

Appendix 4

Litigants guide to Covert (Secret) Recording in the Family Court

In recent years, family courts have increasingly been asked to consider covert (secret) recordings as evidence in family proceedings.

The growth in the use of technology such as mobile phones and tablets has made it easier for individuals to record themselves and others. Sometimes, parents in court proceedings feel a covert recording is the only way to demonstrate what happens behind closed doors. However, these recordings will not always be accepted into evidence.

The Family Justice Council (FJC) has produced guidance on the use of covert recordings in the family courts. This short version is intended for parents and family members, especially those without a lawyer. It addresses some of the issues the court will consider when deciding whether to accept covert recordings as evidence.

The publication of the guidance is not meant to encourage covert recordings. While such recordings can provide important evidence, they may also invade privacy or cause harm, and there are often concerns about their accuracy. The purpose of the guidance is to promote good and consistent practice across the family justice system.

For more detail, please refer to [the full guidance](#).

What is a covert recording?

If you have made a recording without the knowledge or permission of someone, whether they are a professional, an adult, or a child, then this may be described in Court as a covert – or secret – recording. This can refer to both video and audio recordings.

Can I use secret/covert recordings as evidence?

In some situations, covert recordings will be accepted by the Court as evidence. However, this is not always the case. The court needs to consider, among other things, the welfare of any child, the right to privacy and rules of evidence.

What should I do if I want to use a secret recording in evidence?

Tell the court, explain who and what the recording is of, and what the relevance is to the case. Be ready to provide an unedited version of the recording to the Court and parties if ordered to do so.

Tell the court about the recording as early in the case as possible.

The court may ask you to make an application on Form C2 for permission to use the recording.

What will the court do to decide if I can use the recording in evidence?

- There may need to be a special hearing to decide if the recording can be used.

- In general, in deciding on what evidence to allow courts will think about what is proportionate and necessary for the case to be dealt with properly.
- The court will need to decide what the relevance is of the recording to the issues that need to be decided in the case.
- All the parties and the Judge may need to be given access to the recording.
- The court will want to know that any recording is unedited and has not been changed.
- A written version (transcript) of the recording may need to be prepared.
- If there are a lot of recordings that will make the proceedings longer and more expensive, the court will need to decide whether the recordings are going to be helpful enough to justify this.

What are the considerations about privacy?

Whether or not the recording is allowed to be used as evidence, the court may consider why you made the recording and the impact that had on the person recorded. The court may feel you invaded the privacy of the person you recorded.

Recordings by parents of each other: Unless there is a very good reason why it was necessary to record an adult (such as the other parent), these recordings might be seen by the court as an invasion of privacy of the recorded individual. The court may even decide this amounts to harassment or is wrong for another reason. Be mindful that in these circumstances, the court will take this into consideration when deciding about the welfare of the child.

Covert recordings of children: In general, courts do not approve of covert recordings of children. Young people have told us covert recordings of them are an invasion of privacy and may cause them to feel that the adult has broken their trust. The court will likely consider the impact of the recording on the child, whether the child needs to be told about the recording and whether they should give evidence about what was recorded.

The court will need to think about whether all of this is harmful to the child.

Is it okay to record professionals?

If you want to record professionals, it is better to ask their permission and ask to see any policy their organisation may have about recordings. For example, Cafcass says that its social workers should always be open and transparent in their work and there is no legal reason why a parent or carer should not record their own interview. But keep in mind that even with the permission from a social worker to record, that does not mean a court would necessarily accept the recording into evidence.

Can I record what happens in Court?

No. It is a contempt of court and/or a criminal offence to record court proceedings, including remote hearings.

For more information, please see [the full guidance](#).