



**Parents recording
social workers -**
*A guidance note
for parents
and professionals*

The Transparency Project
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HEALTH WARNING

We've prepared this guidance document because we think there is a lot of confusion about the rules, the law and best practice in this area. We don't think that encourages parents and professionals to work together. We've tried to outline some of the "pros" and "cons" of recording meetings, and to help both families and professionals think about this issue from one another's perspective, so they can make decisions about recordings that are right for the particular circumstances of the case.

We hope that this guidance is useful, and will help form a basis for discussion – but it isn't legal advice and isn't tailored to the individual circumstances of your case. We think in most cases the people reading this guidance will have access to a lawyer, and you might want to discuss this guidance with them.

We would welcome your feedback on whether you found this document useful, how you have used it and what the outcome was. We would welcome suggestions for improvements.

Update: The President of the Family Division has now helpfully invited the Family Justice Council to consider formal guidance on the basis that covert recording has become a pressing issue for the family courts. (See pages 7-8 below).

The Transparency Project team

Version 3. Updated March 2018

(Please see the foot of this document for details of the revisions made to this and earlier versions, for convenience and transparency)

WHAT THIS NOTE ISN'T ABOUT

This note is about making recordings of meetings and discussions between families and social workers (including CAFCASS social work professionals). It *does not apply* to making recordings of children or of court proceedings. The appropriateness and value of recording children depends very much on the circumstances and nothing in this note should be taken as suggesting that children are recorded making allegations or expressing views except in a controlled environment and under the supervision of appropriately qualified professionals. It is a contempt of court to record court hearings unless the court has given permission.

WHY MIGHT PARENTS WANT TO RECORD MEETINGS?

- Because they don't want to forget things and find an audio recording easier than making notes. For example, this might be the case if they have a learning disability, literacy problem or specific learning difficulty, or some other physical difficulty that affects their ability to write or concentrate. It might just be that they are forgetful generally or when they are stressed. If a parent 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 parents can find it difficult to get corrections made where the understanding or recollection of professionals does not match their own. When social workers meet with parents outside of formal meetings they keep contemporaneous or near

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contemporaneous records, and parents can feel disadvantaged if they are not able to challenge inaccuracies or omissions.

- Because they don't trust a particular professional or professionals generally.
- 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 want to "catch out" a professional 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 (we think most often this is not the original purpose of the recording, but individuals may subsequently decide to distribute recorded material if they feel that they cannot achieve justice through the courts). Attempts at wider circulation like this might be problematic, as we explain below.

WHAT DO PARENTS DO WITH RECORDINGS?

We are not aware of any research having been done about this. Anecdotally we think that many parents collect evidence “just in case”, some for the specific purpose of relying on it in court proceedings. We don’t think that courts are often willing to consider recordings made by parents, but there are examples of this happening:

- In Medway Council v A & Ors (Learning Disability; Foster Placement) [2015] EWFC B66 a mother made covert recordings of the abusive and racially insensitive foster carer who she was living with along with her baby, and until the recordings were played she had been disbelieved. The court relied on the recordings and made findings against the foster carer who was clearly heard verbally abusing the mother.
- in H v Dent & Ors [2015] EWHC 2090 (Fam) a father was prevented from relying on “illicitly and covertly” made recordings of discussions outside court and at a CAFCASS Office (although the judge did listen to some of them she did not think they demonstrated what it was said they did).
- In Re A, B, C, D & E (Final Hearing) [2015] EWFC B186 it was noted that a parent had covertly recorded meetings, but in that case nobody attempted to rely on that evidence.
- In B (A Child) [2017] EWCA 1579 (Civ) a father had secretly made audio recordings of a social worker, Cafcass Officer and solicitor in child arrangement order proceedings in which he alleged parental alienation, and in deciding whether to allow the father to rely on the recordings the judge had tried to draw up some guidance about covert recording to help in other cases. The Court of Appeal reversed the judge’s decision to publish the judgment setting out his guidance, saying that it was a complex issue and not the job of a judge of his level to issue. The Court of Appeal said that covert recording of children, of family members and of professionals were different

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categories of recording that raised different issues, but the whole issue of covert recording was too complicated to give guidance on then and there. Instead the President of the Family Division invited the Family Justice Council to consider issuing multi-disciplinary guidance on covert recording, as it was such a pressing issue for family courts. The judgment of the Court of Appeal also lists some other cases where covert recording had been involved.

- Some of the practising members of the Transparency Project report experience of cases where recordings have been made by parents, but report that often such recordings are of poor sound quality, unverifiable or appear to be incomplete extracts of a longer exchange. They may also show the recording parent in a poor light.

In spite of the fact that professionals are sometimes “named and shamed” and their photographs put on websites, we are only aware of a very few recordings of professionals being distributed by the internet. Parents do often offer an account of their experience of social workers which may not be impartial or accepted as accurate by professionals, and could be harmful to children, for example if it leads to their identification or if it is read by them. However, it is worth remembering that a parent who is determined to publish details of their case can just as easily publish their own narrative account or any other type of record of an interaction (such as minutes or notes) as they can an audio or video recording.

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. This part of the guidance is looking at the first aspect – the making of recordings.

DOES THE DATA PROTECTION ACT 1998 SAY PARENTS ARE NOT ALLOWED TO RECORD MEETINGS?

No. It does not prevent parents recording meetings.

A parent is not a data controller or processor for the purposes of the act, and what a professional says at a social work meeting or interview is not personal data for the purposes of the act (although the personal data of others may be contained in what is said at a meeting).

However, when a professional makes a record of a meeting in which a child or parent is involved they are likely to be processing personal and sensitive data for the purposes of the act and must comply with its provisions.

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

No. It does not prevent parents recording meetings. RIPA only applies to surveillance by the State (e.g. social services).

IS THERE ANY OTHER LAW THAT SAYS PARENTS ARE NOT ALLOWED TO RECORD MEETINGS?

Confidentiality / Privacy

Whilst everybody has a right to privacy in respect of their personal and private affairs, it is only the families with whom social workers are working whose private information is likely to be discussed in a social work interview or meeting – the social worker's private life will not be discussed so we don't think their privacy comes into play. Professionals clearly have a duty of confidentiality in respect of the private information about families that they are aware of, but there are lots of rules and regulations which permit or require professionals to share or disclose private information about families in order to protect children or vulnerable adults or to prevent the commission of crime (we aren't going to go into those rules here). It might be a breach of a family member's privacy if a recording of a meeting is published or distributed by another family member (although this is probably not a breach of privacy that is protected by law unless it amounts to harassment – see below), but if a recording is simply made for personal use or for use as evidence in private court proceedings we think it is unlikely to amount to a breach of privacy.

Human rights – privacy / life / freedom of expression

If there have been court proceedings about a child, the documents or evidence produced for the purposes of the court case are covered by court rules and must not be distributed except in certain circumstances and to certain people, for example to lawyers or MPs or doctors. However this doesn't mean that every document that is produced about a child whilst a court case is ongoing is restricted. Roughly translated the Family Procedure Rules stop documents created *for* the court case

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being distributed. We don't think that a recording of a meeting is covered by the court rules, even if it is made with the idea it might be played to the court.

Each of the family members with whom social services are working has a right to respect for their private and family life and a right to freedom of expression. Sometimes the rights of one family member might be in conflict with the rights of another member of the family (for example if one parent wishes to be interviewed by a journalist and tell their story but the other does not want information about their family to be published).

Family members do not owe a duty to one another under the Human Rights Act – but agents of / those working for the state (which includes Children's Social Care Services and its employees) have to carry out their work with respect for the rights of privacy, family life and expression. Unlike some human rights such as the right to be protected from torture, these human rights are not absolute – they sometimes have to give way to other competing rights or demands. Social workers and the courts can do things that interfere with these rights, but only where it is necessary, and proportionate or where the competing rights have been weighed up.

Private life of social workers?

Generally human rights are rights owed *by* the state *to* private individuals. Although a person acting on behalf of the state, including a social worker, owes a duty to a parent in relation to their privacy, a recording of a meeting attended by a social worker in their role as social worker is unlikely to contain information about the social worker's private life.

Privacy of families?

Social workers and other employees of local authorities do owe a duty towards children and families they work with in respect of their privacy, and to protect the privacy of people who are being discussed at meetings they sometimes impose rules

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about what can be recorded. The private things discussed at a meeting might relate to a number of different people (children, parents, partners). As long as parents who wish to record a meeting are prepared to agree not to distribute their recordings to the public or a group of the public, and that they will only use their recording for their own records or in private court proceedings, we don't think that social services could be criticized for a breach of privacy in allowing this.

If a parent were to make a recording and distribute it on the internet, social media or in some other way, this might be thought harmful to the child, either because it would lead to them being identified as a child with whom social services was involved, or the details of their private lives being made public (In some cases this might have a negative effect on an assessment of the parents' ability to see and meet their child's needs, or to work with professionals). A local authority (or a parent) might be able to seek an injunction to stop this or to secure removal of information if it was harmful to a child. If there are court proceeding concerning the child the distribution of a recording that identifies the child as the subject of the court case or that gives details of what has happened in the court is likely to be a contempt of court or a criminal offence (or both) and the court may be asked to grant an injunction.

Again, it is not the making of the recording that is problematic but the distribution of it.

In recent years, courts have occasionally awarded damages for breach of a reasonable expectation of privacy, but this is the sort of claim that is usually brought by celebrities against newspapers who publish pictures of them or their children. Such a claim could theoretically be brought by a parent or child whose private details as recorded in a meeting had been distributed on the internet by another parent but we think that in practice this is unlikely (it is probably too expensive and complicated to be worth it).

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Defamation (libel or slander)

We think this is unlikely to apply. Distribution of a recording of something that a person has said is unlikely to be capable of being defamatory of the person speaking, although distribution of a recording of somebody saying something about somebody else could be (if it contained an untruth which was likely to seriously damage the reputation of that person). What is said in a child protection meeting is likely to amount to “honest opinion”, which is a defence to a libel claim.

The reliance upon or playing of a recording in private court proceedings (if permitted) is unlikely to be defamatory, and if its contents are reported in a judgment it is not defamatory to quote that judgment, although judgments of the Family Court cannot be published without permission of the judge.

Harassment

If somebody was to use a recording of a meeting or a part of a meeting to harass somebody at the meeting, for example if it was done very aggressively by thrusting a recording device in the face of a participant, or with explicit or implied threats of going public/putting on the internet or by circulating the material in a way designed to cause distress or fear – a court could potentially be asked to make an order stopping that (an injunction). It’s difficult to give an example but let’s suppose a parent admitted violence or described an incident of intimate violence towards themselves, it might amount to harassment if the other parent distributed a recording of that on Facebook, or if they threatened to do so if the other parent did not agree to some demand or other. If a recording were used to harass a professional it is possible a court could be asked to make an injunction too, although that is probably less likely.

Anything else?

We don’t think things like the law of confidence, intellectual property law or the law around malicious communications are likely to apply in these scenarios.

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 (March 2015) does not say anything about the making of recordings of child protection or looked after children meetings by parents, 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 parents or other participants. It does not say anything about the making of recordings of such meetings by parents, or that suggests this should or should not happen.

We don't think there is any other statutory guidance which directly deals with this issue.

CAN A RECORDING MADE BY A PARENT BE RELIED ON IN COURT?

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

A court is unlikely to give permission unless it is clear that the recording is both relevant *and* reliable.

A court is more likely to give permission if a recording is of good audio / visual quality and is demonstrably a record of the entire meeting or interview, rather than an edited selection (a parent who wishes to rely on a recording of a meeting or conversation will need to provide a recording of what everyone present has said, not just the words of one person).

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.

I'M A PARENT - I'D LIKE TO RECORD MEETINGS. HOW SHOULD I GO ABOUT IT?

We suggest that you ask in advance of the meeting itself, to allow time for the other people involved to think about it and respond. They might not be sure what the law or policy is on this issue and may need to check before they agree. You could show them this guidance to help them.

It might be helpful if you explain why you would like to record the meeting. For example:

- I don't remember things very well and I'm not very good at taking notes
- The minutes of meetings always come too late
- I feel worried that things I have said or others have said might not be accurately recorded
- I remember and understand better if I can hear things rather than reading them
- I have a disability which makes it difficult to take notes or affects my memory or concentration

It might be helpful if you agree to record the whole meeting and to send a copy of the entire unedited recording to the other people at the meeting if they would like it.

It might be helpful if you reassure the people at the meeting that you will only use the recording for your own use, or for court proceedings relating to the children, or in the taking of legal advice, and that you will not publish or distribute the recordings on the internet or otherwise. The recording you make might contain other people's private information (including your children's) and it is a good idea to make sure that everyone understands that you appreciate their privacy is important.

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If you are told you cannot record, you could ask for an explanation to be given so you can see if the reason given is a good one or if there is any practical solution that would resolve the problem. If they give a reason that you think is not a very good one you could show them this guidance and ask them to reconsider.

I'M A PROFESSIONAL – A PARENT WANTS TO RECORD MEETINGS. HOW SHOULD I RESPOND?

There may be good reasons for a parent wanting to record a meeting, so don't discount it automatically. In some cases permitting a parent 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 note makes clear, as a professional you cannot rely upon the Data Protection Act or RIPA as a reason to refuse permission to a parent to record meetings. There is no law that says the consent of the Local Authority is required before a parent can record meetings they are participating in.

If you are anxious about what a parent 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 parent wants to record - for example a parent 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.

**I'M A PROFESSIONAL – A PARENT HAS BEEN COVERTLY RECORDING MEETINGS.
HOW SHOULD I DEAL WITH IT?**

The CAFCASS guidance sets out some good ideas on this. You can find it in the CAFCASS operating framework (August 2017 version) here:

http://cafcass.gov.uk/media/296835/operating_framework_august_2017.pdf

You might want to initiate a non-confrontational conversation with the parent about why they feel they needed to record covertly (reasons might range from them being worried they would not be allowed if they asked to wanting to catch you out). You might be able to agree to the open recording of future meetings.

VERSION 1 – December 2015

VERSION 2 - January 2016

Minor typographical error updated.

(typographical error corrected, incorrect reference replaced on page 6)

VERSION 3 March 2018

Update for the President's invitation to the Family Justice Council to issue guidance -
Page 6

Version updated – Page 4

Minor typographical errors

B (A Child) [2017] EWCA 1579 (Civ) – Pages 6-7.

Updated link to August 2017 version of Cafcass Operating Framework – Page 17

Minor amendment to wording regarding RIPA – Page 8.