

Patient recording of consultations

Patients who record their own consultations, whether covertly or openly, are acting perfectly legally. Evidence suggests that patients' prime motivation is to help them review and understand what was said and perhaps also to share with family members or others. Research has shown that patients valued the ability to re-listen to the recording, often doing so more than once. (Elwyn G, et al. *BMJ Open* 2015;5:e008566)

Basic Considerations

The patient doesn't need the clinician's permission to record a consultation. The ICO is clear that this is the patient's own information and is therefore exempt from the provisions of data protection laws. During a consultation, the information being discussed relates to the patient. By recording it, that patient is merely viewed as processing their own information.

Technology makes it increasingly easy for patients to secretly record consultations. Most mobile phones and smartphones have record functions which can be easily activated without a clinician realising it.

MDDUS' view is that clinicians should accept the prospect of covert recording as a product of the digital age. Think of it as no more than a very accurate record of the consultation rather than as a challenge to the clinician's professionalism. Maintaining and protecting the clinician/patient relationship and the trust that is inherent in that should be a priority. It would be better to discuss the reasons for the patient recording a consultation openly and with mutual respect.

The clinician may wish to consider asking for a copy of the recording so that it can be included in the patient's records.

Common pitfalls

- Organisations put up notices to ban the recording of consultations – this is very difficult to police and there is no legal reason to stop a patient recording what is said or done during an appointment. This sort of policy could lead to complaints.
- A clinician refuses to allow a patient consultation to be recorded and declines to undertake the consultation without putting in place suitable alternative arrangements.

Key points

- Although the patient can record consultations without asking, the clinician wouldn't be allowed to record without the patient's permission as this falls under data protection legislation.
- The Data Protection Act views the data as confidential to the patient but not to the consulting clinician.

- MDDUS experience suggests most patients make these recordings for positive reasons e.g. to help their understanding of their health advice. They might wish to let relatives or friends hear the recording to help with their understanding. However, relatives or friends cannot make recordings without the patient's explicit consent.
- Recordings, covert or not, may be admissible as evidence if judged as relevant to a legal case.

MDDUS Training & CPD Resources: <https://www.mddus.com/training-and-cpd/training-for-members>