

Ashfield District Council

BWV Manual

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1. Introduction

Body Worn Video (BWV) is an overt method by which staff can obtain and secure evidence at incidents. This document is intended to enable staff to comply with legislation and guidance to create evidence suitable for use ultimately in court proceedings if required. In addition to providing compelling supportive evidence for court it has been found that BWV can furnish other benefits such as:

* Raise standards of service.
* Reduce incident escalation.
* Augment opportunities for evidence capture.
* Reduce complaints.

BWV equipment provided for users should be compliant with the recommendations in the ‘Technical specifications’ section of the Guidance for the Police use of BWV Devices published July 2007 by the Police and Crime Standards Directorate http://library.college.police.uk/docs/homeoffice/guidance-body-worn-devices.pdf

This document explains the process by which Ashfield District Council (ADC) will utilise BWV devices. It will ensure a consistent and effective system is adopted throughout the organisation, benefiting both members of the public and officers.

BWV devices will be used by officers. It has the potential to significantly prevent, stop escalation, and record events involving conflict. In cases which involve legal redress it can improve the quality of evidence provided by members of the organisation. It will also raise standards of service providing a good reference for staff development.

BWV can be used across a wide range of operations and in all cases users and supervisors must use professional judgment regarding the use of this equipment.

There are some examples of situations where the use of BWV may not be appropriate; the following list is for guidance only and is not exhaustive.

* Legal privilege – users must be careful to respect legal privilege and must not record material that is, or is likely to be, subject to such protections.
* Private dwellings – whilst recording is not forbidden, users must consider the right to private and family life (Article 8 of the ECHR) and must not record beyond what is necessary for the requirements of the individual case.

Users of the device must ensure where practical, is advertised prior to the start of recording so that parties can be informed that recording is/has took place.

Whilst there will be exceptions, the use of BWV must be made clear by staff making a verbal announcement to those persons who may be recorded. In some cases it will not be practical to make such an announcement, however an announcement is advised as soon as practicable.

BWV cameras might be small, but they are not to be worn or used in a hidden or covert manner ensuring maximum impact on prevention and escalation of an incident.

The decision to record or not to record any incident remains with the user. The user must be mindful that failing to record an incident may require explanation. Therefore, if the user is present at an encounter where BWV can be used the user should record the incident.

Recording should be incident-specific: users should not indiscriminately record entire duties and only use recording to capture video and audio at incidents that would normally require reporting, whether or not these are ultimately required for use in evidence.

This procedure does not deal with covert or directed surveillance, which is covered by the codes of practice issued under the Regulation of Investigatory Powers Act 2000.

1. Risk Assessments / Health and Safety Considerations

Each incident should be subjected to a dynamic risk assessment on its own merits. When using BWV the decision to record or not record forms part of this risk assessment. The assessment should include consideration of the health and safety, human rights and welfare of all those involved.

1. Booking Out Equipment

All cameras are to be stored in the Integrated Partnership HUB. The Community Safety Management Team will be responsible for maintaining the security of the cameras and the allocation to staff who have been instructed in its use.

When issued with the equipment the user should ensure that it is working correctly. This process should include the following basic checks:

* Unit is correctly assembled;
* Recording picture is the right way up;
* Sound recording level is appropriate to use;
* Date and time stamp is accurate;
* There is sufficient memory available for the shift ahead.

Only specifically instructed personnel should be permitted to use BWV devices. On completion of instruction they will be locally authorised to use the equipment. Local trainers will carry out this instruction package. A record of instruction will be maintained at local level and added to the skills list of the individual.

1. Recording Events

Users must not indiscriminately record entire duties or patrols and must only use recording to capture video and audio at incidents that would normally be the subject of PNB entries or as ‘professional observation’. All recordings have the potential to be used in evidence even if it appears at the time that this is unlikely.

It is important to record as much of an incident as possible. Recording should begin at the earliest opportunity at the start of an event.

The user must be mindful that failing to record an incident may require an explanation to line managers and/or in court. Therefore, if the user is present at an evidential encounter, they should record the incident.

When a BWV user is approached by victims or witnesses who are giving their first account of a incident the user may record the encounter. Any initial disclosure recorded on BWV should be treated as an evidential recording. This is important under compliance with statutory identification procedures under PACE Code D. Such recordings do not replace the need for formal written statements but they can be used as supporting evidence and used in accordance with the Criminal Justice Act 2003.

All material recorded to the BWV unit should be downloaded at the end of the officer’s tour of duty. The downloaded video image file will be electronically stored and saved. Where this is not possible for technical / practical reasons (e.g. bandwidth), a detailed rationale should be recorded in the user’s notebook (PNB) , a record of the footage recorded made on the occurrence relating to the recording, and the footage should be uploaded at the earliest opportunity.

The footage on the BWV device will be deleted after the transfer of data unless there is a technological recording failure. Footage marked as non-evidential will be automatically deleted after 30 days. Evidential maybe saved up to 7 years accordance with Ashfield District Council’s Data Retention Policy.

Guiding principles for BWV are:

* + 1. The use of body worn video is lawful
    2. Data will be processed and managed in line with Ashfield District Councils CCTV Data Compliance Procedure and the principles of the Data Protection Act 2018
    3. The normal use of BWV will be overt.
    4. The operational use of body worn video must be proportionate, legitimate and necessary.
    5. Use of body worn video will be incident specific. Officers will use common sense and sound judgement when using body worn video, in support of the principles of best evidence.
    6. Body worn video does not replace conventional forms of evidence gathering (such as written statements and Police and Criminal Evidence Act 1984 (PACE) interviews), it supports them.

1. Image Capture

At the commencement of any recording the user should, where practicable, make a verbal announcement in plain English to indicate why the recording has been activated. If possible, this could include:

* Date, time and location
* Confirmation, where practicable, to those present that the incident is now being recorded using both video and audio
* Inform them of where the Councils Privacy Notice is e.g., direction to website.

If the recording has started prior to arrival at the scene of an incident, the user should, as soon as possible announce to those present that recording is taking place and that actions and sounds are being recorded. Users should use straightforward speech that can be easily understood by those present, such as “I am video recording you”, “I am video recording this incident” or “everything you say and do is being recorded on video”.

Where an officer is attending an incident called in by a persistent complainer, BWV may be used to capture any complaint to ensure the complaint is captured correctly but the persistent complainer must be informed that they are being recorded and why.

1. Collateral Intrusion

Users should attempt to minimise intrusion of privacy on those persons who are present but not involved in the incident, by keeping the camera focused on the incident and not bystanders, in order to obtain evidence and intelligence relevant to the incident.

The recording by BWV is not subject to RIPA when used overtly for ongoing spontaneous incidents.

In any incident that involves mental health issues, the recording of the ongoing spontaneous incident should be recorded in line with the principles in this document, however at the point that a mental health assessment is carried out by a health care professional, officers should cease recording unless there are exceptional circumstances to continue.

1. Selective Capture and Bookmarking

Selective capture is the user making a choice of when to record and when not to record. The nature of some incidents may make it necessary for the user to consider the justification for continuing to record throughout an entire incident.

For example, the recording may be stopped in cases of a sensitive nature or if the incident has concluded prior to the arrival of the BWV user. In all cases the user should exercise their professional judgment in deciding whether or not to record all or part of an incident. In cases where the user does interrupt or cease recording at an on-going incident, they should record their decision in a pocket notebook or similar log, including the grounds for making such a decision.

In recording an incident, it is likely that BWV users will encounter different people, as well as recording the visual evidence at the incident itself. It is recommended that witness and victim details are captured using traditional pocket notebooks.

Selective capture is a means by which users may separate encounters with each person (victims, offenders and witnesses) in order to allow for easier retrieval at a later time. For example, if an officer has recorded an encounter with a witness that includes their name and address, then this section should not be shown to the suspect or their legal representative.

It is recognised that bookmarking (temporarily stopping and restarting recording) is not always practicable due to the nature of incidents; therefore it should only be attempted if the situation is calm and the operator is easily able to undertake this action.

Prior to any temporary suspension for the purpose of bookmarking, the user should make a verbal announcement clearly stating the reason for suspending recording. Following the pause at the start of recording the user should also announce that they have recommenced recording.

The bookmarking process will be demonstrated on the final whole recording of the incident by a missing section of a few seconds.

1. Use of BWV in Private Dwellings

If a BWV user is in a private dwelling, provided this is an incident that would normally be the subject of a written record, the user can record the incident using BWV in the same way in which any other incident is recorded.

When in a private dwelling that the user should, where practicable, make a general verbal announcement that recording is taking place. Recording should only be used when it is relevant to the incident, and users should be mindful of the rights of individuals to respect for a private and family life under Article 8 of the European Convention on Human Rights.

In some circumstances staff may find that one party may object to the recording taking place. In such circumstances staff should consider the need to continue recording with care. Factors to consider in this decision making process are;

* the requirement to secure best evidence of any events that have occurred, whether this is in writing or on video, and that the video evidence will be more accurate and of a higher quality and therefore in the interests of all parties.
* that continuing to record would safeguard both parties, with a true and accurate recording of events, any significant statement made by either party and of the scene.

These factors should be explained to any person objecting to the recoding of any incident.

It is recommended that staff continue to record where incidents are occurring. However, if it becomes clear that the incident is not a matter suitable for recording the user must make a verbal announcement that the recording is being stopped prior to stopping the recording.

1. Sensitivities connected with individuals/ communities

The filming in some circumstances may cause concern with some individuals or communities due to their religious or cultural beliefs and practices. These should be recognised and respected and officers should be aware of this fact and be sensitive to the wishes of those involved in these cases.

Any footage that is being considered for release to the media/subject access request should be considered for its sensitivities. Consideration should be given as to whether any non-involved persons should be pixelated to protect their identity

Any such release should only be on the approval of Legal and Corporate Communications Department.

1. Do not interrupt filming

Unless specific circumstances dictate otherwise recording should continue uninterrupted from commencement of recording until the conclusion of the incident or resumption of general patrolling.

1. Concluding filming

It is considered advisable that the user continues to record for a short period after the incident to clearly demonstrate to any subsequent viewer that the incident has concluded and the user has resumed other duties or activities.

Prior to concluding recording the user should make a verbal announcement to indicate the reason for ending the recording this should state:

* Date, time and location
* Reason for concluding recording

1. Transfer of images to BWV Evidence Management Software

Before completion of duty the BWV user will transfer all data from the camera to the Digital Evidence Management System (DEMS) for storage and retention.

All recordings will be transferred to DEMS only. Any transfer to unauthorised storage facilities may result in legal or disciplinary proceedings.

Any recordings that require retention for evidence in court proceedings will be evidence and as such should be recorded as evidence through the DEMS software. This footage will be retained in accordance with the organisations requirements and in line with current legislation. Non evidential footage will be erased after 30 days in accordance with legislation and Council Policy.

1. Deletion of Images

There are no circumstances in which the unauthorised deletion by the user or other person of any images that have already been recorded can be justified, and any such action may result in legal or disciplinary proceedings.

All non-evidential data will be retained on DEMS software for 30 days and then deleted through the system.

Once transfer of the images has been completed all footage stored on a recording device or similar media will be deleted through the correct use of DEMS software.

1. Return of Equipment

When the BWV equipment is no longer required it will be returned to the HUB. The user will ensure that all equipment is in working order and suitable for re issue. Any damage or malfunctions must be reported to a member of the Community Safety Management Team responsible for the equipment. Care should be taken to ensure that the device is placed on charge for the next user.

1. Recording of Interviews

BWV does not replace the obligations required of officers through the Police and Criminal Evidence Act 1984 (PACE). BWV should not be used to record interviews of suspects under caution that occur at the council’s offices. ***It may be used to record interviews which take place other than at the council offices however recording of interviews under such circumstances does not negate the need for them to be recorded contemporaneously****.*

BWV can and should be used to capture hearsay evidence. An example of this is where a witness gives their account of suspected fly tippers actions to an investigating officer, when not in the presence and hearing of the suspect.

1. Production of Exhibits

In order for the recorded evidence to be presented in court, a copy must be preserved and marked as an exhibit. This can be stored on a secure server or on hard disk.

It is recommended that evidence is recorded and marked as an exhibit as soon as practicable after the footage has been downloaded and that users do not start duty with a recording device that contains evidence of cases from a previous duty or day.

Exhibits will be created within the HUB where a master copy will contain all footage of the incident.

Where more than one BWV device is present at the scene of an incident or the area of the incident is also covered by a CCTV system, the officer in the case must ensure that all available footage of the incident is secured as exhibits or unused material. **As a reminder, ALL material in a case should be reviewed by the officer to assess whether it undermines the prosecution or assists the defence, this includes both evidential and unused material.**

Officers dealing with all cases involving video and CCTV evidence must be mindful of the ‘Birmingham defence', whereby: A video recording had not been disclosed to the defence, even after specific requests for unused material to be served were made. By the time of the trial the tape could not be found and there was no prospect of it being found. It was held that the prosecution was under a duty to disclose; that the defence was prejudiced as a result of the nondisclosure; and that a fair trial was therefore impossible. All BWV footage will need to be identified by the investigating/disclosure officer of an incident, regardless how minimal it may be for this purpose.

If the BWV software fails and officers are unable to download footage that is evidential it is recommended that officers place the camera in an evidence bag and seal it. The handling of that camera and footage can then be recorded until such time as footage can be downloaded. This allows for effective evidential continuity of the footage.

1. Provision of Copies for the Defence

In general terms BWV recordings should be disclosed to the defence in the same manner as other case exhibits.

It should only be necessary to provide copy data to the defence in the case of actual or anticipated not guilty pleas. Ashfield District Council disclosure protocols to be followed.

1. Responsibilities
   1. User

The User of the BWV will have received basic instruction in the use and legislation surrounding BWV prior to any use.

It is the responsibility of the BWV user to ensure that:

* Equipment is checked prior to deployment to ensure it is working correctly.
* That the batteries are charged prior to use and immediately recharged on return.
* That the time and date settings are accurate.
* That camera lenses are clean and the picture quality is suitable.
* The camera lens is aimed and focused appropriately to capture evidence.
* Compliance with legislation and guidance.
* View only footage they have a bona-fide reason for viewing.
  1. Administrators (Community Safety Management Team)

Administrators will be responsible for ensuring the DEMS software is maintained and being used correctly.

They will dip sample entries within the system to ensure standards are maintained. Findings will be reported to management.

They will also ensure that all documents associated with BWV use, such as booking in/out, viewing of footage, deletion and production of evidence conforms to this procedure and the policy document.

Ensuring viewing of footage is appropriate and controlled in line with guidance and legislation.

Responsible for fault reporting and seeing it is actioned at the earliest opportunity ensuring the equipment is available for use at all times.

* 1. Community Safety Manager

Identified managers are responsible for the implementation of this document within their own area of business. They will ensure the use of BWV is ethical and correct in all areas of business.

* 1. Review of procedure

This document will be reviewed annually, commencing one year from the date of publication unless a change in procedure is identified earlier. The review will take account of changes in legislation and working practices, as well as the outcome of consultation with relevant internal departments and external agencies and any evaluation. This review will be carried out by ADC.

1. Supervision, Review, Discipline and Dip Sampling.

The use of BWV will be a constant learning process for both officers particularly due to learning and legislative changes. It is imperative that to maintain public confidence and continually identify issues and best practice BWV is used to enhance learning opportunities.

Officers are encouraged to review their own footage for self-reflection and review. This can be done by reviewing footage on BWV before docking or at time of docking. Team Leaders are to review their staffs BWV as part of their role as a supervisor. To be clear Team Leaders are not required to view all of their staffs BWV, but to dip test/identify specific incidents as part of the normal supervisory process and give both positive and developmental feedback to officers/staff where required.

Officers are also encouraged to speak with their Team Leaders, or the BWV senior users to gain feedback or if they have any concerns about any aspect of their use of BWV.

Any breach of this procedure or misuse of the BWV device or subsequent footage could lead to disciplinary action.

1. Training

The use of BWV and any supporting software is restricted to those who have received formal training in the use of the device and/or DEMS software. Formal training includes attending a specified training event, one to one training with a BWV SPOC or self-learning from any on-line package approved by ADC. Until officers/staff have completed this formal training they are not able to be deployed operationally with the device.

The use of BWV at each incident must be subjected to a dynamic risk assessment on its own merits. The risk assessment must include the consideration of the health and safety, human rights and welfare of all those involved.

As the use of BWV is a 'core skill', all officers, will be trained in its use.

In order to use BWV equipment, officers will receive training in all the necessary technical and practical aspects of the specific equipment being used.

A training package has been developed which includes:

* Why BWV is being used
* Equipment familiarisation
  + - Using the camera
    - Using DEMS Software
* Practical and legal considerations including
  + - Police and Criminal Evidence Act 1984 (PACE)
    - Criminal Procedure and Investigations Act 1996 (CPIA)
    - Data Protection Act 2018
    - Human Rights Act 1998
  + Freedom of Information Act 2000
  + Regulation of Investigatory Powers Act 2000
* Tactical options and considerations including:
  + - Practical use
    - when to commence and cease recording
    - recording an incident
    - using video to prepare statements
    - reviewing first accounts with witnesses
    - Evidential continuity
    - Health and Safety Issues
    - Diversity issues
    - Stop and Search
    - Professional Standards

1. Pixilation of Footage

Footage captured during an ongoing spontaneous incident and subsequently classed at evidential or unused material, ordinarily should not require pixilation or other editing. In the same vein, any footage that is non-evidential and due to be deleted after 30 days should also not ordinarily be required to be pixelated or otherwise edited.

If footage is required to be pixelated, this should be carried out by a Team Leader prior to burning off any footage.

Footage that could be subject to pixilation could include footage released to the media (for example – a Crime watch appeal), and footage due to be released under FOI or subject access request.

1. Other Considerations

There will be situations where the use of BWV may not be appropriate, and/or there may be health and safety or other considerations and the following list is therefore not exhaustive:

* 1. Other Evidence Available at an Incident - CCTV

Whilst BWV has the potential to capture best evidence at a scene of an incident, it does not replace the obligations of officers to gather all other forms of other primary evidence available, including CCTV.

There may be occasions due to expediency at an incident or where footage cannot be burned off from a CCTV unit at that point, BWV could be used to record the screen of a CCTV system to expedite the initial part of an on-going spontaneous incident. This should be seen as a temporary option until the primary evidence, in this case CCTV footage can be burned to secondary media and exhibited and presented as part of a case.

* 1. Officers fitted with Pacemakers

A small number of officers or staff may be fitted with a Pacemaker for an ongoing condition.

ADC will seek advice from each individual’s pacemaker supplier as to whether the wearing of BWV will affect the pacemaker and what precautions should be put in place to minimise any effect.

1. Information Management and Public Access
   1. Vetting

All users of BWV devices are ADC Officers working in enforcement roles and with vulnerable people and therefore will have been subject to Police Vetting and/or Enhanced DBS chgecls. All users of these devices must be Police Vetted.

Any user of the DEMS software must be Police Vetted and or SIA accredited.

Any hardware returned to the supplier for repair and has been returned with footage there-in (due to a fault meaning ADC are unable to retrieve their own footage) the supplier will use an encrypted stand-alone laptop; that will be secured when not in use; to download any footage (to return to ADC) if possible, and make any software repairs.

* 1. Audit Trail

DEMS (Digital Evidence Management Software) has the provision of a full audit trail both for every video as well as every user.

Data will not be downloaded to any device other than a nominated dedicated computer.

Data that is downloaded and defined as non-evidential will be stored for 30 days. During that time it is searchable and can be retrieved and marked as evidential. After this period it will be automatically deleted from the application. ADC may keep a copy as part of disaster recovery/routine system back up for a short time after the 30 days although this won’t be ordinarily available.

Any Evidential or unused footage, and/or any DVD/CD’s produced should be retained in line with the Ashfield District Councils Data Retention Policy.

Access to downloaded footage and any subsequent disclosure of the footage or images is restricted to those who require it for justifiable legal investigative purpose, those being:

* Protecting Life and Property
* Preserving Order
* Preventing the Commission of Offences
* Bringing Offenders to Justice
* Any Duty Arising from Common or Statute Law
* Any other authorised use

Anyone accessing footage for anything other than the above may be subject to disciplinary action.

* 1. Subject Access

Footage from BWV may be subject to a Subject Access Request. Subject access requests have statutory timeframes attached to them within which the Council must respond to applicants and provide the relevant information (subject to the application of any relevant exemptions). Please note that it is an offence to delete any information if a request for this information has been received by the Council.

Requested footage will be provided to the Council’s Data Protection office to allow for any redactions to take place and the footage will then be required to be placed onto a viewable medium (DVD or similar). Please note that a request will cover any information held at the time a request is received so if the footage has not been deleted, it will need to be supplied for consideration, even if there is an intention to delete in the future.

* 1. Lost Devices

Officers should follow the council’s procedure relating to loss of data/electronic devices in the event that a BWV device is lost. At a minimum when a device is lost, the following will need to be informed:

* Team Leader
* Service Manager
* ICT Department
  1. Monitoring and Evaluation

The Community Safety Manager is responsible for monitoring the implementation and effectiveness of this procedure and the overarching policy.

* 1. Review

The Community Safety Manager will review this procedure on an annual basis, or as and when changes in legislation or working practice dictate.

1. Other related procedures, polices and information source

Information Sources

* Guidance for the Police use of Body-Worn Video Devices. found at https://www.cctvusergroup.com/downloads/file/Home%20Office%20guidance-body-worn-devices.pdf
* ACPO Practice Advice on Police Use of Digital Images found at http://www.acpo.police.uk/documents/crime/2011/20111014%20CBA%20practice\_advice\_police\_use\_digital\_images\_18x01x071.pdf
* Information Commissioner’s Office
* https://ico.org.uk/media/for-organisations/documents/1542/cctv-code-of-practice.pdf
* Surveillance Camera Code of Practice
* https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/282774/SurveillanceCameraCodePractice.pdf