

## Working together with Stoke-on-Trent Safeguarding Children Partnership

# GUIDANCE ON ELECTRONIC AND DIGITAL RECORDING

### Purpose of this guidance

This inter-agency guidance has been developed as a tool to help our partnerships to be able to manage the issue of recording on a case by case basis and to provide professionals with guidance on the legal framework and how to manage digital recordings, particularly in multi-agency meetings.

### Why do we need this guidance?

With advances and an increase in the use of digital technology in our society there has been a rise in the number of incidents nationally where professionals are being recorded without their knowledge during visits, where parents and carers are asking if they can record meetings, or where meetings are recorded without any prior knowledge, agreement or consent. The recording may take place overtly or covertly.

It is important to remember that some individuals may simply wish to record a meeting because they have physical, learning or literacy difficulties; they struggle to follow or recall conversations, or prefer to have an exact record of a conversation to refer back to. Some might ask because they want to concentrate on the meeting/ consultation/treatment, or are so worried and stressed and don't want to forget what they've heard, been told or asked of.

### Risks

There are no specific legal requirements that govern an individual making a personal recording of their meeting/ consultation or treatment, either overtly or covertly, for their private use. Recordings made to keep a personal record of what the professionals said are deemed to constitute 'note taking' and are therefore permitted when undertaken for this purpose. While an individual does not require permission to record their meeting/consultation/ treatment, common courtesy would suggest that permission should be sought in most cases.

The content of the recording is confidential to the individual, not the professional. The individual can waive their own confidentiality as they wish; this could include disclosing the details of their meeting with third parties or even posting and/or sharing the recording in unadulterated form on the internet through social media sites.

The position may, however, change once a recording is no longer used as a record of the meeting, for example where the recording is disclosed or publicised in a modified way which is not connected to the meeting. This could include an instance where it is designed to cause detriment to or harass another individual captured in the recording. Any such disclosure or publication, depending on the nature and context, may attract a civil action for damages and may also be a criminal offence.

For more guidance please read your internal processes and consult with your line manager.

## What about the legal framework and statutory guidance?

Many partner agencies and professionals believe that there is some form of legislation or statutory guidance that protects them from being recorded; this is not true and the information below tells you why:

**Data protection:** The Data Protection Act 1998<sup>1</sup> does not prevent individuals recording meetings. It was designed to apply to organisations processing data (not individuals) particularly if the data is collected for personal use. What a professional says at a meeting is not personal data for the purposes of the Act, although the personal data of others may be contained in what is said at a meeting. It is the professional's own record of any meetings which falls under the provisions of the Act. The same applies to the Regulation of Investigatory Powers Act 2000 (RIPA).<sup>2</sup>

**Information Governance:** Information governance refers to the legal and procedural framework that safeguards and ensures the appropriate use of an individual's personal information by an organisation. It is important to note that an individual's own private recording is not an information governance issue. As the organisation/ agency is not responsible for generating or making the recording, it is not liable for safeguarding the confidentiality, integrity or security of such material.

**Human rights:** Individuals do not owe a duty to one another or to a professional under the Human Rights Act.<sup>3</sup> When it comes to matters of human rights it is the professional, as an agent of the state, who owes a duty to the individual and must act with a respect for the rights of privacy, the individual's life and expression. These are all conditional rights and can be interfered with where they compete with other rights if it is necessary and proportionate to do so. A professional is already by definition, interfering with individuals' article 8 'right to a family life' and so must ensure they are weighing up all the competing rights.

**Privacy:** The right of a professional to privacy does not apply since a meeting attended by someone in their professional role is unlikely to contain information about the professional's private life.

**Child Protection meetings:** There are two main pieces of national guidance which refer to conducting child protection meetings. Working Together to Safeguard Children (2018) does not say anything about the making of recordings of child protection or looked after children meetings, or give guidance as to whether this should or shouldn't happen.

The IRO handbook<sup>4</sup> for independent reviewing officers (IRO) on looked after children reviews is another guidance document that does not provide any information about parents or carers recording meetings. It makes it clear the IRO is responsible for ensuring an accurate record of meetings is made, but doesn't include any way of addressing parents' concerns about inaccuracies.

## Potential legal action

<sup>1</sup> The Data Protection Act 1998: [www.legislation.gov.uk/](http://www.legislation.gov.uk/)

<sup>2</sup> Regulation of Investigatory Powers Act 2000 (RIPA) [www.legislation.gov.uk/](http://www.legislation.gov.uk/)

<sup>3</sup> The Human Rights Act [www.legislation.gov.uk/](http://www.legislation.gov.uk/)

<sup>4</sup> IRO Handbook <https://www.gov.uk/government/publications/independent-reviewing-officers-handbook>

If any part of the covert or overt recording of the patient's consultation is disclosed to a third party without the prior consent of the other recorded parties, then depending on the nature and the context of such disclosure, a criminal offence may be committed, civil legal action may be taken, or a breach of the DPA may occur.

## Criminal offences

Criminal offences could arise from unauthorised disclosure, depending on how that disclosure or publication is made. However, the most likely offences could include an offence contrary to section 1 of the Protection From Harassment Act 1997, an offence contrary to section 4, 4A or 5 of the Public Order Act 1986, an offence contrary to section 1 of the Malicious Communications Act 1988 or an offence contrary to section 127 of the Communications Act 2003.

This list is not exhaustive and the specific offence charged would depend on the facts. For further information on the provisions of legislation referred to above please refer to your own organisations/ agency legal department.

## Top Tips for Professionals

As there is no legal restriction on the overt or covert recording of conversations or meetings and this action cannot be banned by agencies, the following guidance should be used by partner agencies and professionals:

- **Don't fear covert recording but be mindful that covert recording could be taking place during your interactions with individuals. This could be during a telephone call, a face to face meeting, appointment or multi-agency meeting.**
- **Remember - You are doing your job and should have nothing to hide, so you should always be able to explain what you said or did and why.**
- **Think about this issue from the individual's perspective and always try and work with them to help make decisions about recordings that are right for the distinct circumstances of the case.**
- **We should always be transparent in our work because we are working to a professional standard on behalf of the individual and/or child. We should therefore expect that everything we say, do or write could become public knowledge.**
- **Try to ensure that they you do not make statements during conversations which they would not be prepared to hear produced as evidence in another professional setting (including court).**
- **For planned recordings advance consent should be sought.**

- If the scale or style of recording is excessive, oppressive or disproportionate then this may raise concerns and cross a threshold. For example, a parent recording their questioning of the child in a manner which is oppressive may in fact be evidence of possible emotional abuse of the child by that parent.
- Always seek advice from your nominated / designated safeguarding lead within your organisation if you are unsure what to do.
- A recording may be relied on in court, but the court would have to give permission for this to be used.
- Remember, recording meetings is not the same as distributing or publishing the records or recordings that have been made.