑](#footnote-ref-5)
6. [BMA Taking and using visual and audio recordings of patients](https://www.bma.org.uk/advice/employment/ethics/confidentiality-and-health-records/visual-and-audio-recordings-of-patients) [↑](#footnote-ref-6)
7. [NHS Patients openly audio recording consultations](https://www.whatdotheyknow.com/request/379944/response/916674/attach/html/3/Patients%20recording%20NHS%20staff%20in%20health%20and%20social%20care%20settings%20guidance%20May%202016.pdf.html) [↑](#footnote-ref-7)