

# Recording and monitoring of telephone calls or emails

A general overview of interception, recording and monitoring of communications

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## Contents

1. Introduction
1. Frequently Asked Questions
2. Guidance for Businesses
3. Removal of mobile phone recording exemption
4. Further Information

Note: This publication has not been updated since it was last published. Some of the hyperlinks may have changed and may need updating. In addition, some of the information in this publication may be out of date.

## Introduction

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;
- Telecommunications (Data Protection and Privacy) Regulations 1999;
- Human Rights Act 1998.

Companies and organisations that routinely record telephone calls, must ensure that their employees are able to make personal calls that are not also recorded under the same system.

Staff must also be made aware that personal conversations could be recorded on their telephone and must have access to a separate telephone on the premises where they can make and receive personal calls that are not recorded. Companies that do not provide this guarantee of confidentiality could be in breach of Article 8 of the Europe Convention on Human Rights which covers people's right to privacy. It is not possible to provide comprehensive detail of that legislation here. Any person considering interception, recording or monitoring of telephone calls or e-mails is strongly advised to seek his/her own independent legal advice and should not seek to rely on the general information provided herein.

It should be borne in mind that criminal offences and civil actions may occur when the relevant legislation is not complied with.

## Frequently Asked Questions

### Can I record telephone conversations on my home phone?

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, ie 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/counter-terrorism/regulation-investigatory-powers/>

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

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.

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

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 or e-mails you have the right to seek redress by taking civil action against the offender in the courts.

### Can a help line record my calls?

No. If you phone an anonymous help line that offers its services for free your conversation may be monitored but not recorded.

### Can a business or other organisation record or monitor my phone calls or e-mail correspondence with them?

Yes they can, but only in a limited set of circumstances relevant for that business which have been defined by the LBP Regulations.

The main ones are:

- 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, e.g. in call centres;
- to prevent or detect crime;

### Informing Customers

The recording of telephone conversations may be notified to customers in product literature, terms and conditions, at the start of a call or in some other way. This is consistent with the Lawful Business Practice Regulations of October 2000 which require any organisation that undertakes call recording, live monitoring, or any form of interception to make all reasonable efforts to advise individuals of what it is doing or may do.

- to investigate the unauthorised use of a telecom system or potential viruses;
- to secure the effective operation of the telecom system; and
- in the interests of national security.

In addition, businesses can monitor, but not record, phone calls or e-mails that have been received to see whether they are relevant to the business (i.e. open an employee's voicemail or mailbox systems while they are away to see if there are any business communications stored there).

Businesses may also monitor phone calls and e-mails that do not fall into the above categories where they can show reasonable belief that the sender and intended recipient have consented to the monitoring.

For further information, see the LBP Regulations online at:  
[www.legislation.gov.uk/ukxi/2000/2699/contents/made](http://www.legislation.gov.uk/ukxi/2000/2699/contents/made)

However, any interception of employees' communications must be proportionate and in accordance with Data Protection principles. The Information Commissioner has published a Data Protection Code on "Monitoring at Work" available on its website:  
[http://www.ico.gov.uk/for\\_organisations/data\\_protection/topic\\_guides/employment.aspx](http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/employment.aspx)

The Code is designed to help employers comply with the legal requirements of Data Protection Act 1988. It states that any monitoring of emails should only be undertaken where:

- the advantage to the business outweighs the intrusion into the workers' affairs;
- employers carry out an impact assessment of the risk they are trying to avert;
- workers are told they are being monitored;
- information discovered through monitoring is only used for the purpose for which the monitoring was carried out;
- the information discovered is kept secure;
- employers are careful when monitoring personal communications such as emails which are clearly personal; and
- employers only undertake covert monitoring in the rarest circumstances where it is used for the prevention or detection of crime.

Any enforcement action would be based on a failure to meet the requirements of the act -

however relevant parts of the Code are likely to be cited in connection with any enforcement action relating to the processing of personal information in the employment context. Accordingly, this Code of Practice and the Data Protection Act must also be considered by any business before it intercepts employees' communications.

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

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. If businesses want to record for any other purpose, such as market research, they will have to obtain your consent.

## Guidance for Businesses

Guidance for businesses covering their responsibilities over recording phone calls for business purposes has been published by Ofcom (formerly Oftel):  
<http://www.ofcom.org.uk/static/archive/oftel/consumer/advice/faqs/prvfaq3.htm>

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Companies that do not provide this guarantee of confidentiality could be in breach of Article 8 of the Europe Convention on Human Rights which covers people's right to privacy.

## Recording telephone conversations on private networks

The advice to businesses that provide telephone services to their employees was published in 1999 at the request of the Home Office who wished to alert businesses to a new and important legal interpretation of their obligations concerning the privacy of their employees' telephone calls. This advice is necessary to ensure that the UK is

compliant the European Convention on Human Rights (ECHR) and a ruling in the European Court of Human Rights (ECtHR).

If you run a company or are in any way responsible within your company or organisation for the provision of telephone services, you need to read, understand and act on this new advice. This includes any organisation that runs its own switchboard, call centre or other type of private voice network.

Several factors have contributed to the growing practice of recording or monitoring telephone conversations at the work-place in recent years. Within the financial services sector it has become widely accepted even where it is not strictly a regulatory requirement. The growth of call centres has led to a significant expansion in the amount of business done by telephone. The need to ensure customer satisfaction, to train and supervise call centre staff, to achieve quality targets, to have a record of what was said in the event of a subsequent dispute – all these have inevitably led to widespread monitoring and recording of calls.

Where organisations do feel it necessary to record or monitor calls – for whatever reasons – the rules under which they do so have been set by the *Privacy of Messages* condition of the major two telecoms class licences – the Self-Provision (SPL) and Telecommunication Services (TSL) Licences. The most fundamental requirement of this condition has been that every reasonable effort is made to inform all parties to a telephone conversation that it may or will be recorded.

Although the condition does not specify precisely how the parties should be informed, most people will now be aware of how many firms are conforming to the requirement. Advertisements that invite calls to a given number, whether the advert appears as a poster, on television or radio or in the print media, frequently carry a message to the effect that calls may be recorded or monitored for quality.

## What else should be done?

Although it may not be a strict legal necessity, it is certainly good practice to explain to staff why their calls might be recorded or monitored. Moreover, this will offer a higher degree of protection in the case of a legal challenge. Employers should develop guidelines covering

their policy on recording and monitoring in the workplace and the use they will make of the material derived from it.

It is however advisable to restrict recording and monitoring activities to situations where they are both absolutely necessary and proportionate to the problem to be overcome. For example, misuse of office phones could be detected by an itemised call record, which is less intrusive than recording or monitoring of the actual calls.

## Conclusion

In conclusion, the main lessons to be drawn are that employees in the workplace are entitled to privacy for any personal calls they may make; that their expectation of privacy for work-related calls must be removed by adequate warning and that where their privacy is affected it must be for some purpose which is both reasonable and proportionate.

## Removal of mobile phone recording exemption

On 11 November 2010, the Financial Conduct Authority (FCA) announced the removal of mobile phone call recording exemption, giving the industry 12 months to comply with the new legislation which now covers voice calls from landline and mobile devices.

The new regulation means that investment firms including banks, stockbrokers, investment managers (including collective investment scheme managers and hedge fund managers), and financial and commodity derivatives firms are now required to:

- Record and store - for a period of six months - all 'relevant communications' made with, sent from or received on mobile phones and other handheld electronic communication devices. The ruling only applies to mobile phones and other handheld electronic communication devices that are issued by firms for business purposes.
- To take reasonable steps to ensure that such communications do not take place on private communication equipment that firms cannot record mainly for privacy reasons. This includes private mobiles, private handheld mobile electronic communication devices, and private non-mobile electronic communication devices.

## Further Information

This guide is for general interest - it is always essential to take advice on specific issues. We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

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