



## **The Case for the Introduction of a Statutory Requirement in Wales to Record in Audio/Video All Meetings between Social Workers and Parents, Carers or Other Relevant Parties in the Context of Children’s Services.**

### **Purpose**

- To present the basis of a case sufficient to justify a Petition to the Welsh Government to introduce such a statutory requirement.
- To present the benefits of the proposal to all interested parties.
- To critique the arguments which motivated rejection of a previous submission to the Welsh Parliament Petitions Committee on this subject.
- To seek authoritative opinion and support for the proposed Petition.

### **Summary**

For the purposes of this presentation of supportive evidence, the working statement of our proposed Petition is: *“We call on the Welsh Government to introduce legislation to require all Social Workers (including Cafcass Cymru) to record fully, and unexpurgated, in audio / video any interactions with parents, carers or other relevant parties in the context of Children’s Services that they later rely upon in any report.”*

The terms “Social Worker”, “interaction”, “report” and “parents, carers and other relevant parties” are defined herein.

The benefits of formal recording would be substantial, and the practical issues involved minimal. The benefits to all involved parties: Social Workers, Cafcass Cymru, parents, carers, and other relevant parties, are discussed and are multifaceted. Such an official recording will ameliorate tensions created by parents or carers requesting to be allowed to record, or perhaps doing so covertly. A statutory requirement also addresses the very important point of protecting Social Workers from accusations of dissembling. In short, the matter hinges crucially upon the enhancement of trust.

Objections raised by the Welsh Parliament Petitions Committee in response to an earlier attempt at a similar Petition are addressed and shown to lack substance. In particular, no impact upon court procedures or arrangements are either explicit or implicit within the Proposal. It is demonstrated that the Proposal is within the legislative competence of the Welsh Government / Welsh Parliament. Similarly, human rights, data protection, security and confidentiality present no new issues of principle or practice over and above the existing obligations in these respects.

The burden of proof now lies with any objection to this Proposal (noting that it is for the very modest purpose of a Petition). We have identified no substantive barrier.

## Contents

Purpose.....	1
Summary.....	1
1. Provisional Statement of the Proposal to the Petitions Committee .....	3
2. Definitions.....	3
3. The Current Position.....	4
3.1 Local Authorities’ Current Practice .....	4
3.2 Recording by “the Other Party” (PCORPs) .....	5
3.2.1 Transparency Project Guidance.....	5
3.2.2 Position of the British Association of Social Workers .....	5
3.2.3 Position taken in the Cafcass Cymru Operating Framework .....	5
3.2.4 Mid and West Wales Safeguarding Board Policy .....	6
3.3 Informal Practice in the Time of Covid: Where Lies the Burden of Proof? .....	7
3.4 Existing Requirements for Official Recording by Social Workers.....	7
3.5 Lack of Public Confidence in Children’s Services in Wales .....	8
4. Clarification of the Proposal .....	8
5. The Benefits of the Proposal.....	10
5.1 The Benefits to Social Workers .....	10
5.2 The Benefits to PCORPs.....	11
5.3 The Benefits to Cafcass Cymru.....	11
5.4 The Benefits to Children .....	12
5.5 The Benefits in Respect of Public Confidence: The Negative Case .....	12
5.6 Disbenefits of the Proposal .....	12
6. Practical Issues and Cost.....	12
6.1 The Available Technology .....	12
6.1.1 Storage Media.....	12
6.1.2 Hardware .....	13
6.2 Security, Confidentiality and Data Protection.....	13
6.2.1 Making Recordings Available to the Interviewees.....	14
6.3 Experience in Other Sectors .....	14
6.3.1 Police (PACE) .....	14
6.3.2 Healthcare .....	14
6.4 Cost.....	14
6.5 Code of Practice .....	15
7. Critique of the Rejection of the Previous Proposal for a Petition.....	16
7.1 The Legislative Competence of the Welsh Government .....	16
7.2 The Proposal: What It Is; What It Is Not .....	17
7.3 Human Rights Issues .....	17
7.4 Data Protection Issues .....	17
8. Conclusions.....	19
9. Next Step.....	19



## **1. Provisional Statement of the Proposal to the Petitions Committee**

For the purposes of this presentation of supportive evidence, the working statement of a proposed Petition will be,

*“We call on the Welsh Government to introduce legislation to require all Social Workers (including Cafcass Cymru) to record fully, and unexpurgated, in audio / video any interactions with parents, carers or other relevant parties in the context of Children’s Services that they later rely upon in any report.”*

It is possible that the suggested wording may be fine-tuned following consultation based on this presentation of the case.

## **2. Definitions**

In response to the charity’s previous attempt at a Petition, the Welsh Parliament’s Petitions Committee raised some questions regarding the usage of certain terms in the wording of our proposal. We clarify our usage of these terms below.

### The Charity

“The charity” shall refer to the charity making this Proposal: FNF Both Parents Matter Cymru.

### Parents, Carers or Other Relevant Parties (PCORPs)

The phrase “parents, carers or other relevant parties” is used in this compound manner, and as the acronym PCORP, throughout. This usage subsumes the definition of “parent” in [Section 576 of the Education Act 1996](#), in which “parent” includes any person who has parental responsibility or who has care of the child in question. The advantage of using the comprehensive term “parents, carers or other relevant parties” is that it clearly is not restricted to parents as that term is understood in everyday parlance, nor is it restricted to persons with parental responsibility as defined in the [Children Act 1989](#). Using our comprehensive term will cover individuals such as grandparents, who may have care of a child by informal voluntary arrangement or under the auspices of the [Social Services and Well-being \(Wales\) Act 2014](#). Similarly special guardians are covered by the term, as would be persons subject to a positive viability assessment in Public Law proceedings and *de facto* caring for the child.

### Social Workers

Within this document, and the intended Petition, the term “Social Worker” shall relate to those individuals practicing in relation to children matters and who are registered as Social Workers with Social Care Wales. The term “Social Worker” is a protected one; it is unlawful for a person to represent that they are a Social Worker in Wales unless they are registered as such with Social Care Wales. This is laid down in Section 3 of “[The Social Worker: Practice guidance for social workers registered with Social Care Wales](#)”, which states, “*to practise as, or to call yourself, a social worker in Wales, you must be registered with us. Students on an approved social work degree course in Wales must also register*”. We understand that there is no specific category of registration that identifies Children's Social Workers. However the



restriction of the scope of our intended Petition to cases primarily about the care, well-being and safeguarding of children is made explicit in the wording.

### Interactions

The term “interactions” is used to avoid any ambiguity in the term “meeting”. An “interaction” shall be understood to be any verbal exchange whether conducted in person or electronically (by ‘phone or online, whether audio only or video). The term shall apply whatever the formal status of the exchange, i.e., whether it is part of a formal process or not.

Events within court shall not be deemed “interactions” for the purposes of this Proposal, which shall apply only outside court. (It is a contempt of court to record court hearings unless the court has given permission).

### Reports

Our intention is that the term “report” should be of the broadest scope, covering any written document (electronic or hardcopy) which carries the authority of a Social Worker or their employing bodies, including Cafcass Cymru, Local Authorities or any other Family Court Advisors (FCAs), and in which the subject matter relates, at least in part, to what passed during an interaction between a Social Worker and a PCORP in the context of children. This shall be without prejudice to any confidential nature which may restrict access of such reports to a limited circulation, e.g., a report is still a report even if the involved PCORP has not seen it.

## **3. The Current Position**

### **3.1 Local Authorities’ Current Practice**

The charity has raised a Freedom Of Information enquiry with each of the 22 unitary authorities in Wales. The question asked was, *“In relation to children’s services, what arrangements are currently in place to record in audio or video any interactions with parents, carers or other relevant parties that they later rely upon in any report?”*

Responses were received from 16 of the local authorities. No reply at all was received from three local authorities and a request for more time was received from two (but without a further response subsequently being forthcoming). One local authority asked why we wanted this information and requested full details of the charity before they would look at the request. It would appear that some local authority staff need reminding of their duty under the [Freedom Of Information Act 2000](#). However, we did not press the matter.

Of the 16 responses, 13 replied that they do not record the interactions in question, or “have no arrangements” to carry out such recording. Merthyr Tydfil responded, *“Children’s Services do not as a standard record in audio or video their interventions with parents, carers or other relevant parties”*, which leaves unclear whether they might do so on some occasions. Two local authorities, Bridgend and Flintshire, do sometimes record meetings for the convenience of the person producing the minutes, the replies were,

*“Some meetings require a recording when using Microsoft Teams to support the minute taker. The chairperson will inform attendees of this and advise that the recording is for the minute taker only and the audio file is deleted when the minutes are produced.”* (Bridgend).



*“Flintshire Social Services use a recording device in limited circumstances to support minute takers where Parents / Carers may be present. Once the minutes are completed, the files are immediately deleted, so they are not saved on file. The recording is not held to later rely upon in any reports.”*

Any claims that recording is impractical are rather discredited by the fact that it sometimes takes place already – specifically because it is helpful, not problematic. However, recording at present is not subject to any Code of Practice.

### **3.2 Recording by “the Other Party” (PCORPs)**

There is no law that says the consent of the Social Worker (taken as the representative of the Local Authority) is required before a PCORP can record a meeting in which they are participating. (For Data Protection issues see §7.4). However, it is common for Social Workers to decline to allow parents, carers or other relevant parties to record, perhaps unaware that they have no power to prohibit it. Many people, cowed by an authority figure, or perhaps not wishing to upset someone who has significant influence over their future, will oblige despite wishing to record. Others take the option of recording clandestinely, which is unfortunate and undesirable – but not illegal.

#### **3.2.1 Transparency Project Guidance**

[The Transparency Project](#) is a registered charity whose aim is to promote the transparency of Family Court proceedings in England and Wales through providing straightforward, accurate and accessible information for litigants and the wider public. Its core group and contributors are mainly lawyers, some practising, some not. They have published “[Parents recording social workers - A guidance note for parents and professionals](#)”. The 2018 update of the Transparency Project’s report was produced following the President of the Family Division’s invitation to the Family Justice Council to consider formal guidance on the basis that covert recording had become a pressing issue for the family courts. As far as we are aware this formal guidance has not been forthcoming.

The Transparency Project’s guidance is recommended as an easy-to-read guide to the law in this area. However, this guidance covers only the issue of “parents” carrying out a recording. Whilst we might reasonably extend this to “parents, carers or other relevant parties”, our proposed statutory recording by Social Workers themselves is a very different matter.

#### **3.2.2 Position of the British Association of Social Workers**

[The British Association of Social Workers has linked to the Transparency Project’s guidance](#) on their web site.

#### **3.2.3 Position taken in the Cafcass Cymru Operating Framework**

In [their Operating Framework](#), Cafcass Cymru note that, “*If the service user insists on recording their own interview, there is no legal reason to prevent them doing so*”. However, they go on to sound a warning that the Family Court Advisor (FCA) “*may wish to seek directions from the court about the recording of the interview*”. This is very unlikely to be an issue in practice, especially as the meeting has most likely already been convened. However, Cafcass Cymru also observe that,



*“Where a recording is made the FCA should inform the service user that they will, as a matter of course, include in their report that the interview was recorded. The other party would then be aware that a recording is in existence and could make an application to the court to have a copy disclosed to them, or to listen to it in evidence. There is of course no guarantee that the court would order disclosure, but depending on the facts of the case, it is possible for the court to do so.”*

Since the other party can, in any case, request disclosure of any written report, and since the written report and the recording should be consistent, there appears to be nothing alarming or objectionable about this warning.

Cafcass Cymru also note that information exchanged during an interview with a FCA, as an agent of the court, is confidential to the court – and subject to the usual non-disclosure rules. However, this presents no new issues of principle (see also §6.2.1).

Encouragingly, Cafcass Cymru also state,

*“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’. This is within the spirit of transparency in the family courts. We should always be transparent in our work, to meet contemporary expectations, including being able to defend whatever we say or write in a court under cross-examination, 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 public knowledge.”*

This is exactly the spirit in which our Proposal is being made, except that covert and unofficial recording is not desirable; rather open, official recording is very much to be preferred.

### **3.2.4 Mid and West Wales Safeguarding Board Policy**

The Mid and West Wales Safeguarding Board have issued [their own policy on the recording of meetings by parents and service users](#). Their policy leans heavily on the guidance from the Transparency Project. It reiterates the crucial distinction between recording and making the recording available to unauthorised persons, e.g., by distributing or publishing it. It reiterates that the Data Protection Act 2018 does not prohibit recording by parents/carers.

The guidance to practitioners in this policy document appears to encourage attempting to dissuade the PCORP from recording. Though this is not stated in explicit terms, it is implicit in, for example,

*“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 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 a PCORP has indicated their desire to record, the policy states,

*“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.”*

This is worrisome. If all PCORPs present agree to recording, under this policy the Chair or Social Worker has assumed a right to prohibit recording which they do not possess in law. [NB: Recall that our Proposal is restricted to interactions that do not involve children].

Such a policy will hardly improve trust, and will also inevitably drive covert recording. In the context of covert recording, the policy then continues,

*“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.”*

Such a heavy-handed approach can only further exacerbate suspicion and mistrust as it projects into the legal arena an action which, though unfortunate, is unlikely to be illegal, and which has been promoted by this very policy, i.e., by the discouraging of an open recording which is the PCORP’s legal right. A statutory obligation for official recording would cut through and eliminate this unnecessary escalation of conflict.

### **3.3 Informal Practice in the Time of Covid: Where Lies the Burden of Proof?**

It is worth noting that the previous attempt by the charity to raise a Petition on this subject pre-dated the 2020 Covid-19 lockdowns. Over the period since mid-March 2020 a great deal has changed, especially the usage of video technology by almost everyone. Whether in the private sector, the public sector or the third sector, business has continued largely through video conferencing and other IT based facilities. In all sectors, the technologies adopted “under duress” in lockdowns have, in many cases, proved beneficial compared with older practices. As a result, many working practices which were adopted of necessity as innovations in 2020 will be retained even when conditions would permit a return to previous arrangements. Moreover, the most common platforms, such as Zoom, Microsoft Teams and Google Hangout, permit recording of video meetings at the click of a button, with automatic cloud storage.

It is fair to say that the *omission* to record formal meetings would now seem gratuitously antediluvian. The burden of proof may have shifted.

### **3.4 Existing Requirements for Official Recording by Social Workers**

There is no requirement for official recording, by Social Workers, of *all* interactions of the type in question. In some cases, recording may be done, but this is at the discretion of the local authority officers. We are unaware of any guidance on how to conduct such recording or whether the concerns raised in §7 have merit in these cases. As noted in §3.1, unofficial recordings, later deleted, are sometimes used for the convenience of the person writing the minutes.



### **3.5 Lack of Public Confidence in Children’s Services in Wales**

The context in which PCORPs interact with Social Workers is such that a glowing critique of the latter by the former is less than probable. This must be borne in mind, as must the fact that Social Workers are doing a complex and difficult job in which their focus is on the protection and best interests of the children. Many parents, both male and female, can find that dynamic a hard one to understand and work with.

The [2019/20 business plan of Social Care Wales](#) made “providing public confidence” one of their three strategic aims. But their approach to this aim is very inward-looking and does not involve consultation with, or feedback from, service users. The same shortcoming applies to their report [Providing public confidence: A report on the professional regulatory work of Social Care Wales 2017 to 2018](#). And yet, in the present context, “providing public confidence” must involve the trust of the PCORPs who interact with Children’s Services, and this can hardly be gauged without asking them. The omission of feedback from service users in Social Care Wales’ measures of public confidence is concerning in itself, but would take us beyond our present purpose to discuss further.

Sadly, it is the common experience of the charity that our service users do not have the high regard for the FCA Social Workers that one would hope for. As noted, this may be inevitable to some degree, but that does not sanction failing to take opportunities to improve the situation. Under the strategic aim of providing public confidence, the Social Care Wales business plan’s strategic objective No.2 is to be “an effective and transparent organisation”. Our Proposal to produce official, and complete, recordings is an opportunity to provide greater transparency and offset some of the mistrust that is only exacerbated by the present reluctance to record. Why should this opportunity not be taken?

The charity has obtained feedback from fathers in Wales on their experience with Children’s Services and Cafcass Cymru, most recently in the [2017 Welsh Dads’ Survey](#). Note that this was not confined to the charity’s service users: most respondents were not service users and had not necessarily been involved in parental separation or child arrangement issues. However, the survey was restricted to fathers. 60% of respondents had had no contact with Children’s Services. But of those who had, the number with a negative experience (in their estimation) outnumbered those with a positive experience nearly three to one. Their experience with Cafcass Cymru was similar but slightly worse, with only 37% having had experience with the service but 78% of those that had reported a negative experience.

One can reasonably expect the experience of mothers to be similar. Clearly, there is much to play for in terms of improving PCORPs’ perception of FCAs, and improving trust and transparency by producing official recordings would be an easy win in a very difficult area.

## **4. Clarification of the Proposal**

[4.1] We seek official recordings, by Social Workers, not by the other party, and for such recording to be a statutory obligation if any part of the interaction in question is used in a report.





- [4.2] Note that, in our Proposal, only those interactions whose content is used in a subsequent report must be recorded. Consequently, purely transactional interactions, for example a phone call to arrange a date for meeting, need not be recorded.
- [4.3] The Proposal excludes any interactions at which children are present.
- [4.4] The Proposal excludes any events within court (necessarily, as it is a contempt of court to record court hearings unless the court has given permission, and court procedure is beyond the legislative reach of the Welsh Government).
- [4.5] Whilst local authority officials, including FCAs, may be obliged by statute to carry out recordings which do not reveal their own private data, there might be a conflict with data protection issues to record PCORPs if they do not consent as the PCORPs personal data will usually be revealed. Hence, it is likely that the PCOPRs consent to recording would be required or a recording could not be made. This issue would have to be clarified in legislation.
- [4.6] With the above restrictions we have not identified any legal barrier to the Proposal.
- [4.7] We look to the mandatory recordings being made available to both parties and their representatives, as a statutory right.
- [4.8] As the “interactions” recorded will generally involve discussions about children, or other family members, this does present Data Protection issues. However, the same applies to court papers and presents no new issues of principle. Like court papers, recordings shall be made available only to the directly involved parties and their recognised representatives. Recipients will be made aware of the legal prohibition against disclosure to other parties, as is the case already with family court proceedings.
- [4.9] The purpose of the recording is to provide a definitive record of all interactions so as to ensure the quality of any report subsequently produced by Social Workers / Cafcass Cymru.
- [4.10] This shall be without prejudice to any written report of a confidential nature which may restrict access of such reports to a limited circulation, i.e., even such confidential reports shall record in writing only those exchanges which have been recorded in audio/video form and hence capable of corroboration should the need arise.
- [4.11] The proposal does *not* seek to establish the admissibility of any such recordings as evidence to a court. While a court may rule to admit such recording as evidence, any proposal to require courts to do so would be beyond the legislative powers of the Welsh Government (see also §7).
- [4.12] In passing we note that, whilst recording interactions in no way trespasses upon the courts’ jurisdiction, it might be argued that to omit recording interactions removes from the courts their reasonable option to regard properly managed recordings as admissible evidence should they so wish. In short, it is the neglect of recording which raises a question about legislative trespass, not the reverse.



## **5. The Benefits of the Proposal**

- [5.1] The overarching benefit of recording interactions is the improvement in the accuracy of subsequent written reports, an objective that all parties will agree can only be desirable.
- [5.2] There is nothing unusual about recording meetings when an accurate account of what took place is required later. For example, the secretary of any formal meeting will commonly record the meeting to ensure details are captured that would be challenging, or impossible, to capture in writing unless you happened to be a stenographer.
- [5.3] The precise wording, or tone, of an exchange may have a significant bearing on what is meant, but be remembered differently by different people. There is ample scope for two people attending the same meeting to recall what was said entirely differently. This is especially true when emotions are high, as they often will be in the sorts of exchanges in question.
- [5.4] Recalling every exchange that took place in a lengthy meeting, and doing so with precision as to the speaker's intended meaning, is problematic even if copious notes are taken – and the note taker is likely to be required to listen and respond simultaneously with note taking, which is likely to prejudice accuracy.
- [5.5] Forgetting, or unintentionally misrepresenting, key parts of the discussion is quite likely, and yet easily avoided if a recording is available.
- [5.6] Challenging behaviours, aggressive tones, and other unconstructive presentations, by either party, will be discouraged if captured in a recording. A recording would reveal aspects of the exchange not apparent in a written account (e.g., the demeanour, attitude and behaviour of participants)

### **5.1 The Benefits to Social Workers**

Everyone can agree that [5.1 to [5.6], above, are important benefits. Four considerable additional benefits apply specifically to Social Workers themselves,

- [5.7] Regrettably it is commonly the case that a PCORP considers the FCA's written report to be a very poor representation of their exchange. Sometimes they may be convinced that the report is simply untruthful. Without a recording there is no possibility of resolving such a dispute; yet with a recording the evidence is there and the PCORP may be surprised when listening back to it. Human memory is notoriously unreliable.
- [5.8] Not only does a recording provide the Social Worker with a simple means of resolving such a dispute, but any impugning of their honesty can be discredited. False allegations of misconduct can only be reduced.
- [5.9] Whilst the physical safety of Social Workers is, one hopes, not a major current problem, nevertheless there is experience from the healthcare sector that overt recording can reduce the likelihood of assaults. Irrespective of the prevalence of such a problem, the reassurance it may provide to Social Workers interviewing PCORPs in



an emotionally heightened state is a worthwhile benefit. (For an illustration of the impact of such improved staff security in an A&E setting see [this video](#)).

- [5.10] Finally, there is the matter of clandestine recording. As noted above, in 2018 the President of the Family Division became concerned at the prevalence of such clandestine recording. It could very easily be avoided completely by having a full, official recording available to both parties.

## **5.2 The Benefits to PCORPs**

- [5.11] If professionals would be challenged to recall exchanges accurately, many PCORPs would struggle far more. They are likely to be stressed, and note taking is probably not an option if they are to participate fully in the meeting. For them, a recording is essential if they are to retain, even imperfectly, more than a fraction of what was said – bearing in mind what is said *to* them matters as well as what they said themselves.
- [5.12] This problem becomes even more acute if the parent, carer or other relevant party has a learning disability, a language issue, a literacy problem or some physical difficulty that affects their ability to hear, understand, write or concentrate.
- [5.13] Regrettably the matter of trust is to the fore. A PCORP may find their trust in the Social Worker undermined if their written report seems to bear scant relation to the exchange as they recall it. Alternatively, there may be mistrust initially which becomes heightened by a serious difference of recollection of what took place in an interaction. It is important that PCORPs are able to challenge the report record, and have a means of resolving any dispute. Trust issues cannot be entirely eliminated by recordings, but the grosser allegations of misrepresentation can be disproved in a manner which is indisputable and clear to an independent party.
- [5.14] The PCORP may have disagreed with the Social Worker previously, and hence be starting from a position of mistrust. As well as having the capacity to resolve a dispute by demonstrating that the Social Worker’s record was indeed accurate, it is also important that the PCORP has a means of proving that, in fact, their recollection is the accurate one – when it is.
- [5.15] There is also the matter of timely access to an account of the exchange. Although formal minutes of meetings are taken, they are often not available straight away. When Social Workers meet with PCORPs outside of formal meetings they keep contemporaneous or near contemporaneous records, and the PCORP is disadvantaged if they do not have access to the record which is used within the professional environment, or access to it is delayed.
- [5.16] The issue of trust can only be ameliorated by the timely availability of a full, official recording to both sides.

## **5.3 The Benefits to Cafcass Cymru**

All the preceding points can be considered benefits to Cafcass Cymru also. In particular, in avoiding disputes, or resolving disputes over reports prior to reaching court, Cafcass Cymru is better serving the courts, which is their function.



## **5.4 The Benefits to Children**

Can the best interests of the children be served by inaccurate reporting or unresolved disputes? Clearly not. All the above points serve to move the case in the right direction, which is in the best interests of the children.

## **5.5 The Benefits in Respect of Public Confidence: The Negative Case**

The benefits of the proposal also lie in helping to overcome the negative perception of Children’s Services by the public (see §3.5). The transparency of the proposed arrangements will go some way to redress this lack of public confidence.

## **5.6 Disbenefits of the Proposal**

It is difficult to identify any substantive disbenefits of the proposal given the clear benefits to public confidence, report accuracy and the avoidance of dispute and mistrust. Two areas of potential concern may be cited: practical issues and cost, which will be dealt with in §6, and the objections raised to the previous attempt at a similar Petition, which will be critiqued in §7. The concern in some quarters that such recordings may be subject to unauthorised promulgation, e.g., publication on the internet, is discussed in §6.2.1.

## **6. Practical Issues and Cost**

This section does not attempt an exposition of specific technology, nor will it recommend any particular recording platform. The proposed legislation would be unlikely to be prescriptive in terms of devices or software to be deployed, requiring only that broad requirements are met. The purpose of this section is only to demonstrate that practical issues and cost will not be a barrier to implementing our Proposal.

The broad requirements that must be met include security, confidentiality and data protection, as well as ensuring that all, and only, authorised recipients receive the recording. The provisional discussion of these issues in §6.2 is intended only to establish that these issues are not barriers to the adoption of the Proposal. Those issues, as well as a range of other matters, would need to be enshrined in a Code Of Practice produced consequent upon any legislation passed. The likely content of such a Code Of Practice is discussed briefly in §6.5.

### **6.1 The Available Technology**

#### **6.1.1 Storage Media**

When compulsory recording of police interviews with suspects started in 1984, audio cassettes were used. Today, in Social Work settings, it is unlikely that removable storage devices (discs, tapes, or chip-based devices) would be used. These create a burden on physical storage, identification, indexing and retrieval. The latest police Code of Practice (PACE 2018, see §6.3.1) permits the use of a “secure digital recording network device” instead. This is simple and avoids the problems with storage and retrieval of hardware storage media. Moreover, networked digital recording can be assured to result in, *“storage, as a digital file or a series of such files that can be securely transferred by a wired or wireless connection to a remote secure network file server system (which may have cloud based storage) which ensures that access to interview recordings for all purposes is strictly controlled and is restricted to those whose access, either generally or in specific cases, is*



*necessary. Examples of access include playing back the whole or part of any original recording and making one or more copies of the whole or part of that original recording.”* ([PACE Code of Practice](#)).

### **6.1.2 Hardware**

The available technology has improved out of all recognition since the police started recording interviews in 1984. At the same time the technology has improved, the costs have reduced dramatically. Virtually all of us now carry a device in our pockets which can record relatively high-quality audio/video. There is a wide range of devices available, from tiny bodycams at one end to desktop devices at the other. The capability to record in video, rather than just audio, is now routine and commonplace.

For occupations which involve staff being constantly mobile and visiting clients in different places, be it in clients’ homes or in different locations in, say, a hospital, bodycams are the practical solution. The bodycams worn by police have become a normal and accepted standard item of their equipment, and their recordings are commonly used as evidence in courts. The small size of devices does not necessarily conflict with adequate sound and video quality.

However, in the situations envisaged here, a static, desktop device will generally be perfectly practical. The hardware platform has become almost irrelevant as desktop PCs, laptops and tablet devices all come with inbuilt microphones and cameras adequate for the purpose. The issue of security and confidentiality has shifted from hardware to software, with the software platform now being the means by which time-stamping, encryption, etc., ensures only authorised access is possible and prevents tampering. However, in addition to general purpose IT equipment which may be used, there are also bespoke systems for audio-visual recording which local authorities may prefer. The issue should not be the specific hardware deployed, but the arrangements for storage, retrieval, security of access, confidentiality and data protection – all of which move to software space.

## **6.2 Security, Confidentiality and Data Protection**

Data protection is about ensuring people can trust the holder to use their data fairly, responsibly and for the purpose for which it was intended only, keeping that data secure and confidential so that only authorised persons have access to it and it cannot be tampered with or passed on to third parties. Adherence to the requirements of the [Data Protection Act 2018](#) and the GDPR subsumes security and confidentiality, as well as requiring a range of other protections under the aegis of “data protection”.

The suggestion that recording by Social Workers might, *per se*, violate data protection obligations is addressed in §7.4 (it does not). There are, of course, data protection issues with storage of personal information, whatever the format of that information or its storage medium. Electronic storage as digital audio/audio-visual files presents no new issues of principle compared to records in the form of writing, whether in the form of electronic files or as hardcopy. (The [Data Protection Act 2018](#) also applies to hardcopy data). The arrangements that a local authority must have in place to protect personal data when in the form of physical documents or, say, electronic WORD files, must apply also to the storage, security, confidentiality, retention, retrieval and access to audio/audio-visual digital files. The same arrangements will also apply to the deletion of such records which may be requested by those to whom the data relates, and, in certain circumstances, must be acted upon.

To repeat: there are no new issues of principle raised by holding information in the form of audio/audio-visual digital files. Personal data is already held in the form of electronic files and any local procedures or instructions can probably be rolled out to the additional file types without any significant changes in practice.

### **6.2.1 Making Recordings Available to the Interviewees**

Security, confidentiality and data protection again involve no new issues of principle when ensuring all, and only, authorised recipients have access to the recordings and that restrictions which are already in force in respect of written documents (or verbal disclosures) are rolled out to the audio/audio-visual format.

There may be a concern in some quarters that recordings would be subject to unauthorised disclosure to other parties, or published on the internet, etc. But, if the person in question is determined break the law, this possibility already exists for written reports, or the PCORPs own (perhaps inaccurate) account. If court proceedings concerning a child are discussed, in any form of communication, then the distribution of that communication which 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. This is already the case, it is well-known, and PCORPs should be – and generally are - aware of it. The audio/audio-visual format of the communication raises no new issue.

## **6.3 Experience in Other Sectors**

### **6.3.1 Police (PACE)**

The [Police and Criminal Evidence Act 1984](#) made mandatory the recording of interviews of suspects by the police in a police station. Recording sound (audio) is mandated; in general visual (video) recording is optional, except for certain categories of interview. The obligatory audio recording is subject to compelling guidance known as [Code of Practice E, updated in 2018](#); the optional audio-visual recording is subject to guidance known as Code F, updated in the same document.

It is fair to say that the public would now be shocked if it were suggested that recording of police interviews should be discontinued. It is accepted by all that such recording is the proper procedure, beneficial to both sides and conducive to fairer, more accurate, and less often disputed outcomes.

### **6.3.2 Healthcare**

Tiny bodycams which may be used in healthcare settings to increase staff safety and confidence, and to deter patient aggression, are illustrated [here](#). Whilst the purpose of these devices is staff protection, not for recording clients' service data, nevertheless this same objective, staff confidence, is potentially valid also for Social Workers.

## **6.4 Cost**

IT equipment with capabilities far exceeding those required for the recordings envisaged here now abound in virtually every home and office – and, indeed, in your pocket. Moreover,



cloud storage has become standard on both hand-held and desktop devices, creating a limitless volume of available storage, obviating the need for local authorities to provide physical or electronic space. We make no attempt at costings here, not least because we have not specified any particular platform, but it is not unreasonable to expect the costs to be absorbed into existing IT budgets. The recordings envisaged are no longer to be regarded as something exotic and expensive.

## **6.5 Code of Practice**

A Code of Practice would be required to ensure certain minimum standards were met, and that statutory obligations were respected whilst also adhering to statutory restrictions. Some of the issues that would be addressed are listed below, but this list may not be definitive. The Code of Practice is likely to be based upon broad principles rather than be prescriptive and to include the following as a minimum,

- A requirement upon local authorities to nominate a suitably qualified and experienced person to be responsible for ensuring any local implementation followed the Code of Practice;
- Creation of a log with a unique numbering system to act as a master index of recordings, and specification of what data this index/log must contain as a minimum (e.g., date and time, attendees' names, professional capacity, and any locally recognisable case ID);
- Specification of whose names may be, and may not be, stated in any recording itself, and the basis of this distinction, e.g., cognisant that the identification of the Social Workers or other FCAs or local authority officials may require protecting or may be withheld on data protection grounds in a recording which will be made available outside local authority offices\*;
- Specification of the permissible location of attendees when the interaction takes place, e.g., whether an online interview may be conducted, and hence recorded, or not. (The difficulty of excluding uninvited parties may prohibit this);
- Specification of the standards expected regarding environmental considerations during any recorded exchange, e.g., that background noise and disruptive interruptions can be avoided;
- Specification of the minimum acceptable recording standards, especially in terms of audibility and clarity of speech;
- The broad types of recording device which would be permitted;
- The broad type of recording medium and/or location of electronic files which would be permitted;
- The physical security of the recordings/files from accidental loss, erasure or degrading;
- The security of the recordings/files from unauthorised access, copying, deletion or tampering;
- Specification of confidentiality, and the arrangements to ensure confidentiality;



- How all aspects of data protection would be met, including full compliance with the [Data Protection Act 2018](#) and GDPR;
- Definition of what persons would be authorised to access and/or receive copies of the recordings;
- Arrangements for the secure copying or communication of the recordings to authorised recipients

\*The issue here is this statement in the PACE Code of Practice: Nothing in this Code requires the identity of officers or police staff conducting interviews to be recorded or disclosed if the interviewer reasonably believes recording or disclosing their name might put them in danger. In these cases, the officers and staff should use warrant or other identification numbers and the name of their police station.

## **7. Critique of the Rejection of the Previous Proposal for a Petition**

The charity's last attempt to raise a Petition with the Welsh Government on this matter was rejected (letter 27/2/20 from Marek Llwyd, Petitions Committee, refers). After making some undisputed statements about the Welsh Government's legislative competence, the letter states the main basis of the rejection,

*“Our understanding of the petition is that the purpose of requiring compulsory recording of social workers is to ensure that in the event that what has been said by either party in public law proceedings is disputed, a contemporaneous record exists which can be used to verify what was said. In order for that to work effectively, there would need to be a change to the current rules in family courts to enable such recordings to be presented as evidence. Family proceedings are governed by the Family Procedure Rules which the Assembly does not have the legislative competence to amend.”*

This fails to address private law proceedings which are equally (or even primarily) our concern.

However, whatever type of case is in question, we do not accept that the second sentence in the above quote is correct: that is, the Proposal does **not** need a change to any family court rules. This is amplified below.

### **7.1 The Legislative Competence of the Welsh Government**

The Children and Family Court Advisory Service (Cafcass) initially related to both England and Wales when it was set up by in 2001 by the [Criminal Justice and Court Service Act 2000](#). Part 4 of the [Children Act 2004](#) transferred the responsibility for the functions of Cafcass in Wales to the (then) National Assembly for Wales, those functions being carried out on behalf of the Assembly by the new Cafcass Cymru.

Subsequently, the [Government of Wales Act 2006 Schedule 7A](#) Paragraph 8 retained courts, judges, civil proceedings, etc., as “reserved matters” to which devolution did not apply, whereas “*advice to courts in respect of family proceedings in which the welfare of children ordinarily resident in Wales is or may be in question*” were “not reserved”, i.e., the functions of Cafcass Cymru were devolved to the Welsh Government.





In short, the Welsh Government has legislative competence over Cafcass Cymru and its functions, but not over the courts. There is no dispute over this, and this is consistent with the Petitions Committee's observations.

## **7.2 The Proposal: What It Is; What It Is Not**

The purpose of the proposed recording is to provide a definitive record of all interactions so as to ensure the quality of any report subsequently produced by Social Workers / Cafcass Cymru. By §7.1 this is within the legislative remit of the Welsh Government.

The proposal does *not* seek to establish the admissibility of any such recordings as evidence to a court. While a court may rule to admit such recording as evidence, any proposal to require courts to do so would be beyond the legislative powers of the Welsh Government – but no such requirement is sought under the Proposal.

## **7.3 Human Rights Issues**

The 27/2/20 response of the Petitions Committee raised two other potential concerns,

*“Legislating to introduce compulsory recording of individuals raises human rights and data protection issues which would need to be carefully considered, as they could have the effect of taking the action required outside the Assembly’s legislative competence.”*

No details were given of how the Proposal might challenge either human rights legislation or data protection laws. Nor have we identified any such concerns. Data protection is addressed in §7.4.

There are a number of human rights issues raised by the types of family proceedings in question. For example, the UN Convention on the Rights of the Child (UNCRC) section 9.3 relates to the right of a child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, unless exceptional conditions apply. Similarly, Section 18.1 of the UNCRC recognises that both parents have common responsibilities for the upbringing and development of the child.

Leaving aside any effects of Brexit, the [Rights of Children & Young Persons \(Wales\) Measure 2011](#) places a legal duty on Welsh Ministers in reference to the UNCRC. This includes Cafcass Cymru because they carry out functions of Welsh Ministers in the Family Court.

However, none of these observations are affected by the proposal to introduce statutory recording of Social Workers except in respect of making the subsequent reporting process more reliable, for the reasons discussed above, and hence potentially contributing to delivery of the human rights obligations noted above. No adverse human rights issues consequent upon the Proposal being adopted have been identified.

## **7.4 Data Protection Issues**

The Petitions Committee suggested that there may be Data Protection issues raised by statutory recording which would put the matter beyond the remit of the Welsh Government, but were not explicit as to what these issues might be.



To be clear, the [Data Protection Act 2018](#) does not prevent PCORPs recording interactions with Social Workers or other FCAs. PCORPs (in the sense used here) are not data controllers or processors for the purposes of the act. Moreover, what a professional says at a social work meeting or interview is not personal data for the purposes of the Act.

However, the personal data of other family members may be contained in what is said at a meeting, and hence in any recording. Consequently, when a Social Worker / FCA makes a record of a meeting in which a child or other family member is involved, they are likely to be processing personal and sensitive data for the purposes of the Act and must comply with its provisions. This applies to any report they produce for the court, for the internal arrangements within Cafcass Cymru, or for anyone else. There is no distinction between a written report and an electronic recording in this respect.

Social Workers / FCAs clearly have a duty of confidentiality in respect of the private information about families that are revealed in any report or recording, and there are many rules and regulations which they are required to obey and which, subject to those restrictions, permit them to go about their professional duties. Electronic recording raises no new issues to be addressed.

One potential novel issue relates to the personal data of the Social Worker. It is very unlikely that the interactions in question would expose such information, but, if so, a recording by a PCORP might become subject to Data Protection restrictions. However, even this unlikely scenario ceases to be problematic if the Social Worker themselves makes the recording in pursuance of their professional business.



## **8. Conclusions**

We have demonstrated that,

- [8.1] A statutory obligation to produce audio/audio-visual recordings of interactions between Social Workers and PCOPRs would be beneficial in a multitude of ways, including improved accuracy of the formal record, reduction in false claims of misconduct, improved trust, avoidance of covert recording, increased Social Worker confidence, resolution of disputes over what was said, protection of the rights of PCORPs, and provision of an authentic record.
- [8.2] The costs and practical issues associated with the adoption of official recording are likely to be slight and certainly not a barrier to adoption.
- [8.3] Human rights, data protection, security and confidentiality present no new issues of principle or practice over and above the existing obligations in these respects.
- [8.4] Objections raised by the Welsh Parliament Petitions Committee in response to an earlier attempt at a similar Petition lack substance. In particular, no impact upon court procedures or arrangements are either explicit or implicit within the Proposal which lies within the legislative competence of the Welsh Government / Welsh Parliament.
- [8.5] The burden of proof now lies with any objection to this Proposal (noting that it is for the very modest purpose of a Petition). We have identified no substantive barrier.

## **9. Next Step**

The charity's proposed next step will be to seek authoritative opinion and support for our proposed Petition to Welsh Government by promulgation of this presentation of evidence to relevant parties.