



## **Recording of Meetings by Parents and Service Users Policy**

### **THE MID AND WEST WALES SAFEGUARDING BOARD**

<b>Version</b>	<b>Revision Date</b>	<b>Owner</b>	<b>Date approved by Exec Board</b>	<b>Review Date</b>
V1	14/07/21	Mid and West Wales Safeguarding Board	14/07/20	14/07/22

## **Contents**

1. Introduction
2. When might service users want to record meetings and conferences?
3. What does the law and statutory guidance say about the recording of meetings and conferences?
4. Can a recording be relied on in Court?
5. Principles of how we will work.
6. What should practitioners do when a Service wants to overtly or covertly record a meeting or conference?
7. What should practitioners do if they believe that if the meeting is recorded and / or the recording published it would put a child of further harm?
8. What should practitioners do when service users have differences in opinion about recording the meeting?

## 1. Introduction

**What is this Guidance?** This guidance is about when service users, parents, and others with parental responsibility want to record a multi-agency meeting such as a looked after child review, a child or adult protection conference or care and support meeting. In this guidance, the term ‘the parents’ will be used to describe those who are birth parents, those who have parental responsibility and legal guardians. The term service user is used describe adults at risk, adults in receipt of statutory services and those subject to care and support plans. The term ‘recording’ refers to both audio and visual media recordings. This is not guidance about the local authority or other agency making a recording of a meeting.

**Why do we need this guidance?** We need this guidance because although the recording of meetings is not widespread, when the situation arises, chairs of meetings and other participants need to understand the issues involved and provide a clear and consistent response.

**What is the purpose of this guidance?** The purpose of this guidance is to provide clarity about the Mid and West Wales Safeguarding Board’s approach to the recording of meetings. It will support existing good practice about how meetings are held and it should encourage practitioners to listen to parents and service users about their reasons for wanting to record. Within the guidance, the law relating to recording will be clarified.

**Who is this guidance aimed at?** This guidance is aimed at those practitioners who chair multi-agency meetings and those who also participate in (on the whole but not exclusively) multi agency statutory meetings. These practitioners will come from a wide range of agencies both statutory and non-statutory.

This guidance has been written with reference to the ‘**Parents recording social workers – A guidance note for parents and professional**’, the Transparency Project December 2015.

**The key contact for comments about this guidance is:**

[CYSUR@pembrokeshire.gov.uk](mailto:CYSUR@pembrokeshire.gov.uk)

## 2. When might service users want to record meetings and conferences?

Sometimes, parents and service users want to record a multi-agency meeting such as a looked after child review, a care and support meeting, child or adult protection conference or core group.

They may do this covertly or overtly. Covertly means they do this without asking or making it known to others at the meeting. The recording device may also be hidden. Overtly means that the person wants to record the meeting is not hiding that they want to do this. They may ask for permission or they may just state that they are going to record the meeting.

The person recording might record the whole meeting or just part of it.

The reasons for wanting to record a meeting will be different for each adult or family member and may include that:

- They might find a recording easier than taking notes. The reasons for this might be because they: are visually impaired; have a learning disability; have a literacy problem; have a physical disability; or have some difficulty that affects their ability to write, concentrate or remember information. This might be made worse by the length of some meetings and how the reason for the meeting may make them feel, for example, feeling stressed;
- They may not want to rely on the notes of the meeting and / or they may not want to wait for the notes of the meeting to be sent to them. They may have previous experiences, which have resulted in them wanting to record a meeting, for example not having received any notes when others have, or received notes that they do not agree with. They may have found it hard to challenge inaccuracies or omissions in the past;
- They may have negative feelings about a particular practitioner or agency or a number of them. They may want to 'catch out' a practitioner or agency or gather evidence for later use in court proceedings;
- They may want to use recording for other means such as to circulate information as part of a campaign, for example on the internet. This might not be their original intention when making the recording.

What might parents and service users do with the recordings?

- They might keep the recording for their own records;
- They might share the recording with their family or friends;
- They might ask that a Court consider the recording.
- They might publish the recording on a social media site such as Facebook or a website, use when taking part in a media interview or use within a campaign.

### **3. What does the law say about the recording of meetings?**

Recording meetings is not the same as distributing or publishing recordings made.

The following section provides a summary of what the law says about recording meetings and conferences. **The Transparency project document** pp 7 - 13 includes more detailed discussion about this.

**Data Protection Act 2018** – The act *does not* prevent parents and service users from recording meetings. (The **following Section needs reviewing to ensure consistency with GDPR, refers previous DATA Protection Act**).

The DPA *does* not prevent parents and service users from recording meetings because 'personal data' is outside the scope of the GDPR.

'Personal data' is defined as information about a living individual who can be identified from that information or other information. It also includes opinions about a living individual. In this context, what a professional says at a social work or multi-agency meeting is classed as their personal data under the DPA and information relating to other persons that are discussed at these meetings is their personal data.

However, if an individual posts recordings of a meeting on an online forum or on a social networking site they will need to check if the DPA applies. The Information Commissioner's Office (ICO) may investigate if an individual seems to have gone beyond the scope of the exemption, and the ICO may take enforcement action against them.

**Regulation of Investigatory Powers Act (RIPA) 2000** – The Act does not prevent parents and service users recording meetings and conferences. RIPA only applies to the actions of the State (the local authority), for example, it gives some protection to parents in relation to surveillance type activity.

### **Are there other laws that say parents and service users are not allowed to record meetings and conferences?**

*Confidentiality and privacy* – It could be a breach of a family members' privacy if a recording is distributed or published by another family member, particularly if it can be demonstrated that the publication has caused harassment, as it is defined in law.

- Where a recording is made simply for personal use or for use as evidence in private court proceedings, it is unlikely to amount to a breach of privacy.
- *Human Rights* – Documents or evidence produced for the purpose of Court proceedings are covered by court rules and there are restrictions about their distribution. Recordings of a meeting are not covered by the court rules (even if the parent intends to provide this recording to court).

Sometimes the rights of family members are in conflict with their individual rights to both respect for their private and family life and their right to freedom of expression.

Family members do not owe a duty to one another under the Human Rights Act 1998. However, agents of and those working for the state (includes the local authority) must carry out their work with the respect for the rights of privacy, family life and expression.

- *Private life of practitioners* – A recording of a meeting attended by a practitioner – for example a social worker in their professional role is unlikely to contain information about their private life.

- *Privacy of families* – If parents and service users agree not to distribute their recordings to the public or a group of the public and only use the recording for their own records or in private court proceedings, it is unlikely that the local authority would be criticized for a breach of privacy in allowing this.

If an adult distributed a recording on the internet (through social media or other way) this might be harmful to the child, either because it would lead to them being identified as a child with social services involvement (for example) or the details of their private lives was made public. A local authority (or an adult) might be able to seek an injunction to stop this or to secure removal of the information if it was harmful to a child.

It is the distribution of the recording that is problematic and not the recording.

- *Defamation (libel or slander)* – this is unlikely to apply unless something that has been said was untrue that was likely to seriously damage the reputation of the person whom the statement was about. What is said in meetings and conferences is likely to amount to ‘honest opinion’ and as such is unlikely to be defamatory.
- *Harassment* – If someone recorded a meeting with the explicit or implied threat of ‘going public’ or putting the recording on the internet or otherwise circulating the material in a way designed to cause distress or fear - a court may potentially be asked to make an order (an injunction) to stop this. If a recording was used to harass a professional, it is possible a court would be asked to make an injunction too, although this is less likely.

#### **4. Can a recording by a parent or service user be relied on in Court?**

There is the potential for an adult made recording to be admissible in Court but the Court would need 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 and visual quality and is demonstrably a record of the entire meeting rather than an edited selection.

If a meeting has been recorded 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 and view,

#### **5. Principles of how we will work**

The Mid and West Wales Safeguarding Board have identified a set of principles to support our approach to recording meetings.

- Practitioners will continue to behave professionally in meetings and provide factual, clear, evidence based information to support discussion and decision-making. Where they are asked to give their opinion they will continue to do so;
- We will work within legal, statutory guidance or local procedures with regard to note taking and minutes of meetings including conferences, and their distribution within agreed timescales wherever possible;
- We will explain to all at the meeting the local process for recording and distributing the notes as well as the process for requesting any amendments.
- We will continue to remind attendees that information discussed at meetings is confidential and that they become responsible for any information that they may take out of the meeting;
- We will be positive and proactive where the situation arises that someone asks to record a meeting and provide a consistent and clear response about this. If the issue has come up at a previous meeting, the chair of the meeting should be proactive in advance of the meeting and ask the person who wanted to record previously what they would like to do this at the meeting;
- We will work with parents and service users when the situation arises to explore with them why they might want to record a meeting.
- Where the reason for wanting to record a meeting relates to any requirements the person has with a learning difficulty, learning disability, sensory or physical impairment, or where English is not their first language, we will endeavour to where practically possible provide additional support to enable the person to understand what is being said and for a record to be made which they can understand;
- We will ensure that the interests of the child, young person, and service user are central to any discussion about recording meetings to ensure that any action taken is not likely to cause the child or service user harm;
- We will provide information to other practitioners if the situation arises that it is known that a parent or service user wants to record the meeting;
- We will confirm in the written minutes whether someone has recorded the meeting.

### **For Children**

- Where the local authority has parental responsibility (when the child is subject to an interim or full care order or a placement order), the Social Worker and the child's Independent Reviewing Officer will jointly decide what is in the best interests of the child;

- Where the child or young person has the age and understanding to participate in a discussion about whether someone should record a meeting, they will be included in the discussion and their views taken into account.

**6. What should practitioners do when the situation arises that someone wants to overtly or covertly record a meeting or conference?**

*When someone wants to overtly record a meeting;*

- a) Any request to record a meeting should be made directly to the chair upon receipt of the invitation to attend but no more than two working days prior to the meeting taking place. The chair of the meeting should explore with them their reasons for wanting to record the meeting and their intentions of what they will do with the recording afterwards. The chair of the meeting should ensure any discussion and the outcome and reasons for this are captured and recorded in the minutes, and that the rules around using it for anything other than personal use are made clear to the whole meeting and recorded.
  - Where the reasons are to do with their disability, impairment or ability to follow the discussion or to remember what has been said, ways in which to improve this for them should be discussed and addressed where possible. This might include everyone at the meeting agreeing to not using jargon and / or to explain things in a way that is suitable for the person. In addition, an arrangement should be made to contact the adult after the meeting to support their understanding of decisions made;
  - Where the adult states that the reasons are concerned with a lack of trust of the people at the meeting or how information is noted down, this should be explored further with them. They should be asked what would help. This might include the chair clarifying each key decision at the meeting and what will be recorded. A visit afterwards by the lead practitioner to the parent might be helpful to explain what was decided;
  - Where the adult states that they want to use the recording in Court, the reasons for this should be explored with them and look for ways for them to feel their views are heard and reflected in the notes of the meeting. They should be advised that a Court has to give permission for a recording to be relied on in Court and that permission is unlikely unless it is clear that the recording is both relevant and reliable. A Court is likely to require a good quality recording that is of the entire meeting rather than an edited selection. Where a recording has been made covertly, it may be difficult to demonstrate that the meeting is complete and that something said or done is not being taken out of context. A Court is also likely to require a transcript to be prepared and provided alongside the original recording;

- Where the adult states that they want to record the meeting to publish this on social media or on the internet, the chair should discuss this with them and advise of the risks that may arise as a result, e.g. negative impact to the child, the longevity of published material on the internet and subsequent inability to retract such information once shared etc. However, while the individual can and should be advised against the use of a recording in such a way, the individual is fully responsible for any further processing of their own personal data which they carry out upon receipt (e.g. sharing their recording on social media), and should they choose to do so against advice given, this will not result in culpability on the part of the Council for the sharing of that data.
- b) The chair of the meeting should explain to all members of the meeting that the request has been made, and the views of members of the meeting should be sought. For children the child or young person and the other parent (as applicable) should also have the opportunity to give their views.
  - c) The decision whether or not to allow recording of a meeting lies with the Chair. The decision should be based on discussions with the parent, service users, practitioners, professionals and where applicable child. Any potential further risk to the child / young person or service user, should take into account the decision and the reasons behind the decision should be documented in the minutes.
  - d) Where it has been decided to allow the recording and there is a need to discuss sensitive information for example sensitive medical information, best practice would be for the Chair to decide to halt the recording until this section of the meeting is concluded. This should be recorded within the minutes of the meeting

*When someone has covertly recorded a meeting or conference*

- e) When it has become clear that a parent or service user has covertly recorded a meeting without the knowledge of the chair and or other participants, the chair of the meeting should be informed. The chair should consider informing the Local Authority's legal representative and seek advice on the possible implications and what if any action needs to be taken.
- f) Should a situation arise where it becomes apparent during a meeting a covert recording is taking place without prior discussion or agreement with the chair, the meeting can be temporarily suspended to enable a constructive discussion to take place between the Chair and the person recording the meeting. This will enable the chair of the meeting to explore the reasons for the recording as outlined under 6 as above. The chair of the meeting has discretion to further delay and re schedule the meeting if appropriate and mutual agreement cannot be reached. If such a situation arises any outstanding risks to the child or adult and the urgency of the situation should be weighed up against the decision to postponing the meeting.

*In both overt and covert situations*

g) If it is discovered that a parent or service user has published a recording on social media and / or elsewhere on the internet, or used it for another purpose, the lead practitioner should consider what potential harm this may cause and what implications this has for the child, young person or adult .The lead practitioner should seek legal advice. The local authority may seek an injunction to try to get the recording removed.

**7. What should practitioners do if they believe that if the meeting is recorded and / or the recording published would place a child at risk of further harm?**

**For Children**

If the local authority has parental responsibility for a child or young person (because they are subject to an interim or full care order or a placement order) the chair could decide to exclude an adult who insists on recording a meeting, where the child's best interests are not served by making a recording (and potentially publishing it).

Alternatively, the chair could suspend the meeting, where appropriate and safe to do so, and offer to hold a restorative meeting with the parent to further explore why they would want to record the meeting and seek to find agreement.

In all cases, the decision should be minuted.

**8. What should practitioners do when parents have differences in opinion about recording the meeting?**

If one adult wants to record the meeting and the other does not, the chair should explore this with each adult separately.

If it is decided that there is no risk of further harm as a result of the recording, the chair should try to seek agreement with the relevant parties.

If agreement is not possible, the chair could decide to manage the meeting differently for example, holding a split meeting with the respective parts of the meeting recorded and not recorded.

If another family member or friend invited by the parents (not a birth parent or someone with parental responsibility) states that they intend to record a meeting and the parents do not agree with this, they will be asked to stop. If they do not, the chair will halt the meeting and they will be asked to leave.

The lead practitioner should seek legal advice if some recording has taken place.