

Can I record my ex-partner behaving badly and use it in court?



In today's digital world, our smartphones are never far from reach and for some, they've become a way to gather evidence during emotionally difficult times such as divorce or separation. But if you're considering secretly recording your ex-partner's behaviour, you may be wondering: *Can this be used in family court — and should I do it at all?*

The short answer? It depends. Covert recordings are becoming increasingly common in family law cases, but that doesn't mean they're always admissible or advisable. Below, we explain the risks, the legal stance, and the best course of action.

Covert recordings in divorce and child proceedings

In December 2018, the Family Justice Council debated the issue and concluded that there could be circumstances where a recording could be of value to a court but in other cases, it may demonstrate attempts to control by the recording party and it may have a negative impact on the welfare of the child.

The Association of Lawyers for Children argues that covert recordings of children should rarely, if ever, be admitted as evidence in family proceedings.

Are recordings ever admitted?

Yes, but not automatically.



It is entirely at the discretion of the judge to allow covert recordings into evidence. There is no presumption of admissibility, and the court will assess each case on its own facts.

Covert recordings and domestic abuse

We have found that covert recordings have been of particular use in shining a light on domestic abuse. It can have a dramatic and profound effect on the outcome of a case. However, it would be wholly wrong to presume that a Family Court judge will only believe and act on an allegation of domestic violence or abuse if there is recorded evidence. The vast majority of domestic abuse incidents take place well away from recording devices and it is simply not possible to turn on a smart phone in the middle of an incident in which domestic abuse is being perpetrated.

Can it go wrong?

Yes – and it often does.

Potential risks include:

- **Prolonging incidents:** Recording may escalate or extend confrontations, especially around children.
- **Delaying proceedings:** One case saw a hearing delayed by six months due to the misuse of covert audio recordings.
- **Judicial disapproval:** A judge may view covert recording as manipulative, especially if the device was placed on a child or if the evidence appears edited.

Judges want to see **unedited, full recordings**, not cherry-picked clips taken out of context. Attempting to selectively present recordings can damage your credibility and increase costs.

What the courts say

Presenting covert recordings can easily go wrong, even for well-meaning people. We have seen in our own cases how the presence of a covert recording devices can lead to a nasty incident lasting longer than it should, so prolonging distress felt by a child.

In one reported case, the Family Court adjourned a hearing where there was a misuse of covert audio recordings resulting in a six month delay. The judge in that case said *“The production of audio and video material in family proceedings is now a frequent occurrence and there are obvious issues surrounding editing, quality of any transcription, production of original footage and wider context which must be case managed in advance of a trial. Even if that is not a matter of law ... it is quite obvious from a practical perspective.”* Complete recordings should always be disclosed and cherry picking edited highlights will likely result in delay and wasted cost.

In another case, the judge criticised a parent for placing a covert recording device on a child, saying *“It is almost always likely to be wrong for a recording device to be placed on a child for the purpose of gathering evidence in family proceedings, whether or not the child is aware of its presence.”* Nevertheless, in that case the Family Court ruled that the recordings could be admitted as evidence on the basis that they were *“so extensive that it would be unreal to exclude them”*. The father had sewn a recording device into his daughter’s clothing and the recordings were demonstrative of the fact that the father could not meet his daughter’s emotional needs.

Principles of covert recording for evidence in court

Case law continues to develop and the position remains far from consistent. Some principles have emerged from recent case law, and generally, the Family Court will ask itself two questions.

1. Is the evidence relevant to the legal or procedural issues at hand?
2. Is the evidence an accurate representation of the whole conversation i.e. is it clear that the evidence has not been manipulated or tampered with in some way?

Each case will need to be considered on its facts. But, if you are considering using covert recordings to gather evidence in a family law case, we always recommend taking advice from a specialist family lawyer before you do so as you need to minimise the risk of the court taking a dim view and imposing an adverse outcome that you do not intend.

Get legal advice before using recordings in court

Our experienced family law team regularly advises on matters involving domestic abuse, child arrangements, and financial disputes, including how to handle sensitive evidence.

If you would like further information on divorce or child arrangements, then please contact our expert [family law team](#) either by calling us on 01892 506191 or [get in touch](#) by completing our contact form.



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