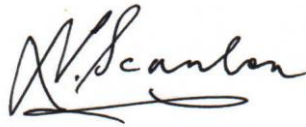


Policy Document Control Sheet

Reference Number	PROC/HI/0050				
Title	Data Subject Audio and Visual Recording Procedure				
Version number	3.0				
Document Type	Trust-Wide Policy		Trust-Wide Procedure	x	HR Framework
	Trust-wide Guideline		Local Guideline		
Originating Directorate Or Care Group	Nursing				
Department	Health Informatics				
Name of Document Author	Lisa Natrass				
Name of Document Owner	Head of Data Security and Protection				
Original Policy Date	November 2015				
Reviewing Committee	Data Security and Protection Committee				
Approving Committee	Informatics Strategy Sub Committee				
Ratification Committee	Integrated Quality Assurance Committee				
Ratification Date	25 th May 2019				
Next Review Date	25 th May 2022				
Equality Impact Assessment completed	Yes				
Status	Approved				
Confidentiality	Unrestricted				
Keywords	Data Subject Audio and Visual Recording; conversations; procedure				

Executive Sponsor's Signature	
Name & Job title of Executive Sponsor	Noel Scanlon, Executive Director of Nursing
Master copy held at:	Corporate Records Office, Trust Headquarters, Darlington Memorial Hospital

Version Control Table

Date Ratified	Version Number	Status
November 2015	1.0	Superseded
December 2017	2.0	Draft
May 2019	3.0	Approved

Table of Revisions

Date	Section	Revision	Author
November 2015	All	New Procedure	HOIG
December 2017	All	Full Review	HOIG
May 2019	All	Full Review re GDPR	HDSP

This Policy/Procedure/Guideline has been reviewed and updated to comply with the General Data Protection Regulations (May 2018)

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1 Introduction

The trust is receiving increased requests from people to record meetings, scan's, conversations etc. The management of this needs careful consideration. It is better to know that conversations are being recorded rather than they are completed covertly.

2 Purpose

The purpose of this guidance is to assist staff how to handle requests to record conversation or images from a patient, relative or visitor on their personal devices.

3 Scope

This policy also applies to persons who, although not employed by The Trust, have authorised access to the Internet through the computers owned or managed by The Trust. This includes staff working for any affiliated organisations and includes County Durham and Darlington NHS Services (CDD NHS Services).

4 Definitions

N/A

5 Duties

All trust staff must comply with the law and the trust policies defining the law i.e. Data Protection Policy.

6 Main Content of Policy

The trust have developed guidance to staff on these aspects being open and transparent.

Any recording can be used to remind people of the conversations / meetings, record visually aspects of a scan etc. if people do this they must know it is their personal responsibility for that information if they chose to record on their personal device.

Staff need to be aware recording is possible by people and that they must act professionally knowing their actions can be seen or heard at a later date.

6.1 Best practice

There are a few areas noted as best practice but these do not have to be completed and are purely a guide to staff.

Ideally people should inform that a recording is happening and where possible obtain consent for this on the recording. In practice, this will require the following process:

- a. Notify the person you intend to record of your intent to record.
- b. Obtain consent 'off the record'

- c. Start the recording; and then
- d. Ask the person to confirm on the record that they consent to the recording.

Most average mobile phones now have the means to record both audio and visually, with or without permission; most people have the capability to record conversations or videos.

If a patient, relative or visitor requests to record the patient's treatment the patient must consent to this and a note and signature made in the case records of the consent and recording.

It must be made clear to the patient and individual completing the recording on their personal device that the trust has no responsibility for the personal information on that device or where it is later stored. It is fully the responsibility of the individual whose device it is.

In practice, recording meetings may make those taking part uncomfortable and so may not be helpful to the conduct of the meeting, however even if consent is not obtained from everyone, recording may still proceed.

Employees need to be aware that they should never say anything that they aren't prepared to have stated back at them at a later date and be aware that there is a clear message of don't do or say anything in a situation that you aren't prepared to stand by.

6.2 Robustness

Some issues which have been identified are, firstly if the technology fails and you have solely relied on the recording device, you could be left in the situation of not being able to produce accurate evidence. Secondly, it is not unheard of meetings etc. to become heated and there is the risk that things are said in the heat of the moment which in all honesty would not want to be aired at a later date, be mindful of this.

6.2.1 Case law

People may think that if a request to record something and permission is refused that would be the end of the matter. Unfortunately this is not the case. A case in Scotland had no option but to accept the resignation of its chairman rather than discipline him, after it came to light he had covertly recorded a meeting using a special pen fitted with a recording device. The content of the meeting could have caused an issue with the organisation had it been publically aired.

There is further case law appearing regarding this area and employers need to follow the updates from the courts.¹

6.2.2 Trust storage of recording

If the Trust are recording conversations they must ensure either a full transcript is typed from the meeting and the minutes are accepted, once this has been completed the recording can be deleted.

If recording audio or visually use of the Medical Illustration department must be completed if it is for trust clinical use. If the recording is for other conversations the recording must be kept for the minimum retention period within the associated file.

6.3 Key Performance Indicators (KPIs)

The Trust complies with the law

Staff know and understand how to respond to requests under this procedure.

¹ Employment Appeal Tribunal case of Amwell School v Dogherty UKEAT/0243/06 - See more at: <http://www.alcumusgroup.com/recording-workplace-conversations/#sthash.hDb4TYGe.dpuf>

7 Monitoring

7.1 Compliance and Effectiveness Monitoring

Compliance with this policy will be monitored as outlined in the table below.

7.2 Compliance and Effectiveness Monitoring Table

Monitoring Criterion	Response
Who will perform the monitoring?	The Corporate Records Compliance Team Data Protection Officer
What are you monitoring?	<ol style="list-style-type: none"> 1. Compliance with the Policy for Procedural Governance Documents as follows: <ol style="list-style-type: none"> a) Style, format and template. b) Explanation of terms used. c) Consultation process. d) Review/approval arrangements/process. e) Associated documents. f) Supporting references. 2. Compliance with the Policy for Procedural Governance Documents as follows: <ol style="list-style-type: none"> a) Ratification process; and b) Review arrangements. 3. Assurance with the Policy for Compliance: <ol style="list-style-type: none"> a) contractual agreements are logged on the trusts 'records of processing' registers by Senior Information Asset Owners and are reviewed on an annual basis.
When will the monitoring be performed?	<ol style="list-style-type: none"> 1. Quarterly StaffNet Policies and Procedures site audit and report. 2. Quarterly advance warning report. 3. Quarterly basis as per trust IRM Policy
How are you going to monitor?	<ol style="list-style-type: none"> 1. Analyse the export report from StaffNet Policies and Procedures site. 2. Monitoring of Register and StaffNet with regards to completeness and timeframes. 3. Checks of records of processing registers through the staffnet communities site.
What will happen if any shortfalls are identified?	Any shortfalls identified will be reported to the appropriate Document Owner and Ratification Committee.
Where will the results of the monitoring be reported?	Monitoring reports will be provided as follows: 1, 2 and 3. Quarterly monitoring report to the appropriate Ratification Committee and relevant Lead Directors / Associate Directors.

How will the resulting action plan be progressed and monitored?	Action Plans will be developed and progressed by the relevant Committee monitored by the relevant Ratification Committee.
How will learning take place?	Supplementary guidance will be issued in the form of Staff Bulletins via StaffNet, the Trust's intranet. If required, the Data protection Officer will provide support to Document Owners.

8 Glossary of Terms

N/A

9 Associated Documentation

This guidance is referenced from the following CDDFT Trust policies and procedures:
Data Protection Policy

References

Data Protection Act 2018

Information Commissioners Office Guidance

UK Case law

10 Appendices

Appendix 1 - Equality Impact Assessment

10.1 Appendix 1 - Equality Analysis/Impact Assessment (v4/2018)

Division/Department:

Nursing / Health Informatics

Title of policy, procedure, decision, project, function or service:

Data Subject Audio and Visual Recording Procedure

Lead person responsible:

Head of Data Security and Protection

People involved with completing this:

Data Security and Protection

Type of policy, procedure, decision, project, function or service:

- Existing
- New/proposed
- Changed

Date Completed:

May 2018



Step 1 – Scoping your analysis

What is the aim of your policy, procedure, project, decision, function or service and how does it relate to equality?

To ensure Trust is compliant with legislation.

Who is the policy, procedure, project, decision, function or service going to benefit and how?

Full Trust staff.

What barriers are there to achieving these outcomes?

None

How will you put your policy, procedure, project, decision, function or service into practice?

Full distribution Trust wide; held on staffnet policy central register

Does this policy link, align or conflict with any other policy, procedure, project, decision, function or service?

No

Step 2 – Collecting your information

What existing information / data do you have?

Follows the current policy in the trust and legislation

Who have you consulted with?

Data Security and Protection Committee

What are the gaps and how do you plan to collect what is missing?

None

Step 3 – What is the impact?

Using the information from Step 2 explain if there is an impact or potential for impact on staff or people in the community with characteristics protected under the Equality Act 2010?

Ethnicity or Race

None

Sex/Gender

None

Age

None

Disability

None

Religion or Belief

None

Sexual Orientation

None

Marriage and Civil Partnership (applies to workforce issues only)

None

Pregnancy and Maternity

None

Gender Reassignment

None

Other socially excluded groups or communities e.g. rural community, socially excluded, carers, areas of deprivation, low literacy skills etc.

None

Step 4 – What are the differences?

Are any groups affected in a different way to others as a result of the policy, procedure, project, decision, function or service?

No

Does your policy, procedure, project, decision, function or service discriminate against anyone with characteristics protected under the Equality Act 2010?

Yes

No



If yes, explain the justification for this. If it cannot be justified, how are you going to change it to remove or mitigate the affect?

N/A

Step 5 – Make a decision based on steps 2 - 4

If you are in a position to introduce the policy, procedure, project, decision, function or service? Clearly show how this has been decided.

Review – Data Security and Protection Committee; Approval ISSC & IQAC and loaded to staffnet

If you are in a position to introduce the policy, procedure, project, decision, function or service, but still have information to collect, changes to make or actions to complete to ensure all people affected have been covered please list:

How are you going to monitor this policy, procedure, project or service, how often and who will be responsible?

Continual assessments are in place for all policies and procedures.