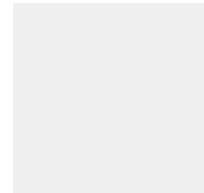


## Electronic Recording of Meetings and Conversations



### SCOPE OF THIS CHAPTER

This chapter deals with recording of meetings/conversations by individual service-users, in their capacity as private individuals. Note that the employees of the local authority, acting in their professional capacity, are subject to different legislative requirements, e.g. under the Data Protection Act 1998.

This is a developing area, and legal advice **must** be sought as necessary.

### AMENDMENT

This guidance was reviewed and updated in September 2018 following the introduction of the General Data Protection Regulations (GDPR) and Data Protection Act 2018.

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#### 1. Introduction

Advances in technology (e.g. smartphones) have made the recording of meetings and other conversations with professionals much more easily available to individual service-users. This may be simply because they wish to have a verbatim record of the conversation/meeting to refer back to, or because they have difficulties in following or recalling conversations. They may, however, seek to

use the recording for other purposes such as admission into evidence in family court proceedings, or even for wider broadcast.

This may arise in the context of private law or public law proceedings, and may involve recording of conversations between parents, between parents and social workers, foster carers, etc, or recording of conversations between parents and children. One parent may be trying to use it, for example, to justify their assertions regarding contact with the other parent.

The recording may take place overtly or covertly.

## **2. Consent**

There are no specific legal restrictions on the recording of face-to-face conversations, whether this is overt or covert. Thus, whilst good practice would suggest that advance consent should be sought for any planned recording, a blanket ban on recording is unlikely to be lawful.

This is not a clear-cut area, and legal advice **must** be sought as appropriate. Practitioners should be mindful that covert recording may be taking place, and should endeavour to ensure that they do not make statements during 'private' conversations which they would not be prepared to hear produced as evidence in court.

Cafcass, in its **Operating Framework**, states:

*'We should have nothing to fear from covert recording. Our attitude should be, "I am doing my job and I have nothing to hide. I can explain why I said what I said or why I did what I did." This is within the spirit of transparency in the family courts. We should always be transparent in our work, to meet contemporary expectations, including being able to defend whatever we say or write in a court under cross-examination, because we are working to a professional standard on behalf of a child. In this sense, we should expect that everything we say or write could become public knowledge'.*

The fact that the social worker has not given their consent to the conversation being recorded does not, of itself, render the recording unlawful or inadmissible.

If the scale or style of recording is excessive, oppressive or disproportionate, then this may 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. Persistent recording of a social worker in such a way as to amount to intimidation may constitute harassment, and it may be possible for the social worker to seek legal redress such as a non-molestation order.

## **3. Use of Recorded Material**

Whilst the recording itself may well be legitimate, there may be restrictions on its use.

If a party seeks to admit such material into court proceedings, then it is at the discretion of the court whether to allow this or not. Such evidence will only be admitted if it is relevant to the issues in the case and not, for example, in furtherance of a personal grievance by a parent against a social worker.

The Data Protection Act 2018 not processing of personal data by an individual in the course of a purely personal or household activity. The scope of this in the context of recording is not clear. However, Jackson J in *M v F (Covert Recording of Children)* [2016] EWFC 29 expressed the view that a similar exemption contained in the previous Data Protection Act was intended to protect normal domestic use, and would not cover the covert recording of individuals, and particularly children, for the purpose of evidence-gathering in family proceedings.

Wider distribution, for example, making such material available via the internet, would be in contravention of the General Data Protection Regulations and the Data Protection Act 2018. Such recordings are likely to contain information (including possible 'sensitive personal information') relating to third parties, and the distribution of such information so as to enable those third parties to be identified would be in breach of data protection provisions. If the issues in question are the subject of ongoing court proceedings, then there is also a possible contempt of court.

#### **4. Good Practice**

A clear process should be in place for dealing with requests to record meetings/conversations or for situations where it seems likely that covert recording is taking place or is likely to take place. It is preferable for this to be addressed with all service-users at an early stage, rather than waiting until the situation arises at the start of a meeting. The process should set out how the request should be made, who will consider the request and how far in advance of the meeting the request should be made. It should also make clear to the service-user the limitations upon the use of the recorded material, e.g. that it can only be used in relation to the ongoing family proceedings and cannot be broadcast more widely. The service-user will preferably be invited to sign to indicate their agreement to and understanding of these limitations.

It is important that each such request is considered on its own merits. If the decision-maker is minded to refuse the request, then legal advice should be sought.

#### **5. Further Information**

Please see [Parents recording social workers - A guidance note for parents and professionals \(The Transparency Project, 2015\)](#).