



Mr Bruce Beckles

by email

Reference: FOI-2009-93

22 July 2009

Dear Mr Beckles,

Your request was received on 14 July 2009 and I am dealing with it under the terms of the Freedom of Information Act 2000 (FOIA).

You asked:

"Please supply, in electronic form, a copy of the paper "Voice/Sound Recording at Formal / Informal meetings" which I believe was considered by the HR Committee as Agenda item 1084/09 at their meeting of 11 June 2009.

Please also supply, in electronic form, any notes, minutes, record, etc. of the considerations of this paper by the HR Committee as well as of any conclusions they reached or actions they agreed as a result of considering this paper."

I attach the requested documentation. Please note that this documentation should not be copied, reproduced or used except in accordance with the law of copyright.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of this decision, you should write to the Administrative Secretary, quoting the reference above, at the Secretariat, The Old Schools, Cambridge, CB2 1TN. If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the Information Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by the University. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely,

Kirsty Allen

DRAFT – SUBJECT TO CONFIRMATION

UNIVERSITY OF CAMBRIDGE
COUNCIL AND GENERAL BOARD
HUMAN RESOURCES COMMITTEE

11 June 2009

Present: Professor Andrew Cliff (Chair), Professor Carol Brayne, Professor Martin Daunton, Professor A Gamble, Dr George Reid, Professor Nigel Slater, Professor Dame Marilyn Strathern, Professor Ian White,

In attendance: Mr Graham Allen, Ms Rebecca McIntosh (Secretary), Mr Indi Seehra

Apologies: Professor Simon Deakin, Dr Jonathan Nicholls, Dr Emma Wilson, Dr Ian Lewis, Professor Athene Donald

1084/09 Voice / Sound Recording at Formal / Informal meetings

RECEIVED, at 11/06/HR82, a paper on the tape recording of formal and informal meetings under the University's Disciplinary, Grievance, Appeal, and Dignity at Work procedures.

NOTED that:

- a growing number of questions are being received as to how records of meetings are kept under grievance, disciplinary and dignity at work procedures.
- a recent review recommended that clearer guidance should be available from HR.
- the paper proposes a number of options including: note taking, verbatim transcription and sound recording; it also explores the associated benefits and disadvantages of each option.
- the Dignity @ Work policy refers to an 'agreed record' but in other hearings the individual receives, in letter form, the decision with supporting reasons as opposed to a record of the meeting.

AGREED to proceed with the recommended approach of continuing the existing practice of written note taking. The relevant HR pages will be updated to clarify this position.

Action	Responsible Person
1084/09 Update the HR web pages to clarify the position on voice recording / note taking.	Indi Seehra

Title	11/06/09/HR82 Tape Recording of Hearings under the University's Disciplinary, Grievance, Appeal and Dignity at Work procedures.
Sponsor	Indi Seehra, Director of Human Resources

Summary

The HR Division in recent times has experienced a more regular flow of requests from staff to tape record meetings under the University's disciplinary, grievance, appeal and dignity at work procedures. There is no statutory obligation on an employer to permit an employee to tape record meetings unless the employer's formal procedures provide this right. To date, the University has not permitted tape recording, as a note taker is provided to make a formal record that is made available to both parties to review and agree. This approach has become custom and practice over a number of years.

However, as a result of an appeal hearing in 2008 during which the appellant criticised the HR Division for not being clear about tape recording in its operational guidance, the appeal panel recommended that some clearer guidance should be provided. An immediate action taken was to place a short statement (Annex A) on the HR Division website as operational guidance for staff and Institutions. While this reflects the University's current custom and practice, it has been accepted that a more formal consideration of this issue should be brought to the HR Committee.

Following an analysis of the options available to the University, this paper recommends that the University continues to provide a note taker at such meetings to provide a formal written record, made available for both parties to review and agree, noting any areas of disagreement.

Decision / Action Required

A decision is sought on how records are kept of formal (and informal) meetings associated with the University's disciplinary, grievance, appeal and dignity at work procedures.

Timing

Immediate

Resource Requirement

There are no expected additional resource requirements for the recommended approach. However, the alternative options outlined below are likely to incur additional costs and these would need to be met from the existing budget. For example, a stenographer would involve agency fees and tape recording would involve the purchase and maintenance of specialist recording equipment.

Equality and Diversity Impact

This paper has been sent to Equality and Diversity for comment. An equality impact assessment will be completed if this is considered appropriate.

Communications Required

The HR Division website has been updated, and the Assistant Staff Handbook and Staff Guide have been updated.

An email circular to HR Schools teams, Chairs & Secretaries of Schools, Heads of Institutions, Faculty and Departmental Administrators will be issued to provide formal notification on the agreed approach.

Background / Content

Background

Over the last year, a number of staff members have either requested permission to tape record formal or informal meetings under the University's procedures or have covertly recorded meetings (requesting permission at a later date to submit transcripts as evidence). However, it is likely that many more meetings have been covertly recorded without managers or the HR Division's knowledge.

As a result of an appeal hearing in 2008, during which the appellant criticised the HR Division for not being clear about tape recording in its operational guidance, the appeal panel recommended that some clearer guidance should be provided. An immediate action taken was to place a short statement (Annex A) on the HR Division website as operational guidance for staff and Institutions. The statement explains that tape recording is not permitted, and that a note taker will provide a formal record of the meeting which will be made available for both parties to review and agree. This reflects the University's current custom and practice and it has been accepted that a more formal consideration of this issue should be brought to the HR Committee.

Rationale

Consideration must be given of the reasons behind these requests and the importance of getting an accurate record of such meetings. The main reason put forward for requesting recordings is 'management distrust' including those who chair the panels. However, in addition the other benefits include:

- Avoidance of genuine disputes about what was said.
- A full and detailed record of the evidence submitted, to inform subsequent hearings under the University's internal procedures or at Tribunal.
- Reassurance that records held on file are complete, accurate and that the information they contain is reliable.

University Procedures

The University's written procedures are silent on tape recording, however in a number of places they do provide for the attendance of a note taker, such as under the Un-established Academic and Academic related disciplinary and appeal procedures and the dignity at work procedure. Statute U also provides for a clerk of the University Tribunal and the Septemviri. Annex B provides a list of references to the production of formal records under the University's formal procedures.

Legal Implications

There is no statutory obligation upon an employer regarding the tape recording of meetings unless the employer's formal procedures provide for this right. Up to now, the University has not permitted tape recording (except under exceptional circumstances), and instead provides a note taker to make a formal record which is made available for both parties to review and agree. This approach has become custom and practice over a number of years. Under the Dignity at Work procedures it

is intended to be the case that appropriate notes are taken at the meeting during the informal stage, but again depending upon the sensitivities, no notes may be taken.

There are a number of legal issues related to the recording and covert recording of meetings in an employment context, in particular the Data Protection Act 1998 and the Human Rights Act 1998.

Any recording by the employer constitutes personal information under the Data Protection Act 1998. The making of a recording without an individual's knowledge or consent would breach at least two of the data protection principles, namely the duty to process data fairly and lawfully and the duty to process data in accordance with the rights of individuals. It is important to note that 'process' for this purpose is widely defined and includes the gathering of data in the first place. It is therefore essential that an employer obtains consent from all of those in attendance at a meeting before a recording is made regardless of the purpose of the meeting. Careful consideration must also be given to procedures for ensuring the security of the recording equipment, how long the tapes are stored, who receives copies and how the tapes are destroyed. If an employee believes that there has been a breach of the Data Protection Act they can complain to the Information Commissioner, who may subsequently prosecute the employer with a fine of up to £5,000.

Recordings made without another party's knowledge and consent may constitute a breach of their rights under Article 8 of the Human Rights Act 1998. If article 8(1) is found to have been breached, the breaching party can use article 8(2) to justify its behaviour in terms of protecting public safety, their economic well-being, the protection of health and morals, or for the protection of the rights and freedoms of others. This is of course relevant because any policy on recording would need to take account of how the matter is handled if any one single person objects. There is no equivalent legislation regarding note taking or stenography.

The Human Rights Act is useful in examining what information employment tribunals are likely to accept as evidence from employees (even if covertly recorded). This is explored in more detail in Annex C with an examination of a recent tribunal case. However at a policy level, there are no Human Rights Act principles under which a recording, covert or otherwise, would be preferable to an agreed note of the salient points of the meeting.

Overall, tribunals tend to express displeasure at the clandestine nature of covert recordings, however they are inclined to take the view that where evidence is relevant it should be admitted and, if necessary, unreasonable conduct (related to the recording and disclosure of evidence) penalised in costs.

Finally, the ACAS code clearly does not provide for recording of meetings or even note taking, rather an employer must put in writing to the employee the reasons for the decision reached. The Code does however compensate for some of the disadvantages of not keeping a formal record. For example, employees have a statutory right to be accompanied by a companion.

Options for consideration

Permit the recording of formal meetings under the University's disciplinary, grievance, appeal and dignity at work procedures on request from the employee.

Advantages

- The avoidance of genuine disputes about what is said at a meeting.
- It can be helpful for staff and managers to have a full record of the evidence submitted in case of a subsequent appeal or tribunal claim.
- By permitting recording, it is likely that fewer covert recordings will be uncovered at later stages of internal procedures or at Tribunal. The University may therefore be better prepared.
- It can be helpful for managers to have formal recordings to demonstrate that no inappropriate behaviour occurred during a meeting – particularly in relation to dignity at work complaints. Or in the case of an employee, evidence that inappropriate behaviour did take place.

Disadvantages

- The individuals involved may find themselves giving evidence under very difficult and upsetting circumstances. For example, in Dignity at Work cases (e.g. sexual harassment) witnesses may be nervous and reluctant about giving evidence or feel constrained in the evidence they provide if they are to have their evidence tape recorded.
- The process may be disrupted by the recording process and operating of recording equipment¹.
- The need for additional personnel to attend hearings as independent recorder operators - apart from the issue of cost, it may be harder for witnesses and appellants to speak and to give evidence if they have to do so in front of such operators.
- Cost, reliability and maintenance of specialist recording equipment.
- The need for policies and procedures for recording, storage of recordings, security & confidential destruction of recordings.
- Agreement would need to be sought from all parties in advance of the meeting. This lengthens the administrative process and presents difficulties if certain parties do not give their consent. This could in turn lead to inconsistent practice in different cases.
- A decision would need to be reached in each case, as to which parties receive copies of the recording and of which section of the recording i.e. witness statements, private deliberations of the panel etc.
- Significant administrative time is required to transcribe the recording after the meeting. This would also require a process of clarification as individuals do not always speak clearly, coherently, or in a grammatically

¹ For example, reporting the date, time and details of attendees present, each participant introducing themselves, changing the tape and the breakdown of equipment etc.

correct manner. This clarification process could open up further opportunities for disagreement.

- Recordings or transcripts are not infallible. Even if the words are clear, there is scope for further disagreement i.e. "If I said that, it's not what I meant".

Provide a stenographer to take verbatim minutes of formal meetings

Advantages

- Stenographers can provide an accurate, verbatim, punctuated record at speeds of up to 200 words per minute.
- The avoidance of genuine disputes about what is said at a meeting.
- If typed directly on to a lap top, limited transcribing time is required and a full transcript can be generated quickly.

Disadvantages

- Cost - professional stenographers command professional fees and remain in relatively short supply.
- Scarcity of stenography skills within the University.

Provide a note taker to make a written record made available for both parties to review and agree, noting any areas of disagreement.

Advantages

- Complies with existing custom and practice.
- The provision of a note taker is referred to in a number of University procedures including the Un-established Academic and Academic related disciplinary and appeal procedures and the dignity at work procedure.
- No additional cost.
- In Dignity at Work (e.g. sexual harassment) cases where witnesses may be nervous or reluctant about giving evidence under difficult and upsetting circumstances, they are likely to feel less constrained in the evidence they provide, if they are not recorded.
- Facilitates full and frank discussion between members of the panel in their attempt to reach the 'right' decision in their deliberations. This also complies with Employment Tribunals view as a reasonable 'ground rule' under employers procedures.
- A concise note of key points is likely to be more useful in future proceedings than a lengthy and rambling transcript.

Disadvantages

- Administration time to write up the notes of the meeting and for each party to review and agree.
- Does not provide a verbatim record of the meeting and therefore not a full record of all of the evidence put forward.
- May lead to covert audio recordings of meetings if requests from staff to tape record are refused. This may leave the University in a more vulnerable position if a recording does not surface as evidence until a

case reaches an employment tribunal. However this would depend upon the specific circumstances of the case and the Tribunal's decision in admitting the evidence.

Chairman's discretion

Advantages

- Flexibility – an appropriate decision can be reached depending upon the circumstances of the case. In sensitive Dignity at Work (e.g. sexual harassment) cases where individuals may be providing evidence under difficult and upsetting circumstances the chairman is able to make the decision for the meeting not to be tape recorded.

Disadvantages

- Guidance would need to be published, as the chairman's decision would need to depend upon:
 - the complexity of the case,
 - the issues involved i.e. discrimination, harassment,
 - the number of parties involved,
 - the number of recordings required and who to distribute these to.
- Delays – it may take time for requests to be considered and for a decision to be reached.
- Even if the chairman takes the decision that a meeting will or will not be recorded, the employee maintains the right to raise a grievance and challenge the decision reached. An appropriate procedure would need to be developed to deal with these cases.
- Consistency – it will be difficult to maintain a consistent approach between different procedures and chairman.

Recommendation

This paper recommends that the University continues to provide a note taker for formal meetings under the disciplinary, grievance, appeal and dignity at work procedures. The notes will be made available for both parties to review and agree and any areas of disagreement as to the content will be noted, to produce an agreed record of the meeting.

It is recommended that requests to tape record formal and informal meetings under these procedures are declined. However, in exceptional circumstances where a panel's ability to understand the facts may be hampered, a recording may be considered and approved by the chair².

² For example where English is not the first language of the person concerned and they have been offered the services of an interpreter. Under these circumstances, a tape recording of the proceedings [would make it possible to establish what was actually said and if there were subsequent questions about] delete [...] insert [could assist with] the accuracy of the translation.

Annex	Annex A - Operational advice on tape recording made available on the HR Division Website in 2009 Annex B - Extracts from University policies and procedures referring to the production of formal records of meetings Annex C – Further legal background
Author	Suzanne Fowler, Employee Relations Adviser
Version Number	1
Date	02/06/2009

Annex A

Operational advice on tape recording made available on the HR Division Website in 2009

<http://www.admin.cam.ac.uk/offices/hr/policy/grievance/>

Tape-recordings

Formal hearings and informal meetings under the University's disciplinary, grievance and appeal procedures cannot be tape-recorded by either side and therefore will not be admissible as evidence even where a recording exists. A note-taker may be present at hearings to provide a formal record of the meeting. This will not be a verbatim record but will be made available for both parties to review and agree. This approach has been adopted to maintain the formality of proceedings and to minimise disruption.

Annex B

University Policies and Procedures - references to the production of formal records

Statute U, Chapter III (Discipline, Dismissal and Removal from Office)

'The Clerk of the Tribunal shall notify the Vice-Chancellor, the University Advocate, and the member concerned of the Tribunal's decision on any charge referred to it. Such notification shall include the Tribunal's findings of fact regarding the charge, the reasons for its decision, the penalty (if any) determined by the Tribunal, and the penalty (if any) imposed by the Tribunal or the Chairman.'

Statute U, Chapter V (Appeals)

'The Clerk of the Septemviri shall notify the decision of the Septemviri on any appeal, including any decision reached in the exercise of their powers under section 8 above, together with any findings of fact different from those reached by the competent authority under Chapter II or by a Tribunal under Chapter III, as the case may be, to the Vice-Chancellor, to the University Advocate, and to the appellant.'

The University's policy and procedures relating to disciplinary action, grievances and appeals in respect of un-established academic and academic-related staff

2. Disciplinary Procedure

2.3 Formal Warning

*'The member may bring a union representative or colleague with him or her to the meeting, and the responsible person may request that a representative of the Academic Secretary, or Registry if the person is employed in a Council institution, be present **and/or that another member of staff attends to take notes.**'*

'A letter confirming this decision will be sent to the member as soon as possible (preferably within seven days) specifying the complaint made against the member, where appropriate the improvements required in the member's conduct or performance, where appropriate the period of time within which such improvements are to be made, and confirming that if the member commits a further act of misconduct, or his or her performance does not improve, the next stage of the procedure may lead to dismissal or some other penalty.'

3. Procedure in the Case of Alleged Serious Misconduct

3.6 Decision

Following the meeting the disciplinary committee will consider the facts of the case. The Chairman will then notify the member of the action to be taken. Appropriate courses of action where the Panel believes that the member has committed an action of serious misconduct or has committed a further offence or failed to sufficiently improve performance or conduct after formal warning, may include the issue of a

formal warning, disciplinary transfer or dismissal. A letter confirming this decision will be sent to the member within seven days. The decision will set out the findings of fact on which it is based as well as the determination of the Committee. The Chairman will advise the member that he or she may appeal against the decision by following the procedure detailed in Section 5 below, provided that such notice of appeal is received within fourteen days of the receipt of the warning letter. A copy of the letter will be sent to the Academic Secretary or Registry, as appropriate, and the member will be asked to sign and return a copy to acknowledge its receipt.

4. Grievance Procedure

Rules of Procedure

'The decision of the Grievance Committee will be notified to the aggrieved member and recorded in a document signed by the Chairman. A confirmatory letter will be sent to the aggrieved member within seven days.

5. Appeals Procedure

5.2 Appeal Committee

The Chairman may request that another member of staff attends to take notes.

5.3 Rules of Procedure

- *The decision of the Appeal Committee will be notified to the appellant and recorded in a document signed by the Chairman, giving the reasons for this decision. A confirmatory letter will be sent to the appellant within seven days.*
- *A copy of the document and letter will be sent to the Academic Secretary or Registry, whichever is appropriate, and to the responsible person.*

Assistant Staff Rules

No reference to a note taker other than stating the following.

- The assistant may, if he/she so wishes, be accompanied by a representative who should be an accredited Trades Union representative or another member of the Assistant Staff.
- A representative of the Personnel Committee may be present at the interview.
- The Head of institution shall write to the assistant confirming the decision and the reasons for it.

Dignity at Work Procedure

4. Principles

Records

Notes taken at meetings should ideally be agreed by all present. The University and all those involved in this process must observe the principles of data protection. The Human Resources Division (and the College, if the complainant is a student) should be consulted about filing and retention of all notes and documents.

Guidance on Conducting Investigations



- *Support for the investigator*
*An investigator will be advised and supported by a member of the Human Resources Division, normally a HR Consultant or HR Officer. This support can include procedural advice, accompaniment to meetings, and assistance with, for example, the preparation of a report. **As some of the evidence may be obtained orally, at meetings or interviews, an impartial note-taker would also be needed.***
- *Evidence*
*The collection of, and testing of, evidence may include written statements and interviews. **Notes of interviews should ideally be agreed and signed by the interviewee. If for any reason it is not possible to agree the record, any points of dissent should be appended.***
Evidence may need to be tested in a hearing at which both parties to a complaint or witnesses to an alleged incident are present. It is essential to natural justice that a person against whom complaints or allegations have been made can hear and challenge them, and any supporting evidence. When considering documentary evidence (letters, file notes etc.) you should consider whether these demonstrate a consensual or one-sided account of the matters under consideration.
In particular circumstances, for instance harassment complaints, there may be difficulties in this respect. The complainant may be emotionally vulnerable. There may be a need in sensitive cases to balance the requirement for confidentiality with the requirement to test evidence. The HR Consultant supporting you will be able to advise on how to proceed in such cases.
- *Arrangements for Interviews*
A record of the interview should be agreed, and signed, by the person interviewed. If for any reason it is not possible to agree the record, any points of dissent should be appended.
- *Meeting individual needs*
*Some parties to the investigative process may need **reasonable adjustments** in connection with meetings or interviews to ensure proper access to the process. Such arrangements may include:*

Where English is not the first language of the person concerned s/he should be offered the services of an interpreter. Special care should be taken to allow additional time for translation, and to record the process accurately. A tape recording of the proceedings would make it possible to establish what was actually said, if there are subsequent questions about the accuracy of the translation.

Annex C

Further legal background

Recordings made without another party's knowledge and consent may constitute a breach of their rights under **Article 8 of the Human Rights Act 1998**. If article 8(1) is found to have been breached, the breaching party can use article 8(2) to justify its behaviour in terms of protecting public safety, their economic well-being, the protection of health and morals, or for the protection of the rights and freedoms of others. The Human Rights Act is useful in examining what information employment tribunals are likely to accept as evidence from employees (even if covertly recorded).

In a recent case (*Amwell View School v Dogherty*, 2006) the Employment Appeal Tribunal examined these principles in more detail and ruled that article 8 did not apply. This was because the public governors (the employer), who were recorded conducting a disciplinary hearing, were considered by the EAT to have discarded their rights as private individuals not to be recorded. The nature of article 8, which applies only to individuals and not to organisations, means that it offers more protection to employees who are recorded at work than to employers who are more likely to be seen as operating in a public rather than a private sphere. Without article 8, in considering whether to accept covertly recorded material, tribunals are dependent upon balancing broad competing policy considerations and deciding cases upon their unique facts.

In *Amwell* the employee was therefore permitted to provide transcribed evidence from a covert recording she had made of various meetings with her employer. Please note that this was on the basis that the recording would serve to resolve any dispute as to what was actually said and that no agreed note of the meetings had been produced.

However the part of the transcript where the governors were debating the facts of the case in her absence were ruled inadmissible. Here the tribunal gave regard to the broader consequences of a ruling that would allow confidential discussions in relation to employees to subsequently be disclosed at tribunal. It was felt that decision-makers at such meetings might be inhibited from open discussion in their adjudications and that it could give rise to potential satellite litigation in relation to leaked information from the employer or covert recordings made by the employee (please see extract below).

'No ground rule could be more essential to ensuring a full and frank exchange of views between members of the adjudicating body (in their attempt to reach the "right" decision) than the understanding that their deliberations would be conducted in private and remain private.'

However the tribunal expressly stated that their ruling might have been different if the claim had been framed in terms of unlawful discrimination, in particular where no reasons were given by the panel for their decision and where the recording of private deliberations had produced the only evidence of such discrimination. Furthermore, deliberations at a school meeting or other public body are likely to have a wider-reaching impact than those at a private company or University, so protection may be more limited.

From this case, it appears that breaches of employer/employee privacy tend to be decided according to tribunal discretion in the context of broader decisions relating to the issues in dispute.