

## Call Recording Legal Requirements Guidance

There are very strict legal rules governing (a) the circumstances in which it is permissible to record calls, (b) the purposes for which such recording may be made, (c) the length of time recorded material may be retained, (d) most importantly of all, the need for pre notifications to those taking part in the call, and (e) the manner in which such notification must be given.

It is essential that you obtain advice on these requirements from your own lawyers, and implement all such internal rules and processes, and have in place all such pre-recorded notifications, and publicity and explanatory material, as are required to ensure full compliance.

This document provides an overview of the laws which require certain obligations to have been met before telephone calls can lawfully be recorded. The requirements of all relevant legislation must be complied with. It is not possible to provide comprehensive detail of that legislation here. Any person considering interception, recording or monitoring of telephone calls is strongly advised to seek his/her own independent legal advice and should not seek to rely on the general information provided below. It should be borne in mind that criminal offences and civil actions may occur when the relevant legislation is not complied with. Accordingly, we accept no liability for reliance by any person on the following information or for any omission of information.

The interception, recording and monitoring of telephone calls is governed by a number of different pieces of UK legislation. The requirements of all relevant legislation must be complied with. The main ones are:

- Regulation of Investigatory Powers Act 2000 ("RIPA")
- Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 ("LBP Regulations")
- Data Protection Act 1998
- The Employment Practices, Data Protection Code
- Telecommunications (Data Protection and Privacy) Regulations 1999
- Human Rights Act 1998

Below we have summarised the key areas of each law but again this information should not be relied upon as to your compliance.

### Regulation of Investigatory Powers Act 2000 ("RIPA")

Call recording is only lawfully carried out if one of the following applies:

- (i) The person recording the call has reasonable grounds for believing that it has the consent of both the caller and the intended recipient of the call to record; or
- (ii) The recording is carried out by a business in compliance with the Lawful Business Practice Regulations.

### Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 ("LBP Regulations")

Generally, calls can be recorded for the following reasons:

- to provide evidence of a business transaction
- to ensure that a business complies with regulatory procedures
- to see that quality standards or targets are being met in the interests of national security
- to prevent or detect crime to investigate the unauthorised use of a telecom system
- to secure the effective operation of the telecom system

### Data Protection Act 1998

Recording (and use of recordings) where a Company would be able to establish the identity of either party to the call, either directly from the recording or from other information which it is conceivable that the Company could obtain, would require you to first:

- (i) Have informed that party how the recording would be used;
- (ii) Obtain consent for the recording to take place (This may be implied from the fact that the customer has been notified and not object, but you should obtain explicit consent if the call reveals any information classified as sensitive by the DPA, ie details of race/ethnic background, political opinion, religion, trade union membership, physical/mental health, sexual life, offences committed or legal proceeding bought.)
- (iii) The obligations in relation to processing of that data also apply, so that the data must be kept for longer than necessary, under secure conditions and must be accessible to the customer at their request.

### The Employment Practices, Data Protection Code

This regulates employer/employee relations and so is more relevant to the monitoring of calls from your staff's point of view. The code states that employees should be informed about any monitoring of their calls and that their consent should be obtained (as required under the DPA.) The code does provide exemptions from this obligation, for instance where monitoring is necessary to investigate criminal activity, but with provisos, for instance specific examples of criminal activity should have been identified before monitoring begins.

### Human Rights Act 1998

The Act provides that "everyone has the right to respect for his private life and family life, his home and his correspondence". Legal cases involving the monitoring of phone calls have recommended that to ensure that this right is protected employees whose calls are monitored should be given access to a private line over which personal calls can then be made, during their lunch break for example.

### Telecoms License obligations – The Service Provision License

Private and business use of a telephone system is regulated by certain DTI licenses. These include a similar requirement to that set by the Regulations that "every reasonable effort" to inform parties to a telephone conversation that recording may take place should be made.

### **Conclusion**

A common theme through the above pieces of law is the requirement to inform all parties to a monitored/recorded call in advance that their conversation will be recorded. This requirement applies in respect of a Company's staff just as much as it does in respect of its customers.

It enables you to record calls, but the obligation to inform customers that the calls are being recorded is not overridden.

The Regulations require that all reasonable efforts to inform participants to a call be made.

Mentioning the fact that your calls will be monitored / recorded in customer documentation or adverts is the absolute minimum step which you should take to comply with the Regulations' prior information requirement. Ideally at the beginning of a monitored/recorded call customers should also be:

- informed that recording will be taking place (as required by the Regulations and the DPA) ;
- informed of the purpose of the recording/how it will be used, eg for training and monitoring purposes (as required by the Regulations and the DPA); and
- asked to consent to this (as required by the DPA.)

The requirement to obtain consent should always be observed where sensitive data (as defined by the DPA) is obtained from the individual concerned.

Where recording/monitoring takes place in the course of business (as opposed to detect a crime) staff should be notified which phone lines/types of calls will be monitored and should be asked to consent to this happening.

### **Call Recording Questions and Answers**

#### **Q : Is it legal to record my business calls ?**

A: Yes – as long as you are using call recording to evidence transactions, improve processes and quality. It is not legal to intercept communications which are not yours, or to record calls for commercial gain– ie to sell the call content or place it in the public domain without the permission of the parties concerned.

#### **Q. Can I record telephone conversations on my home phone?**

A. Yes. The relevant law, RIPA, does not prohibit individuals from recording their own communications provided that the recording is for their own use. Recording or monitoring is only prohibited where some of the contents of the communication - which can be a phone conversation or an e-mail - are made available to a third party, i.e. someone who was neither the caller or sender nor the intended recipient of the original communication. For further information see the Home Office website where RIPA is posted. (<http://www.homeoffice.gov.uk/crimpol/crimreduc/regulation/>)

#### **Q. Do I have to let people know that I intend to record their telephone conversations with me?**

A. No, provided you are not intending to make the contents of the communication available to a third party. If you are you will need the consent of the person you are recording.

#### **Q. Do businesses have to tell me if they are going to record or monitor my phone calls or e-mails?**

A. No. As long as the recording or monitoring is done for one of the above purposes the only obligation on businesses is to inform their own employees. Businesses wanting to record for any other purpose, such as market research, will have to obtain your consent.

#### **Q. What do I do if my calls have been recorded unlawfully?**

A. Under RIPA it is a tort to record or monitor a communication unlawfully. This means that if you think you have suffered from unlawful interception of your phone calls you have the right to seek redress by taking civil action against the offender in the courts.

#### **Q: Do I have to tell my employees that they are being recorded?**

A: Yes – Typically in writing, and best through written policy and contracts, with clear indication of why recording is being used and the benefits and protection that it can give to the company and the employee, and indeed the caller.

#### **Q: Do I have to tell my incoming callers that they are being recorded?**

A: Yes – you must take reasonable steps, this could be in the form of a recorded announcement at the beginning of a call (e.g. a common one is "calls may be recorded for quality and training purposes") or a statement on the brochure which solicited the call. If it is an existing customer that is calling it is often sufficient to do so through your contracts with existing customer, through notifications on web sites / advertising etc for prospective customers and through in- call IVR messaging for incoming calls to call centres.

#### **Q: Do I need to tell my customers or prospects whom we call to that they are being recorded?**

A: It is good practice for outbound calls to notify the customer that their call maybe recorded and it mandatory to do so if you wish to rely upon the recording for evidencing a transaction prior to the transaction taking place. If you are calling existing customers and their contractual terms include the right to record calls then this is not necessary.

#### **Q: How long can I keep the calls for?**

A: You can generally keep calls for as long as you want. In some cases customers are mandated for PCI Compliance or FSA Compliance to keep them for a certain number of years. In other cases customers will keep calls for as long as there might reasonably be a customer enquiry or dispute regarding that particular transaction.