**Electronic Recording of Meetings and Conversations**

**Scope Of This Chapter**

Part 1 of this chapter deals with recording of meetings/conversations by individual service-users, as private individuals.

Part 2 of the chapter deals with recording by employees acting in their professional capacity, which is subject to different legislative requirements, e.g. under the Data Protection Act 2018 and UK General Data Protection Regulation (UK GDPR).

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

**Amendment**

In August 2022, Part 1 of this chapter was updated in line with case-law.

1. **Recording by Service-users Acting in a Personal Capacity**

This part of the chapter deals with recording of meetings/conversations by individual service-users, in their capacity as private individuals.

* 1. **Introduction**

Advances in technology (such as smartphones) have made it possible for service users to record meetings and other conversations with professionals. This may be to help them remember what has been said or because they want to use the recording for other reasons such as admission into evidence in family court proceedings, or even for wider broadcast.

This may arise in both 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 against another parent, to justify their assertions regarding contact with the other parent.

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.

Recording may take place overtly or covertly.

* 1. **Overt Recording**

A clear process should be in place for dealing with requests to record meetings/conversations. 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/conversation. The process should set out how the request should be made, who will consider the request and how far in advance of the meeting/conversation 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.

Cafcass state the following in their [**Frequently Asked Questions**](https://www.cafcass.gov.uk/about-cafcass/frequently-asked-questions/):

* 1. **Covert Recording**

This is not a clear-cut area, and legal advice **must** be sought as appropriate.

Article 2(2) of the UK GDPR does not cover 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.

HHJ Clarke at [**First Instance in Fairhurst -v- Woodward (2021)**](https://www.judiciary.uk/judgments/fairhurst-v-woodard/) held that a party who sought to ‘actively mislead’ another party about what audio recordings were being captured, meaning that ‘…personal data may be captured from people who are not even aware that the device is there…’, had breached data protection principles.

The Court noted that the Information Commissioner has provided [**Guidance**](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/lawfulness-fairness-and-transparency/#:~:text=Transparent%20processing%20is%20about%20being,into%20a%20relationship%20with%20you) on the meaning of ‘transparently’ in which she says that ‘Transparent processing is about being clear, open and honest with people from the start about who you are, and how and why you use their personal data’.

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.

* 1. **Use of Recorded Material**

Aside from the legitimacy of the recording itself, 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.

Wider distribution, for example, making such recordings available via the internet, is likely to be in contravention of the UK General Data Protection Regulation 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.

1. **Recording by Employees Acting in a Professional Capacity**

Employees, acting in their professional capacity, are subject to different legislative requirements. They are subject to compliance with all relevant data protection legislation including General Data Protection Regulation GDPR and Data Protection Act 2018.

The increase in 'virtual', rather than in-person, meetings and the associated technology, has led to an increase in scope for the recording of meetings, such as the built-in recording functionality for video calls.

This section of the chapter deals with recording by employees in their professional capacity. Note that, even where the meeting is not intended to be recorded, that individual service may unilaterally decide to record it, in which case the information contained in section 1 above will apply.

Before any new processes are put in place to record meetings or conversations, relating to service users or employees, advice should be sought from the Information Governance Team. A new data protection impact assessment (DPIA), under data protection legislation may be necessary for recording process or an existing one may require updating.

Recordings should only be made using devices and software applications approved by the employer for this purpose.

Consideration should be given in advance as to whether it would be necessary and appropriate to record a meeting. Note that this should take account of the circumstances of each case/meeting.

Agreement to the recording should be obtained from all participants prior to the meeting/conversation and participants should be made aware of purpose of the recording and their rights over their personal data.

A clear written process for recordings should be in place, which all involved in the meeting/conversation are aware of prior to recording, which addresses:

* Purpose of recording e.g. to support accurate minute taking;
* Lawful basis;
* Procedure for recording process;
* How agreement to record meeting/conversation will recorded for all participants;
* What happens if participant does not agree to be recorded;
* Approved devices and software applications to be used;
* Communications regarding recording process with participants;
* Who the recording will be shared with;
* Categories of personal data being discussed;
* Technological and organisational measures to keep recording secure;
* Responsibilities of those involved in meeting/conversation;
* How long will recordings be kept and what will be the procedure for deleting them; and
* How rights of individuals being recorded will be met in compliance with data protection legislation e.g. process for making a subject access request in relation to recording.

**Please note** - video recordings of meetings or training sessions, in which service users or employees are not going to be identified will not require a data protection impact assessment. They will require a clear written process, as described above, and all attending should agree to recording prior to meeting.