

**SERVICE USERS RECORDING SOCIAL WORK AND OTHER LA STAFF -**

***Guidance for Devon County Council social work staff***

**WHY MIGHT SERVICE USERS WANT TO RECORD MEETINGS?**

● Because they don’t want to forget things and find an audio recording easier

than making notes. For example:

1. if they have a difficulty that affects their ability to write or concentrate or are forgetful generally or when they are stressed;
2. If a service user has to write notes at the time they may find it difficult to participate fully in the meeting.

● Because they don’t want to rely on other people’s records of a meeting and

want an objective record of their own. Although formal minutes of meetings

are taken, they are often not available straight away, and service users can find it difficult to get corrections made where the understanding or recollection of professionals does not match their own. Service users can feel disadvantaged if they are not able to challenge inaccuracies or omissions.

● Because they have previously disagreed with the accuracy or completeness of a professional’s record and were unable to demonstrate that their version of events was accurate.

● Because they don’t trust a particular professional or professionals generally.

● Because they want to prove a professional is not telling the truth or gather evidence for later use in court proceedings.

● Because they want to circulate information as part of a campaign, for

example on the internet.

**WHAT DOES THE LAW SAY ABOUT RECORDING MEETINGS?**

Remember, recording meetings is not the same as *distributing or publishing* the records or recordings that have been made.

**DOES THE DATA PROTECTION ACT 2018 SAY SERVICE USERS ARE NOT ALLOWED TO RECORD MEETINGS?**

No. It does not prevent service users recording meetings.

A service user is not a data controller or a data processor for the purposes of the act. Therefore, as long as the service user only uses the information for their own private purposes, the Data Protection Act 2018 will not apply to them.

However, when a professional makes a record of a meeting in which a child or

service user is involved the Data Protection Act 2018 will apply. In such circumstances the social worker must ensure that the service user is aware that recording is taking place. They should also be given the opportunity to object to the recording prior to it taking place.

**DOES THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) SAY SERVICE USERS ARE NOT ALLOWED TO RECORD MEETINGS?**

No. It does not prevent service users recording meetings. RIPA only applies to the actions of the State (e.g. social services), for example it gives some protection to service users in relation to surveillance type activity.

**DOES STATUTORY GUIDANCE SAY ANYTHING ABOUT PARTICULAR TYPES OF MEETING THAT PREVENTS RECORDING?**

***Working together to safeguard children*** *-* ***A guide to inter-agency working to safeguard and promote the welfare of children*** *(****July 2018)*** does not say anything about the making of recordings of child protection or looked after children meetings by service users, or that suggests this should or should not happen.

***The IRO Handbook*** on Looked After Child Reviews: makes clear that the independent reviewing officer is responsible for ensuring an accurate record of initial / review meetings is made and distributed, although the guidance does not include any mechanism for correction of inaccuracies by service users or other participants. It does not say anything about the making of recordings of such meetings by service users, or that suggests this should or should not happen.

**CAN A RECORDING MADE BY A SERVICE USER BE RELIED ON IN COURT?**

Potentially, yes – but the court would have to give permission.

A court is only likely to give permission if it is clear that the recording is both relevant *and* reliable.

If a meeting or interview has been made covertly it may be difficult to demonstrate that the recording is complete and that something said or done is not being taken out of context.

The court is likely to require a transcript to be prepared, but the original digital or analogue recording should be made available to all participants to hear / view.

It is a contempt of court to record court hearings unless the court has given permission.

**A SERVICE USER WANTS TO RECORD MEETINGS. HOW SHOULD I RESPOND?**

Service users have a right to record meetings so long as they do so within the law (set out above) There may be good reasons for a service user wanting to record a meeting, so don’t discount meeting with them automatically. In some cases permitting a service user to record interactions with professionals may reassure them and enable them to engage more effectively with you and others.

You might feel uncomfortable about being recorded but, as this guidance makes clear, there is no law that says the consent of the Local Authority is required before a service user can record meetings they are participating in.

If you are anxious about what a service user might do with a recording, it might be helpful to have a discussion with them about why they want to record and what they will do with the recording. They may be able to reassure you (for example) that they will not publish the recording on the internet. You may be able to find an agreed compromise once you understand better why the service user wants to record – for example a service user may not feel able to keep up with a meeting and take a note, and might be just as happy with a trusted friend coming with them to make a written note, or you may be able to agree that a single recording will be made on local authority equipment for use by everyone.

If a service user wants to record a formal meeting (such as a child protection conference or child in care review), they should be encouraged to raise this with the person chairing the meeting in advance giving their reasons so that all those attending the meeting can be informed and suitable arrangements made. Those attending might not be sure what the law or policy is on this issue and may wish to check before they agree

**A SERVICE USER HAS BEEN COVERTLY RECORDING MEETINGS.**

**HOW SHOULD I DEAL WITH IT?**

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”. We should always be transparent in our work 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 subject to scrutiny.

 You might want to initiate a non-confrontational conversation with the service user about why they felt they needed to record covertly. You might be able to agree to the open recording of future meetings.

In cases where there are family court proceedings, and the practitioner subsequently becomes aware that they have been recorded without their knowledge, they should tell the court. In some cases, however, the professional may not become aware of the recording until the service user presents the recording, or a transcript of it, at court. In such situations, the professional should make clear to the court that the recording was made without their knowledge. The professional may ask for the opportunity to listen to the recording or read the transcript before it is admitted into evidence. It is a matter for the court to decide whether the recording or transcript can be included in evidence.

Service users may also ask professionals to listen to or watch recordings of others that they have recorded covertly. Such material may consist of:

* A recording of a contact session with a child without the other party’s knowledge or the consent of the court;
* A recording of a telephone conversation with the other party or another person;
* A recording made by concealing a device on a child.

There are several considerations that should be taken into account by professionals when offered such material:

* There is a possibility that recordings may not be authentic, accurate or complete;
* In accepting the recording, the professional may appear to be influenced by one party over another;
* In family court proceedings, once the professional has seen/heard the recording, it must be provided to the parties and the court, if it is relied upon.
* If offered such material, the professional needs to be aware that whether it is admitted into evidence will be a decision of the court and there may be issues raised by other parties about the validity of the material. While it may be appropriate to read/listen to the recordings the professional should decline to accept it until the recording has been brought to the attention of the court and the court’s directions have been obtained.

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