



Cornwall Council

Antisocial Behaviour Team

Operational Procedure, Policy, and Privacy Impact Assessment for the use of BODYWORN VIDEO (BWV)

Reveal D3 Body Camera

July 2023 - Version 1.1

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1.0 Application and Scope

This policy covers all aspects of the use of Body Worn Video (hereinafter BWV) equipment, and the subsequent management of the data obtained, by officers of Cornwall Council Antisocial Behaviour (ASB) Team.

BWV does not replace the need for a Section 9 statement or a formal ABE where applicable. Evidence captured through the use of BWV is subject to disclosure and may be relied upon, or referred to, at any stage during: an investigation; the prosecution of a case; or an investigation into professional standards and behaviour.

Common law provides Cornwall Council ASB Team with the authority to use BWV in the lawful execution of its duties; for the purpose of the prevention and detection of crime, and the apprehension or prosecution of offenders. Cornwall Council ASB Team staff are “citizens in uniform”, although they are granted additional statutory powers in order to execute their duties, much like the police. ASB Team staff generally do not require special statutory powers to undertake any activity that the public could lawfully undertake. The taking of photographs - and, in its wider sense, video or sound recordings - is deemed lawful and common law (precedent) does not prevent this activity in a public place. (Lord Collins in *Wood v Commissioner of Police for the Metropolis*, 2009).

‘Public place’ includes any highway, and any other premises or place to which - at the material time - the public have or are permitted to have access, whether upon payment or otherwise. (**Criminal Justice Act 1972, Section 33**).

Appropriate use of BWV may be subject to scrutiny by supervisors to ensure compliance, integrity, and transparency. BWV equipment shall be used solely for Antisocial Behaviour Team purposes and will only be connected to the Officer of Cornwall Council ASB Team computer.

All images recorded are the property of Cornwall Council and must be retained in accordance with their procedures as well as the relevant legislation. Images are recorded and retained for the prevention and detection of crime, and for the apprehension or prosecution of offenders. Images must not be shown or given to any unauthorised persons, other than in accordance with specified exemptions.

BWV is an overt method by which the ASB Team staff can obtain and secure evidence at the scene of incidents and crimes. These procedures are intended to enable ASB Team staff to comply with legislation and guidance to create evidence suitable for use in court proceedings.

Occasions where covert capabilities are deployed may include:

- General patrol, incidents of rowdy or nuisance behaviour or where an officer of Cornwall Council ASB Team decides to extend covert use, in accordance with the **Regulatory Investigatory Powers Act 2000** and the **Investigatory Powers Act 2016**.

It is standard practice across Council ASB Teams that information about offenders is managed in line with the **Management of Police Information (MoPI) Code of Practice 2005, Guidance 2010** and **Threshold Standards**.

The relevant legislation covering the use of BWV can be found in the following Acts of Parliament and Guidance which should be read in conjunction with this policy:

- **Data Protection Act 2018 / General Data Protection Regulations (GDPR) / UK GDPR** - covering the processing, retention and management of personal data;
- **Criminal Procedures and Investigations Act 1996** - covering the disclosure of material in criminal cases;
- **Freedom of Information Act 2000** - covering the right of individuals to access recorded information held by public authorities;
- **Human Rights Act 1998** - specifically **Article 6 ECHR** (Right to a Fair Trial) and **Article 8 ECHR** (Right to Respect for Family and Private Life);
- **Regulation of Investigatory Powers Act 2000** - covering covert, directed, or intrusive surveillance;
- **Police and Criminal Evidence Act 1984** - specifically in respect of identification (Code D);
- **Protection of Freedoms Act 2012**;
- **Director of Public Prosecutions Guidance on Charging, 6th Edition 2020 & the Attorney General's Guidelines 2020**;
- **Information Commissioners CCTV Code of Practice Amended 2021**;
- **Management of Police Information (MoPI) Code of Practice 2005**;
- **Management of Police Information (MoPI) Guidance 2010**;
- **Management of Police Information (MoPI) Threshold Standards**.

For the purpose of this policy the following definitions apply:

- **BWV** - Any body-worn device worn in an overt or covert capacity for the primary purpose of recording video and audio evidence. (Therefore, equipment such as smartphones or handheld video cameras would not fall into this definition.)
- **User** – Officer of Cornwall Council ASB Team: trained and authorised to use BWV equipment in an operational capacity.

2.0 Introduction

Cornwall Council ASB Team is committed to maximising the use of their resources to capture the best possible evidence and intelligence, including by the effective use of technology. BWV, therefore, should be used in all appropriate circumstances. To enable this, all users must be aware of their responsibilities in relation to its deployment and retention, so as to safeguard users as well as the integrity of the digital product. Officers are reminded that all BWV footage is subject to disclosure and may be relied upon or referred to at any stage during an investigation, prosecution of a case or investigation of professional standards and behaviour.

BWV technology records exactly what happened, what was said and when; it is an indisputable format of evidence.

This document sets out the Cornwall Council ASB Team policy for the use of BWV. It will enable officers to comply with the relevant legislation relating to video recording and will outline the associated benefits to officers, persons with whom they interact in the course of their duties, and the general public.

It also documents general best practice procedures with regard to the integrity of data, (including images and video) as well as its security and use.

2.1 Aims

The use of BWV can provide a number of benefits which include:

- Assisting Local Authorities to achieve best evidence;
- Promoting public confidence through the appropriate use of BWV to maintain integrity and transparency;
- Ensuring the integrity, retention and continuity of any evidence or intelligence gained;
- Ensuring the admissibility, in court, of any evidence obtained;
- Bringing more offenders to justice by the production of incontrovertible digital evidence;
- Improving the effectiveness of PACE interviews by way of presenting key evidence to the suspect;
- Modifying behaviour to help prevent harm to the public and to deter people from committing crime and ASB;
- Supporting officers who may have become a victim of crime in the course of their duties;
- Providing evidence of compliance with relevant legislation, codes, and policy.

2.2 Objectives

The aim of BWV is to capture best evidence to maximise charging and out-of-court disposals, promote early guilty pleas, and support evidence-led prosecutions, thereby:

- Reducing the number of cases proceeding to trial;
- Reducing the court appearances attended by vulnerable victims and witnesses;
- Reducing unnecessary case building requirements;
- Increasing the level and quality of intelligence gathered;
- Improving standards of professional behaviour to reduce complaints and civil litigations.

3.0 Roles & Responsibilities - General

Cornwall Council ASB Team takes the strategic lead for this policy and will maintain the long-term vision and implementation of BWV.

DATA PROTECTION:

Any information relating to an identified or identifiable living individual recorded as a consequence of this procedure will be processed in accordance with the **Data Protection Act 2018, General Data Protection Regulations**.

FREEDOM OF INFORMATION:

This document has been assessed as suitable for public release.

MONITORING and REVIEW:

This procedure will be reviewed every two years in the light of any national guidance or procedural change; or sooner if due to changes in law or local strategy; or at such other times as may become necessary. It may also be subject to amendment or revision as a result of changes or developments, in technology or equipment, as may occur from time to time.

WHO TO CONTACT ABOUT THIS POLICY:

Cornwall Council ASB Team Manager

3.1 Roles & Responsibilities - Service Managers

- Ensure staff are provided with appropriate training (see 5.0) to make effective and lawful use of the equipment;
- Make certain that all BWV operators are aware of, and familiar with, this policy and associated documents (see 1.0);
- Be responsible for monitoring the practical implementation of this policy at local level.

3.2 Roles & Responsibilities - BWV Operator(s)

- MUST familiarise themselves with this and other relevant policies & procedures (see 1.0) and ensure compliance at all times;
- MUST ensure they have completed all relevant training prior to utilising the cameras and the appropriate software;
- MUST regularly connect the BWV device to the designated computer to ensure it receives required software updates;
- MUST wear the BWV device when deployed operationally, unless otherwise directed by their manager;
- MUST take responsibility for what they have chosen to record or omit, as they may have to justify their decision-making during any subsequent court or other investigative proceedings.

Note: Only Body Worn Video devices purchased by the Cornwall Council can be utilised. Under no circumstances must any other or privately owned BWV devices be used to capture evidence by any officer.

4.0 Equipment & Associated Systems

The BWV equipment is a body-mounted camera with a built-in microphone. The camera stores digital files that, once recorded, can neither be deleted nor amended by the operator. Each digital file carries a unique identifier and is time and date stamped throughout.

The BWV have a playback function to allow for immediate review of footage directly from the device.

The playback function can only be accessed upon successful input of the unique sequenced pass code using the buttons on the device. This minimises the risk of unlawful access to any footage on the device in the event of its theft or loss.

4.1 Equipment

Equipment must be kept in good working order and it is the responsibility of each trained user to ensure that the equipment is maintained. Any faults or losses must be reported immediately to the ASB Team Manager.

If the device has become damaged, or a fault is identified, the user must notify the ASB Team Manager ASB Team as soon as practicable.

The ASB Team Manager or System Administrator reports via DEMS 360 - in the event of a loss, the ASB Team Manager or Community Safety Team Manager will be responsible for carrying out a risk assessment related to the lost device and must inform the Data Protection Manager for Cornwall Council immediately.

BWV devices should only be used by trained users and must be stored in line with policy.

All users should ensure that the device is clean, including the lens, and is fully charged before operational use.

Formal training must be completed before any staff member can use BWV.

All users who are trained will have knowledge of the following:

- Maintenance;
- Day to day use;
- Storage of devices;
- Device software;
- Evidential recordings;
- Legal considerations;
- Deployment of BWV;
- Evidential continuity;
- Disclosure;
- Health & Safety;
- Diversity issues;
- Recordings for retention/deletion.

4.2 Software

Devices will be allocated using the Digital Evidence Management System (DEMS 360) software, which will also be used to upload and subsequently handle the footage, and to provide a full audit trail to maintain evidential continuity.

DEMS 360 is comprised of a fully auditable secure storage system. Footage can be viewed via designated Council laptop computers, upon which footage clipping and redaction can take place (although the original footage will always remain). The techniques for doing so will be included within the training that is provided to all users.

Each image file carries a unique identifier, and is time and date stamped throughout. Once recorded, footage cannot be amended or deleted by the user. DEMS 360 is a dedicated, certified ISO/IEC 27001 software package that supports the secure management, downloading, and storage of BWV digital files on a UK based server.

ISO/IEC 27001 is an international standard on how to manage information security. This provides a full audit trail ensuring evidential continuity is maintained. It will be the responsibility of the system administrator to report any malfunctions to Cornwall Council's IT department who may, in turn, refer the matter to the manufacturer/supplier of the BWV devices and software.

All users should refer to the DEMS 360 User Manual.

4.3 Loss of device - Security Incident Management

The loss of data poses a risk to Cornwall Council. Therefore, if a device is lost or stolen, or if it is suspected that a data loss has occurred, this must be reported to the ASB Team Manager and the Data Protection Manager as soon as the loss or theft is discovered.

The following details should be included within the report:

- Time and date of the incident being discovered or suspected;
- Location of incident, if known;
- Who first discovered (or suspected) that an incident had occurred;
- The business area (ie: the geographical location in which the filming took place) and the details of the asset (if it is an IT-based incident);
- Details of any other person who may have been involved in - or may have witnessed - the incident;
- Whether the device contains footage or not.

5.0 BWV Training

All operational ASB Team Staff in possession of personal issue BWV will be required to complete the BWV training package.

The training may be completed individually or as a team led by a designated staff member assigned by the ASB Team Manager. Once the ASB Team Manager is satisfied that a member of staff has completed the training, details of authorised users will be recorded, and the Team Manager will issue the necessary log on details for DEMS 360.

In order that ASB Team Staff know how to clip and perform basic redaction functions on BWV recordings, staff issued with BWV equipment must also complete the necessary software training for DEMS 360.

Users are reminded of their obligation to clip and redact relevant footage to ensure that only the evidential recording required for prosecution is initially supplied to the Prosecutor. If any part of the BWV footage has the potential to undermine the prosecution, support the defence, or is specifically requested by the prosecution or defence, then the whole recording may be provided, in accordance with our disclosure responsibilities.

Only staff who have received and completed the appropriate BWV and associated software training will be issued the equipment.

Once staff have been allocated a BWV camera it will be permanently booked out to them and there will be no requirement to book it out on a daily basis.

6.0 Procedure

The use of BWV remains at the discretion of the trained user and, in all cases, staff must use their professional judgement and must be able to justify its use. However, a decision has been made by the ASB Team manager that BWV must be deployed to record the following:

- Visits to premises for the purposes of investigating a potential criminal offence;
- The execution of premises closures;
- Issue of CPW/CPN's;
- Incidents of escalating violent aggression in a public or private place;
- Serious disorder in a public or private place.

6.1 What to Say

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

- Date, time, and location;
- Incident type;
- Confirmation, where appropriate, to those present that the incident is now being recorded using both video and audio.

If the recording has commenced prior to arrival at the scene of an incident, the user should, as soon as is practicable, announce to those persons present at the incident that recording is taking place, and that actions and sounds are being recorded.

Specific words for this announcement have not been prescribed, but users should use straightforward speech that can be easily understood by those present, such as:

"I am wearing and using a body worn video camera which is recording both video and sound..."

"I am recording you...."

"I am video recording this incident...."

"Everything you say and do is being recorded on video..."

6.2 Recording an Incident

If one user has already commenced recording, subsequent BWV users attending must use a discretionary approach, based on knowledge and experience, to consider

whether footage captured on additional cameras will add anything of further evidential value. It is recognised that recording multiple angles in certain scenarios can be useful.

The requirement to switch on BWV is not mandatory for every user at scene, other than at those listed (see 6.0).

It must be noted that BWV does not replace the requirement for users to provide a Section 9 statement.

Users are reminded to switch off or reverse BWV cameras under certain circumstances, for example, when writing a statement or logging onto devices/authority systems, to avoid incidents such as where cameras may inadvertently capture confidential or sensitive information, eg: personal addresses and user login details. This is to ensure that there are no information breaches of GDPR and disclosure, which could either put the individual, their employer, or other services or agencies at risk.

NOTE: All BWV footage is subject to disclosure and, as such, may be made available to the defence.

6.3 Selective Capture

Selective capture does not involve the deletion of any images but merely describes the ability of the user to make a choice as to when to record and when not to record. In general, the BWV user should record entire encounters from beginning to end, without the recording being interrupted. However, the nature of some incidents may make it necessary for the user to consider the rationale for continuing to record throughout entire incidents.

Users **MUST** be aware that stopping a recording during any incident may require an explanation in court or as part of any investigation into the user by any relevant authority. In cases where the user does interrupt or cease recording at an ongoing incident, they should record their decision on video or PNB, including the grounds for making such a decision.

There are no circumstances in which the deletion by the user of any images already recorded can be justified and any such action may result in legal or disciplinary proceedings. The BWV hardware used by Cornwall Council ASB Team is fully auditable and any deleted recordings or removal of any part of the camera are reported to the systems administrator.

6.4 Concluding a Recording

It is considered advisable that the user continues to record for a short period after the incident has concluded. This will clearly demonstrate to any subsequent viewer, particularly from an evidential and integrity perspective, that the incident has come to an end.

Recording may also be concluded when the user attends another area, where other recording devices are able to take over the video & audio recording.

Prior to concluding recording, the user should make a verbal announcement to indicate the reason for ending the recording. This should state, when practicable:

- Date, time, and location;
- Reason for concluding recording.

7.0 BWV Camera Deployment

This section aims to clarify under what circumstances BWV should be deployed.

If one user at the scene has already commenced recording, subsequent BWV users attending must use a discretionary approach, based on knowledge and experience, to consider whether footage captured on additional cameras will add anything of further evidential value. It is recognised that recording multiple angles in certain scenarios can be useful.

7.1 Incidents relating to ASB Crime & Disorder

As stated at 6.0, a decision has been made by the ASB Team Manager, that all BWV users must record certain incidents including their immediate approach to the scene. Users will have discretion to operate their BWV at other times outside of these specified occurrences, but may be required to explain the criteria of why they felt it necessary to commence recording on their BWV.

7.2 Visits to Premises for the Purposes of Investigating a Potential Criminal Offence

In any premises which users have lawfully entered, users may find that one party objects to the recording taking place. In such circumstances users should continue to record and explain the reasons for recording continuously which include:

- The requirement to secure best evidence of any offences that have occurred, whether this is in writing or on video, and that video evidence will be more accurate and of higher quality and, therefore, in the interests of all parties;
- That continuing to record will safeguard both parties with a true and accurate recording of any significant statement made by either party;
- That continuing to record will safeguard all parties against any potential allegations.

Note: The filming in domestic premises could be at odds with some cultural and religious beliefs. An example may be where a female in her home may not be dressed as she would usually be in public, eg: not wearing head or face coverings. Users should be aware of this fact and be practical and sensitive to the wishes of those involved in these circumstances.

Unless specific circumstances dictate otherwise (see below) recording must continue uninterrupted from commencement of recording until the conclusion of the incident.

Users should not under any circumstances utilise the camera solely as an audio recording device by deliberately aiming the lens at the floor or by covering the lens in some manner.

When recording in areas where individuals would have a strong expectation of privacy (for example, inside a private residence) clear justification would be required for using BWV. Users must consider the **Right to Respect for Private and Family Life (Article 8 of the ECHR)** and must not record beyond that which is justifiable, lawful, proportionate, and necessary for the evidential requirements of a case. This is reinforced by the judgement in *AB v Hants Constabulary*, (in which there was a recording of a general victim update conversation in a private premises, made in anticipation that something else might happen (a complaint)).

7.3 Closure of Premises Power of Entry

Section 118 of the Criminal Justice and Immigration Act 2008 introduced new powers for the courts to close, on a temporary basis, premises associated with significant and persistent disorder or persistent serious nuisance. Schedule 20 inserts a new Part 1A into the Anti-Social Behaviour Act 2003 which makes provision for the issue of closure notices and the making of closure orders in respect of premises associated with persistent disorder or nuisance. If any forced entry is required to facilitate premises closure by Cornwall Council or are accompanying Devon & Cornwall Police, the BWV device must be activated. All methods of forced entry whether conducted by ASB Team or other authorities **MUST** be recorded using BWV and will include as a minimum the initial contact with occupants (to confirm powers of entry/warrant served, etc), method of building entry, and any subsequent damage to entry points.

At the conclusion of the premises closure, a designated officer **MUST** also complete a visual check of premises for damage prior to leaving, and this should be captured using BWV. This will assist in any subsequent enquiries - for example, civil litigation claims, etc - relating to the circumstances and impact of these incidents.

7.4 PACE Interviews

Due to recent changes to **Code E of PACE**, the use of BWV devices to record suspect interviews is not recommended at this time. This is due to the definition of 'audio' recording, as written in the Codes, and the current advice being that the use of BWV will be insufficient in this regard to record a suspect interview away from a police station.

7.5 When NOT to Deploy BWV

The following examples are for guidance only where the use of BWV is NOT appropriate (this list is not exhaustive):

- Legal privilege - BWV users must be careful to respect legal privilege and must not record material that is - or is likely to be - subject to such protections, such as consultation between a legal representative and a suspect;
- Private dwellings - whilst use of video within domestic premises is covered in section 7.2, users must consider the right to private and family life, in accordance with **Article 8 of the Human Rights Act**, and must not record beyond what is necessary for the evidential requirements of the case;
- Vulnerable Witness Interview (ABE) - the use of BWV is not a replacement for ABE interviews;
- Explosive atmospheres - like many electrical items, BWV cameras could cause electrostatic interference, which may trigger explosive reactions in certain conditions. Therefore, BWV equipment **MUST NOT** be used in an area where it is believed that explosive atmospheres may be present, such as on a petrol forecourt, or in certain manufacturing environments.

In all cases, users must deploy their professional judgment with regard to recording.

The use of BWV in establishments such as prisons, military establishments, or other areas - where the BWV may capture sensitive or restricted data, and where such data is subject to the provisions of the **Official Secrets Act**, or other similar legislation - must be approved by the Governor, Officer in Charge, or other individual with similar responsibility, or by their representative.

8.0 Witnesses and the Community

8.1 People Objecting to Recordings

There may be occasions where a person objects to being recorded.

The use of BWV by Officers of Cornwall Council ASB Team has been introduced for legitimate enforcement, and health & safety purposes. If a member of the public objects to being recorded, then they should be informed that the use of BWV is authorised. Users may record overt video and audio without consent if this recording is for 'law enforcement purposes'.

The decision to continue recording should remain with the user, who should consider the objections made by the person in respect of the recording. The presumption should be, however, that recording should continue unless the objections made override the need to record an evidential encounter.

If the user feels the recording is unnecessarily inflaming a situation, then they can use their judgement to turn off the equipment. The decision to turn off recording should only be considered as an action of last resort - after **all** other alternatives have been exhausted - and the reason must be recorded.

If the user decides to continue recording despite the objections of an individual, they should make a note as to why they have decided to do so.

They should also take steps to advise the individual as to the following:

1. The reason for the recording taking place - usually this will be for the prevention and detection of crime;
2. Non-evidential material will only be retained for a maximum of 31 days as prescribed by the DPA & UK GDPR;
3. Footage is subject to the DPA & UK GDPR and can be applied for by making a subject access request (and that information on making a request can be found on the Cornwall council website);
4. Any material is restricted and will only be disclosed to 3rd parties in accordance with the law;
5. The recording is being made in order to act as a corroboration of the encounter and, thus, can be used to back up the accounts of each and any party at an incident.

Equally, users may encounter members of the public who specifically request that any encounter or interaction is recorded, even if the user does not feel that there is any evidential reason to do so. Unless there are clear reasons to do otherwise, the user should record such an encounter, but should remind the person requesting the recording that, unless there is an evidential reason to retain the footage, it will be automatically deleted in line with existing guidelines (currently 31 days).

Note: Common Law provides the Cornwall Council ASB Team with the authority to use BWV in the lawful execution of its duties, for the purpose of the prevention and detection of crime and the apprehension or prosecution of offenders (See 2.1).

8.2 Collateral Intrusion

Users are reminded that all BWV footage is subject to disclosure and may be relied upon or referred to at any stage during an investigation or prosecution of a case.

Insofar as is practicable, therefore, users should restrict recording to areas and persons necessary in order to obtain evidence and intelligence relevant to the incident and should attempt to minimise collateral intrusion.

Every effort should be made to ensure that personal information of victims or witnesses is not inadvertently recorded on BWV.

All footage captured is disclosable and might require editing and redaction at a later stage. Any persons recorded as part of an incident can and may be redacted from the footage by trained and authorised personnel. Users must note that this process will be carried out in exceptional circumstances only, and not as a matter of course.

DEMS 360 has redaction capability, which is the responsibility of the officer or OIC to employ. Consideration of this process will be based on the sensitivity of the footage captured. If uncertain as to what aspects of the recording must be redacted, the guidance of a supervising officer, disclosure officer, or legal department should be sought. The Data Protection Officer is also available to provide advice.

8.3 Witness First Accounts

If the BWV user is approached by victims or witnesses who are giving their first account of the crime, the user may record the encounter, but this should be considered against the needs of the individual with due sensitivity to the nature of the offence being reported. Any initial disclosure from victims and witnesses, including a first description of the offender, recorded by BWV should be treated as an evidential recording and submitted to the investigating officer. This is important to ensure compliance with statutory identification procedures under **PACE Code D**.

Such recordings DO NOT replace the need for formal written statements from victims or witnesses, but they can be used as 'supporting evidence' for such statements. They can also be considered to be hearsay evidence and used in accordance with the provisions of the **Criminal Justice Act 2003**.

If this recording amounts to the victim's first notes, or initial description of suspects, they may 'refer to the relevant section of the video' when making their written statement. Care must be taken to ensure that the witness reviews **only** their account and they must not be allowed access to other sections of the recording. The extent of any review by the witness to assist with making their statement must also be recorded in their statement.

8.4 Witness Identification

Witnesses to an incident, where the investigation is being assisted by officers of Cornwall Council ASB Team, and where the offender is present, must under no circumstances be shown the video captured on the BWV. Users should revert to the **Police and Criminal Evidence Act 1984 Section D (Annex E)**; 'Showing of Photographs or Other Controlled Identification Processes' for further guidance.

9.0 Retention, Storage & Disclosure

The use of BWV generates a large amount of digital material that must be stored, retained, reviewed, and deleted appropriately.

To ensure compliance with the above, officers of Cornwall Council ASB Team will use the DEMS 360 video management system to store all recorded footage, which will be automatically uploaded to the secure designated laptop and managed subject to the above. All footage recorded to the BWV device must be downloaded as soon as practicable upon conclusion of the operational use. Once downloaded, the camera is cleared of all footage and ready to be used again. Users must store their personal issue BWV units securely when not in use.

All recorded footage is automatically downloaded when the camera is connected to a computer that has DEMS306 software installed and is automatically saved on the secure networked data storage facility.

Once the footage is uploaded, the user must decide as to whether the footage is likely to be required at a future point, either as evidence or for some other law enforcement purpose.

Any saved evidential footage must then be identified by users entering the IDB reference number in the incident ID column and other details such as exhibit number, suspects, and other relevant details in the notes column.

Additional information entered into these fields is searchable and allows future searches to identify and retrieve essential footage. The recording of the IDB reference number ensures that the BWV is indexed and downloaded to DEMS 360 correctly. This is essential in order to locate all footage linked to an incident. BWV should be marked as 'evidential' only when the continued retention is necessary to support an investigation/operation. It must not be marked evidential for the sole purpose of professional development.

The Reveal (DEMS) video management system has a full audit capability enabling review of such aspects as search, metadata entry, and playback. All BWV footage should be uploaded to DEMS as soon as possible. This will assist in proving evidential integrity. Footage cannot be deleted from the BWV device prior to the uploading process.

It is the responsibility of the BWV user to ensure that evidential footage is correctly downloaded. Data must NOT be downloaded to any device other than designated computers with the DEMS 360 software installed. Any attempt to do so will result in the automated reporting of the incident, and any user found doing so may be liable for prosecution or disciplinary procedures.

It is for the investigating officer to determine whether there is a need to retain BWV data and the period for retention, taking into account the requirements of legislation, policy, and regulations. A failure to review and retain information appropriately may constitute a breach of the relevant legislation and, ultimately, undermine public confidence in the assistance given by officers of Cornwall Council ASB Team.

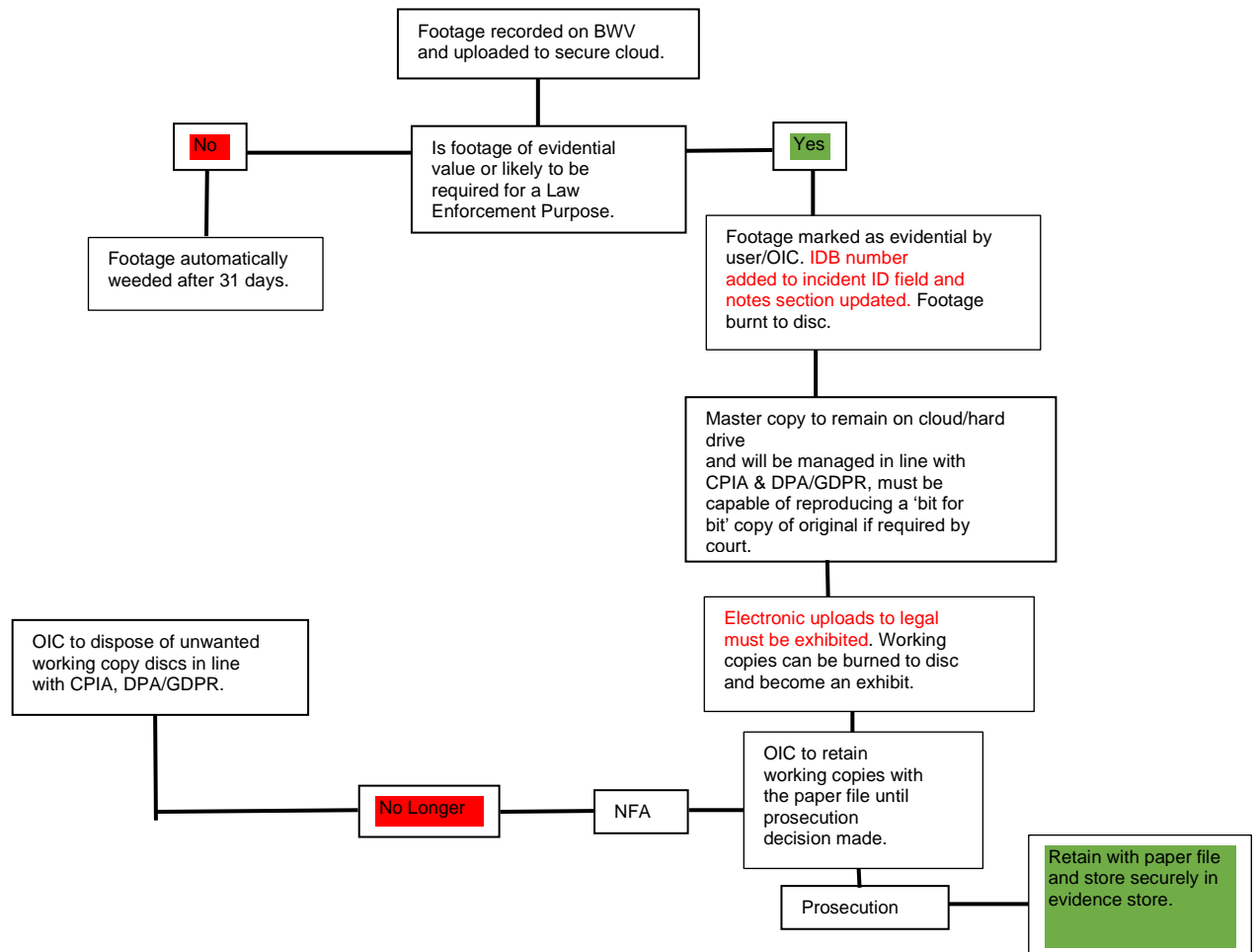
9.1 Evidential Footage

‘Evidential footage’ will be considered to be any data that is:

- Evidence of an offence being committed;
- Supporting evidence for any process; premises closure; serving of Community Protection warnings/notices or legal documents;
- Issuing of Fixed Penalty Notices etc;
- Footage which should be revealed under **The Criminal Procedure and Investigations Act 1996**;
- Footage that is required for a relevant and proportionate policing purpose, eg: footage providing evidence to support police investigations and/or intervention.

Data downloaded as evidential will be retained by Cornwall Council for a minimum of 6 years in line with the **Guidance on the Management of Police Information**. A ‘bit-for-bit’ copy of the original footage must be burned, and provided as required, on to a non-rewritable disc which is securely stored in accordance with the **Criminal Procedure and Investigations Act 1996**, **The General Data Protection Regulation (GDPR)**, **DPA 2018** and **UK GDPR**.

The following process map should be consulted when considering post recording and retention decisions:



Where an investigation is taken over by a secondary investigator, the responsibility as to whether the continued retention of footage is required will pass to that investigator or officer in the case (OIC).

The need for retention must be justifiable and tangible. Simply retaining footage in case it may be required is not a strong enough test and the investigator or OIC in each instance must be capable of justifying why footage needs to be retained on a case-by-case basis.

Any working copies of BWV that are produced by users during the course of an investigation should be retained until the conclusion of proceedings (including any known appeals process if applicable). Each working copy will be given an exhibit number, and continuity of that exhibit becomes the responsibility of the OIC. When no longer required, such copies must be securely disposed of by the OIC.

It is not necessary to burn a 'master' copy on each occasion. The master copy is the first complete viewable footage of any upload and should be retained on the dedicated server. If requested by the court, a 'bit-for-bit' copy of the original footage must be burned and provided as required.

In order to prove the authenticity of recordings required as evidence in a trial at court, it may be necessary for evidential continuity statements to be produced. Such statements confirm that any securely stored master copy (as above) has not been tampered with in any way and thus must include the following content:

- 1 -The equipment serial number or unique reference number;
- 2 -The day, date, time, and location that the user took possession of the equipment (Time 'A');
- 3 -The day, date, time, and location that they commenced recording (Time 'B');
- 4 -The day, date, time, and location that they concluded recording (Time 'C');
- 5 -The day, date, time, and location that the master copy was created and retained securely on the server (Time 'D');
- 6 -Whether any other person had access to, or used, the equipment between times A, B or C and time D - if so, a statement will be required from that person.

9.1.1 BWV as Evidence

It is acceptable, and an expectation, that users review their own BWV when compiling their Section 9 statement, unless specifically directed not to by the ASB Team Manager, or other supervisor, for example: in relation to a complaint against the officer or service.

Wherever BWV has been employed to make a statement, reference to this footage must be recorded within that user's statement. This must include the start and finish times of the relevant evidential section(s). If this recording is to be relied upon as evidence, then it must be allocated an exhibit reference number, which must also be included.

Users have a duty to identify to the prosecutor anything that may have been recorded which has the potential to undermine the prosecution case or assist the defence with theirs. This must be highlighted via the case file. Where there has been a legitimate reason to interrupt recording, or to turn the camera off, the reason for this must be recorded on the case file to fully inform the prosecutor. Officers should be conscious that, where a witness discloses personal details or an address, this can later be redacted, and it is not necessary to stop the recording.

9.2 Non-Evidential Footage

Data downloaded as non-evidential will be stored on DEMS 360 for 31 days, or until a decision is taken whether to institute proceedings against a person for an offence - whichever is sooner. During that time, it is searchable and can be retrieved and marked as evidential. After this period, it will be automatically deleted.

Where more than one BWV device is present at the scene of an incident, the officer in the case (OIC) must ensure that all available footage of the incident is secured as exhibits in consideration of any defence arguments that may be presented.

The General Data Protection Regulation (GDPR), DPA 2018 and UK GDPR also specifically allow the retention of records beyond the period needed for law enforcement or organisational purposes for the purpose of:

- Archiving in the public interest;
- Scientific or historical research purposes;
- Statistical purposes.

Section 41 of DPA 2018 and GDPR Article 89 detail when the processing of information for these purposes is not permitted. The 'Keeling Schedule' sets out amendments made to the **DPA 2018** under the **UK GDPR** following the withdrawal of the UK from the European Union.

All BWV data, whether evidential or non-evidential, will be retained and disposed of in accordance with the applicable legislation & guidance; viz:-

- **MoPI;**
- **Criminal Procedure and Investigations Act 1996;**
- **Data Protection Act 2018;**
- **General Data Protection Regulations & UK GDPR.**

The existence of BWV - whether evidential or not - must always be noted in the user's PNB.

9.3 Disclosure (CPIA)

In accordance with the **Criminal Procedure and Investigations Act 1996 Code of Practice (Revised March 2015)**, the investigator must retain material obtained in a criminal investigation, which may be relevant to the investigation.

At the heart of every investigation is the obligation, in the **CPIA** and **Code of Practice**, to pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. Any material that satisfies the disclosure test, ie: has the potential to undermine the prosecution case or assist the defence, must be brought to the attention of the prosecutor at the earliest opportunity. The investigator must notify the disclosure officer of the existence and whereabouts of any material that has been retained. Users are reminded that all BWV footage is subject to disclosure, whether used evidentially or provided as unused material.

9.4 Intelligence

BWV footage may be used for intelligence purposes if the footage itself is being retained for an ASB Team or law enforcement purpose which is defined as:

- Protecting life and property;
- Preserving order;
- Preventing the commission of offences;
- Bringing offenders to justice;
- Any duty or responsibility arising from common or statute law.

BWV footage that is retained by Cornwall Council during any assistance given to any South-West local authorities for law enforcement purposes must be held in accordance with the principles and guidance set out in **MoPI**.

If it is deemed no longer necessary or proportionate to retain the footage purely for intelligence purposes, then this footage must be weeded in line with all other non-evidential footage. Users must not use BWV as a reason to circumvent other statutory powers; eg: it would be unlawful to use a power to enter a premises purely for the purpose of obtaining BWV footage to be used for intelligence or identification purposes.

9.5 Training

Operational BWV footage may be used for training purposes. The consent of the OIC should be obtained before using footage from evidential incidents for training purposes.

If using operational BWV footage for training purposes, trainers must justify why this footage needs to be retained if it would otherwise ordinarily be deleted. Trainers must regularly review such retained operational BWV footage, to ensure retention is still both proportionate and necessary for training purposes.

If using footage for training purposes, trainers must consider taking steps to obscure persons on the material as necessary.

BWV equipment may be used in training, and in other non-operational incidents for the purposes of training. Trainers must be aware that the retention of such footage will still need to be in accordance with relevant legislation.

9.6 Disclosure (News & Media)

BWV footage may be considered for use on social media and/or for release to the news media, if it could support a service objective or investigatory purpose. For example, footage could be considered for release to support an ongoing investigation, inform the public about a recent incident, or support a crime prevention campaign.

Staff and witnesses featured in BWV footage will always be made aware of the intention for it to be released into the public domain and their written permission will be sought in order to comply with GDPR legislation.

Members of the public featured in footage must always have their identity protected. Suspects, or people subsequently arrested, must also always have their identity protected, unless the incident has been fully dealt with in court, and legal proceedings are no longer active. The use of BWV in communications by Cornwall Council must always adhere to any reporting restrictions that are imposed by the court.

Release of BWV footage for media purposes will only be undertaken by Cornwall Council Communications Officer, who will ensure that it is fully auditable and can be withdrawn from media and social media if necessary. This will always be done in consultation with the local authority in whose area the BWV was filmed.

10.0 Sharing of BWV Data.

Users and investigators must remember that, where cases are prosecuted, BWV footage is 'material gathered' during an investigation and therefore may be subject to disclosure responsibilities. BWV footage in these cases should be retained as 'unused material', even where the user considers there may be no immediate evidential value in the footage. Failure to do so may lead to an abuse of process argument being lodged.

Footage may be shared with other partners if (a) it is proportionate and necessary for law enforcement purposes; **and** (b) the other partner is a signatory to an authorised information sharing protocol between that partner and Cornwall Council.

Personal data may be shared on the basis of an identified and documented lawful condition (**article 6 GDPR** and **S8 DPA 2018**) within the **GDPR** or **Data Protection Act 2018**. A Data Protection Impact Assessment (DPIA) may also be required. Data sharing outside of the United Kingdom must not take place. The Data Protection Team may be consulted in the event of any doubt about the lawfulness of sharing personal data or any other aspect of the sharing.

11.0 Legislation and Guidelines

11.1 The Human Rights Act 1998

Article 6 provides for the right to a fair trial. All images captured using a BWV have the potential to be used in court proceedings and must be safeguarded by an audit trail in the same way as any other evidence.

Article 8 of the **Human Rights Act 1998** concerns the right for private and family life, home, and correspondence. Users of BWV should not record beyond what is necessary for evidential purposes (see 7-10).

Cornwall Council ASB Team will include, on the Safer Cornwall and Cornwall Council Web Pages information about the wearing of BWV by its staff.

Cornwall Council will further ensure that the use of a BWV device is emphasized by officers wearing it in a prominent position (normally on their chest) and so that its forward-facing display is visible to anyone being recorded. Officers will make a verbal announcement, where practicable, prior to commencement of any recording. The ASB Team will also utilise waterproof flashes on the outer clothing garment hosting the BWV unit that video and audio recording may be in operation.

11.2 The General Data Protection Regulations (GDPR), Data Protection Act 2018 (DPA) and UK GDPR.

The **GDPR**, **DPA** and **UK GDPR** will be relevant to the retention of BWV if the footage held is about a living person who can be identified from the data.

Articles 5 and **9** of the **GDPR** and **Sections 34 to 42** of the **DPA 2018** are the principles with which compliance is required. The **GDPR** is retained in domestic law now the Brexit transition period has ended, but the UK may independently keep the framework under review.

The **UK GDPR** sits alongside an amended version of the **DPA 2018**. The government has published a 'Keeling Schedule' for the **UK GDPR**, which shows the amendments. The Information Commissioner's Office is the regulator for the Act and has given guidance with regard to CEO use of BWV equipment. This legislation regulates the processing of 'personal data' or 'sensitive personal data', whether processed on computer, BWVs, still camera, or any other media. Any recorded image that is aimed at, or may identify, a particular person is described as 'personal data' and is covered by this act. This will include images and audio captured using BWV equipment. The use of BWV in this guidance is 'overt use'.

Where an individual asks for access to the footage this is called a 'subject access request'. The requester is only allowed to access footage of themselves and anyone who has provided consent for their images to be viewed by them.

11.3 The Protection of Freedoms Act 2012

On 12th August 2013, the **Surveillance Camera Codes of Practice** came into force. The codes are pursuant to **S30(1)(a) of the Protection of Freedoms Act 2012**. When Officers of Cornwall Council ASB Team are fulfilling their duties as an authorised officer, they remain employed by Cornwall Council, and work on behalf of all other local authorities in the South-West; all are 'relevant authorities', as defined by **Section 33 of the 2012 Act** and, as such, must show due regard to the code when exercising any function to which it relates. Whilst this is a Code of Practice, it is pursuant to **Section 29 of the Protection of Freedoms Act 2012**, and is admissible as evidence, in criminal or civil proceedings. A court or tribunal may take into account a failure by a relevant authority to have regard to the code, in determining a question in any such proceedings.

11.4 Freedom of Information Act 2000

This Act grants a general right of access to information held by public bodies, which is not personal data. Information released under **FOI** can include statistical and other non-personal information.

11.5 Regulation of Investigatory Powers Act 2000

This Act makes provisions for, and about, the carrying out of surveillance, and the use of covert human intelligence sources.

11.6 Police and Criminal Evidence Act 1984 (Code D, Identification of People)

This Act and Code of Practice concerns the principal methods used by law enforcement agencies to identify people in connection with the investigation of offences, and the keeping of accurate and reliable criminal records. The powers and procedures in this code must be used fairly, responsibly, with respect for the people to whom they apply, and without unlawful discrimination.

11.7 Information Commissioners CCTV Code of Practice Amended 2021 and Surveillance Commissioners Code of Practice 2014

Officers of Cornwall Council ASB Team will adhere to the **Surveillance Commissioners Code of Practice 2014** and the **Information Commissioners CCTV Code of Practice**.

11.8 The Director of Public Prosecution's Guidance on Charging, 6th Edition 2020, & the Attorney General's Guidelines 2020

The Attorney General's guidance is to ensure Prosecutors work in a way to discharge their disclosure requirements and comply with CPIA. It provides a clear set of guidelines for prosecutors and law enforcement agencies to ensure cases are referred to the prosecutor at the right time, and with the right material and information, so that prosecutors can make immediate charging decisions and to ensure that cases pass effectively and efficiently through the criminal justice system.

The Director's Guidance aims to achieve efficient and effective charging arrangements between policing and the Crown Prosecution . However, other prosecuting authorities should operate with regard to the guidance.

11.9 Management of Police Information (MoPI) Code of Practice 2005, Guidance 2010 & Threshold Standards

The principles of **Management of Police Information (MoPI)** provide a way of balancing proportionality and necessity that are at the heart of effective police information management. They also highlight the issues that need to be considered in order to comply with the law and manage risk associated with police information.

Although the Council ASB Team are not police, the principles of management of police information are applied and accepted as a national standard by Cornwall Council ASB Team as per the **MoPI Code of Practice 2005 and Guidance 2010**.

11.10 Privacy Impact Assessment

	Assessment Criteria	Proportionality, legality, accountability, necessity, justification
1	What is the organisation's purpose for using the BWV and what are the issues that the system aims to address?	Prevention and detection of crime & disorder, the apprehension or prosecution of offenders, and officer & public safety. See 1.0 for further information.
2	Can BWV technology realistically deliver these benefits?	Use of BWV provides accurate and reliable evidence that can be used to detect and/or provide independent evidence for criminal prosecutions or civil proceedings. See 2.0 for further information.
3	What are the views of those who will be under surveillance?	There may be occasions where a person objects to being recorded. The use of BWV by officers of Cornwall Council Antisocial Behaviour Team has been introduced for legitimate enforcement and health & safety purposes. If a member of the public objects to being recorded, then they should be informed that the use of BWV is authorised. Users may record overt video and audio without consent if this recording is for 'law enforcement purposes'. See 8.1 for further information.
4	What is the collateral intrusion of the use of BWV?	All BWV footage is subject to disclosure and may be relied upon, or referred to, at any stage during an investigation or legal proceedings. Insofar as is practicable, therefore, users should restrict recording to areas and persons necessary in order to obtain evidence and intelligence relevant to the incident and should attempt to minimise collateral intrusion. See 8.2 for further information.

5	What are the benefits to be gained from using BWV?	Use of BWV provides accurate and reliable evidence that can be used to detect and or provide independent evidence for criminal prosecutions or civil proceedings. It facilitates the prevention and detection of crime & disorder, the apprehension or prosecution of offenders and officer & public safety. See 1.0 & 2.0 for further information.
6	What are the privacy issues arising from this surveillance camera system?	<ol style="list-style-type: none"> 1. Overlooking private space; 2. Recording of personal data; 3. Retention and deletion of data; 4. Excessive or inappropriate monitoring; 5. Data handling and provision.
7	What privacy design features will be adopted to reduce privacy intrusion?	<p>To ensure privacy of data the system has the following safeguards:</p> <ol style="list-style-type: none"> 1. ISO accredited system and restricted & recorded access; 2. Automated digital data deletion process; 3. Evidence handling procedures; 4. Redaction capabilities - See 9.0 for further information.
8	What organisations will be using the BWV data and who will take legal responsibility for the data under the DPA, GDPR?	<p>Cornwall Council ASB Team (Communities Service)</p> <p>See 9.0 - 9.6 & 10 for further information.</p>

9	Does the footage captured by the BWV need to be able to identify individuals, or could other solutions use other images not capable of identifying individuals?	<p>Individuals captured on the BWV footage need to be identifiable for the apprehension or prosecution of offenders. Images of individuals that do not need to be identified will be redacted.</p> <p>See 8.2 & 9.0-9.6 for further information.</p>
10	Will the BWV equipment being utilised, and the system of work being adopted, be sustainable? Is there sufficient funding for the scheme?	<p>Yes, the system has a sustainable budget held by Cornwall Council. The equipment has already been purchased and software installed.</p> <p>There are no further costs.</p>
11	Will the particular system/equipment being considered deliver the desired benefit now and in the future?	<p>The BWV camera and associated software has been designed for resilience and future compatibility in order to ensure that any part of the system may be replaced or upgraded with minimal impact and cost. The software is continually being upgraded by the manufacturer to ensure maximum effectiveness, and to take advantage of future technological advancements.</p>

12	What future demands may arise for wider use of BWV data and how will these be addressed?	<p>Footage may be shared with other partners if it is proportionate and necessary for law enforcement purposes. Personal data may be shared on the basis of an identified and documented lawful condition (Article 6 GDPR and S8 DPA 2018) within the GDPR or Data Protection Act 2018. A Data Protection Impact Assessment (DPIA) may also be required. Any data sent outside the ASB Team must be compliant with the General Data Protection Regulations (GDPR) and Criminal Procedure and Investigations Act 1996.</p> <p>See 10.0 for further information.</p>
13	Is the system established on a proper legal basis and is it operated in accordance with the law?	<p>Common law (precedent) provides the ASB Team with the authority to use BWV in the lawful execution of its duties, for the purpose of the prevention and detection of crime, and the apprehension and/or prosecution of offenders.</p> <p>See 1.0 for further information.</p>
14	Is the system necessary to address a pressing need, such as public safety, crime prevention or national security?	<p>Cornwall Council ASB Team has invested in the use of a BWV system to (a) assist in meeting its statutory requirements (and when assisting other enforcement agencies) to reduce crime, disorder and ASB, and (b) to enhance its ability to manage emergency incidents and improve public safety.</p> <p>The continued success of the system is performance managed and externally accredited.</p>
15	Is it justified in the circumstances?	<p>Correct use of BWV has shown to be of considerable operational and evidential benefit to Cornwall Council ASB Team and partner agencies.</p> <p>The use of BWV is lawful and supported by the ASB Team and partner agencies.</p>

16	Is it proportional to the problem that it is designed to deal with?	The use of BWV by officers and the way it operates is deemed proportionate, necessary, and accountable, through its professional accreditations and its proven success. There are measures in place to protect personnel privacy and to ensure that the system always operates with due regard to the public right of privacy wherever possible.
17	Do any of these measures discriminate against any particular sections of the community?	Users of BWV, and its management processes, ensure that discrimination (in all its forms) does not occur. Staff are fully trained in legislative requirements.

This policy has also been subject of the Cornwall Council Business and Privacy Impact Assessment available as a separate download.