

HOSTING AND RECORDING ONLINE LESSONS DURING THE CORONAVIRUS PANDEMIC

1. Introduction

- 1.1 Schools have been facing a challenging term during the third national lockdown in England that started on 5 January 2021. With many schools operating with skeleton staff onsite and only the children of critical workers and those considered vulnerable physically attending onsite, schools are largely relying on remote learning provisions for keeping their pupils engaged and learning while at home.
- 1.2 In contrast to the first national lockdown in April 2020, schools are now generally more experienced at and equipped for delivering online learning, with resources for delivering educational provision remotely. It remains important for schools to 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. Department for Education guidance and the Continuity Direction

- 2.1 The Department for Education (DfE) updated its guidance on 7 January 2021 for schools to reflect lockdown. The guidance includes direction on managing safeguarding procedures and remote learning during lockdown, and might remain relevant for, say, blended learning in the future. The full guidance can be accessed [here](#).
- 2.2 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. This is different from the first lockdown in April 2020. There was no expectation for teachers to live-stream or provide pre-recorded videos. Schools were able to consider the approach that best suited the needs of their pupils and staff.
- 2.3 The guidance calls for schools to provide remote education that is equivalent in length to the core teaching pupils would receive in school. It should include both recorded or live direct teaching time, and time for pupils to complete tasks and assignments independently. The guidance goes on to say 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 should meet, which include setting work that is meaningful and ambitious and having ways of checking that pupils are actively engaging with the work set.
- 2.5 Despite schools in England reopening in March 2021, we recommend that staff read the guidance on remote education (page 52 onwards) in full (see [here](#)).
- 2.6 For independent schools, where parents are paying for their children's education, it was more likely to be considered necessary and appropriate to provide an alternative educational provision for their pupils, more akin to classroom-style learning while the schools remain closed. This has been challenging for schools with international students who will likely be in a different time zone.
- 2.7 This time round, given that independent schools have 'done this before', they have had time to prepare and manage their online provision. We are finding that the quantity and quality of online learning formed 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, with 'face-to-face' distance learning via Zoom or Teams, for example, allowing schools to continue this while pupils are offsite.

3. Safeguarding

- 3.1 For most schools, while online learning did take place during the previous lockdowns, it is still a relatively new concept, and it is important that schools continue to protect their pupils and staff when providing remote education. Staff should continue to follow the principles of the school's staff behaviour policy (or code of conduct).
- 3.2 Staff required to teach lessons, or to communicate with pupils and/or parents from home should maintain professional standards (for example, 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 that schools should have in place safeguarding procedures online while 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 Regarding the actual provision put in place, schools should have carried 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 include when carrying out such a risk assessment are pupils' ages and content of the education, the needs of any vulnerable pupils (including those with SEND) and the risks arising from the format/type of the remote provision.

3.5 In terms of safeguarding processes, schools must ensure that there is a trained Designated Safeguarding Lead (DSL) (or deputy) available onsite, or at least contactable by phone if working from home. If 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. Recording lessons

4.1 The latest DfE guidance on safeguarding and remote education during the Coronavirus pandemic directs 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 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](#)). It 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 (among several other organisations). A link to the latter is [here](#). This guidance covers 20 safeguarding considerations for lesson livestreaming, including recording lessons.

4.3 Recording a live lesson is just one of several measures that schools can consider 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 As a reminder, 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, schools should continue to ensure that there are very clear reporting routes in place so that pupils (and indeed staff) can raise any concerns while 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 have been 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 need to 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 considers 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 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 can also be reviewed by teachers

before they go live, so that any content 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: 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 parents will not complain. However, teachers can be reassured that any complaint raised would consider, 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 ensures 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 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 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 to 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 teachers can go to if they have any questions or concerns about recorded lessons.
- Review: It may be reassuring to staff if the school periodically reviews 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. For example, it is highly unlikely within the education sector that an employment contract 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 should be clear in their expectation for appropriate behaviour from their staff, and that staff are reassured what the recordings will be used for. It is likely to be reasonable for schools to require their staff to deliver online learning. The government guidance now requires a certain standard of online learning, and 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 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.

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