



Hosting and Recording Online Lessons during the Coronavirus Pandemic

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1. Introduction

- 1.1 Schools are once again facing a challenging term following the announcement of a third national lockdown in England from 5th January 2021. With many schools now operating with skeleton staff on site, and only the pupils of critical workers and those that are considered vulnerable physically attending on-site, schools are now largely relying on remote learning provisions for keeping their pupils engaged and learning whilst at home.
- 1.2 In contrast to the first national lockdown in April 2020, schools are now generally more experienced and equipped to deliver online learning, with resources for delivering educational provision remotely. That being said, it remains of paramount importance that schools follow the current government guidance on remote learning and ensure that they have safeguarded their staff and pupils from the risks associated with remote provision.

2. DfE guidance and the Continuity Direction

- 2.1 On 7th January 2021, the DfE updated its guidance for schools to reflect the national lockdown. This updated guidance included direction on managing safeguarding procedures and remote learning during the third national lockdown. The full guidance can be accessed [here](#).
- 2.2 The emphasis has changed since April 2020. During the first lockdown, there was no expectation that teachers should live stream or provide pre-recorded videos. Schools were able to consider the approach that best suited the needs of their pupils and staff. Schools will no doubt recall, that when the "Reopening of Schools" guidance was published in July 2020, there was considerable information contained within it that set out the DfE's expectations for the quality of remote learning. Importantly, the DfE made it a requirement that schools prepare a remote learning provision that could be immediately implemented in the event of a school closure, or a local or national lockdown.
- 2.3 The guidance dictates that schools should provide remote education that is equivalent in length to the core teaching pupils would receive in school and will include both recorded or live direct teaching time, and time for pupils to complete tasks and assignments independently. The guidance goes on to state that the minimum amount of remote education provided should be:
 - 3 hours a day for Key Stage 1 on average across the cohort, with less for younger children
 - 4 hours a day for Key Stage 2
 - 5 hours a day for Key Stages 3 and 4
- 2.4 The guidance also sets out further objectives that schools must provide which include setting work which is meaningful and ambitious and having ways of checking that pupils are actively engaging with the work set.
- 2.5 We recommend that schools read the guidance on remote learning (page 46 onwards) in full (see [here](#)).

- 2.6 In April, our view was that for independent schools, where parents are paying for the provision of education for their children, it was more likely to be considered necessary and appropriate to provide an alternative educational provision for their pupils that is more akin to classroom style learning whilst the school remains closed. This may be challenging for schools with international students who will likely be in a different time zone. This remains our view.
- 2.7 There is likely to be an increased parental expectation this time around given that independent schools have "done this before" and have had time to prepare and manage their online provision. We anticipate that, as was the case with lockdown one, the quantity and quality of online learning will form the basis of parental complaints and fee disputes this term. Having said this, parents are more familiar with what to expect and the transition for some to remote provision has been smooth.
- 2.8 Schools also provide considerable pastoral support to their pupils, and as before, "face to face" distance learning via Zoom or Teams, for example, will allow schools to continue this whilst pupils are off site.

3. Safeguarding

- 3.1 For most schools, whilst online learning did take place during the previous lockdowns it is still a relatively new concept, and it is of paramount importance that schools continue to protect their pupils and staff when providing remote education. The starting point should be for staff to follow the principles of the school's staff behaviour policy (or code of conduct).
- 3.2 If staff will be required to teach lessons, or to communicate with pupils and/or parents from home, staff should be reminded that they should maintain professional standards (for example, in relation to their dress, language, email contact, and professional boundaries). When broadcasting or recording, staff should be mindful of what is displayed in the background. This is important to protect both pupils and staff.
- 3.3 The DfE guidance also emphasises the importance for schools to consider how best to approach its safeguarding procedures online whilst continuing to have regard to Keeping Children Safe in Education (2020) at all times. The latest guidance reiterates the requirement for schools to update their safeguarding policies to set out any interim arrangements in place to keep children not physically attending the school safe, especially when they are online, and to identify how concerns about these children should be progressed. Schools should also read the safeguarding section of the DfE guidance (available [here](#)).
- 3.4 With respect to the actual provision put in place, schools should carry out a risk assessment to determine what arrangements are most appropriate for their setting to support safe remote learning, and in terms of providing pastoral care to pupils. Factors to consider when carrying out such a risk assessment includes the age and content of the learning, the needs of any vulnerable pupils (including those with SEND) and the risks arising from the format/type of the remote provision proposed.

- 3.5 In terms of safeguarding processes, schools must ensure that there is a trained DSL (or deputy) available on site, or at least contactable by phone if working from home. In the event that this is not operationally possible, schools can arrange to share DSLs with other local schools. In terms of reporting procedures, there should be no change to local multi-agency safeguarding arrangements despite the national lockdown.

4. Should lessons be recorded

- 4.1 The latest DfE guidance on safeguarding and remote education during the Coronavirus pandemic signposts schools to Keeping Children Safe in Education (2020) (specifically Annex C) for information on what schools should be doing to protect their pupils online.
- 4.2 In addition, the guidance lists a number of resources on safe online education (see above) that may assist schools. Including the DfE's "Safeguarding and Remote Learning During Coronavirus" guidance, last updated on 6 October 2020 (available [here](#)) which also refers schools to third party guidance including from the UK Safer Internet Centre on safe remote learning, the NSPCC and the London Grid for Learning (LGfL) on the use of videos and livestreaming (amongst several other organisations). A link to the latter is [here](#). This guidance covers 20 safeguarding considerations for lesson livestreaming - recording lessons being one of them.
- 4.3 Recording a live lesson is just one of a number of measures that can be considered by schools as part of their risk assessment. Other options include using school registered accounts, auditing the settings on who can start or join the stream/video, conducting it in an appropriate room with appropriate clothing, and having another member of staff or adult present. This list is not exhaustive.
- 4.4 In addition, the DfE guidance on "Safeguarding and Remote Learning During Coronavirus" states that, when communicating online with parents and pupils, schools should:
- communicate within school hours as much as possible (or hours agreed with the school to suit the needs of staff)
 - communicate through the school channels approved by the senior leadership team
 - use school email accounts (not personal ones) • use school devices over personal devices wherever possible, and
 - advise teachers not to share personal information.
- 4.5 To protect both the pupils and the staff delivering lessons, it remains of paramount importance for schools to ensure that there are very clear reporting routes in place so that pupils (and indeed staff) can raise any concerns whilst online. As well as reporting routes back to the school there should also be signposting to age-appropriate practical support, not to mention clear guidance for staff which would normally be contained in a school's IT and staff behaviour policies. This should be included in the school's interim safeguarding policy or annex to it.

- 4.6 If a school decides to record online sessions following a risk assessment, it is understandable that teachers may be concerned that they could be judged or appraised on their performance. Schools should make clear to staff the purpose of recording lessons and the purpose for which they will be used.

5. Data protection considerations

- 5.1 If schools record live lessons or ask teachers to pre-record their lessons, they are likely to be capturing personal data on the individuals participating in those lessons. There may also be personal data recorded on non-participants if, for instance, comments are made about others during the lessons. As data controllers of this additional personal data, schools will need to consider and meet their obligations under data protection law including compliance with the seven data protection principles under the GDPR.
- 5.2 It is crucial that schools review their privacy information for teachers (and pupils, if their personal data is also captured) to determine whether it takes into account recording of lessons. Schools may have already updated their privacy notices last year with this in mind. However, “reminder” or supplementary communications may be required during this lockdown particularly where new platforms or ways of learning remotely are being introduced.
- 5.3 Where communications are required, schools may wish to email relevant staff with information on how their data in these recordings is being handled and protected; this may prove reassuring to them. We suggest referring to any communication with this privacy information as a temporary supplement or addition to the Staff Privacy Notice (which can also be signposted to at the same time). Alternatively, some schools may prefer to make a further update to the Staff Privacy Notice itself before letting staff know and making it accessible to them.
- 5.4 Some teachers may continue to have reservations about remote working and teaching and may have concerns over how any recordings will be used. This should be considered in the light of the exceptional circumstances schools find themselves in, and the changes that are required to continue to educate pupils. Where recordings are considered necessary, they are likely to be limited to the subject-matter of the lessons that they would be usually required to teach. Recordings made in advance of circulation can also be reviewed by teachers before they go-live, so that any content they prefer not to include can be deleted or re-recorded. Other measures can also be put in place to ensure personal data of teachers is protected, for instance:
- **Guidance:** Teaching from home is different to teaching in the classroom. Guidance should be provided to teachers on how to record their lessons in a professional manner which should accord with the school's existing staff behaviour policy (or code of conduct) as set out under "safeguarding" above.

- **Purpose limitation:** It is understandable that teachers may be concerned that they could be judged or appraised on their performance, or that parents or pupils may more easily complain about their teaching. They are likely to need reassuring on what these recordings would be used for. As is the case with teaching in the classroom, schools cannot guarantee that parental complaints will not be made, however, staff can be reassured that any complaint raised about a teacher would take into account, where relevant, the exceptional circumstances all schools are faced with.
- **Data minimisation:** The recordings should only contain what is adequate, relevant and limited to the subject-matter being taught and should not contain unnecessary personal information or opinions or comments that may cause offence. This will ensure the data held by the school remains professional in nature.
- **Storage limitation:** Schools should not retain the recordings for longer than necessary. If the recordings are only intended for use during the coronavirus pandemic, this can be made clear to staff and should be deleted after a short and reasonable period of time. Schools may find it helpful to consider their existing data retention periods in this regard.
- **Security:** Appropriate security measures should be put in place to ensure the confidentiality, integrity and availability of the recordings. IT colleagues may wish to review the security of how teachers upload their recordings and also how pupils access them. For instance, recordings could be put on a platform which does not allow them to be downloaded onto students' personal devices, and the recordings should only be accessible by pupils via a registered account. The DfE refers schools to the National Cyber Security Centre (NCSC) on how they can set up video conferencing safely.
- **Support:** This remains a relatively new way of teaching for many teachers and they may need support in getting familiar with it. Schools should be clear about who they can go to if they have any questions or concerns about recorded lessons.
- **Review:** It may be reassuring to staff if the school periodically review these interim arrangements to ensure they are working as intended, so that changes can be made promptly if necessary.

6. Employment contracts

- 6.1 In law, employees have a duty to obey the lawful and reasonable orders of their employer. This is an implied term of their employment contract. What this means is that an employer can insist that an employee performs a particular duty or instruction, provided that the instruction is reasonable in the circumstances, and is not wholly inconsistent with the terms of their employment contract. By way of example, it is highly unlikely within the education sector that an employment contract would dictate that teaching duties must take place in person.

- 6.2 It is our view that, provided schools put in place appropriate safeguards for staff in line with the DfE guidance set out above, schools are clear in their expectation for appropriate behaviour from their staff, and that staff are reassured what the recordings will be used for, it is our view that it is likely to be reasonable for schools to require their staff to deliver online learning. Particularly given the Government guidance now requires a certain standard of online learning, and also there has been an expectation (particularly within the independent schools sector) to do so for almost a year.
- 6.3 We would always recommend communicating transparently with staff to explain the reasons why it is necessary to deliver education in this way, for your particular school. Reminding staff that this is an unusual time, and that these arrangements are only temporary, will hopefully be reassuring.
- 6.4 If schools are unsure whether their intended alternative provision is appropriate, we recommend that they take legal advice before taking steps to implement arrangements.

ClearComm, part of Moore Kingston Smith provides Data Privacy and Cyber Security solutions to the educational sector.

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