



## Voice Recording Legal Guidelines

There are two specific aspects to the recording of calls that are covered by different Acts:

### 1. The actual recording of a call

### 2. The storage & handling of the call

#### 1. Recording of a call

**Recording** is the physical act of making a recording, and **monitoring** is the listening to a call either when being made or later. Operating a PABX is covered by either the Class Licence for the provision of Branch Systems to provide Telecommunications Systems (TSL) or the Class Licence for Self Provided Telecommunications (SPL), either of which can apply depending upon the status of the organisation making the recording. However, the relevant privacy condition requires that:

**“every reasonable effort is made to inform parties that recording or monitoring is taking place.”**

The Regulation of Investigatory Powers Act (RIPA) came into force in July 2000 and creates a legal framework which covers, amongst other things, recording and monitoring of telephone calls. This requires that *tacit consent* is sought by sender and recipient and is operated in compliance with the Lawful Business Practice Regulations.

The Lawful Business Practice Regulations (LBPR) came into force in October 2000 and defines circumstances when a business may record conversation. Examples are to provide evidence of a business transaction, to meet a quality standard or to check targets are being met.

OFTEL’s guidance *recording telephone conversation on private networks* annexed to Press Release 47/99 is an update to the guidelines and the TSL/SPL concerning the rights of employees to privacy in the workplace.

In summary, it appears that recording and monitoring (whether for the purposes of passive listening or active intervention) is subject to the same rule which is:

**“You have to take reasonable steps to ensure both parties are aware that the call may be monitored or recorded and be able to demonstrate if required that you have done so.”**

What constitutes reasonable steps is not defined by OFTEL or by the legislation. Therefore the organisation must decide for itself what is reasonable. It would seem sensible that whatever steps are taken when recording would apply equally to monitoring.

In practice, it would seem sensible and important to have a policy that covers:

- the principle of what is recorded and under what circumstances
- how the parties are informed
- how the policy is policed

## 2. Storage & Handling of a call

Once a call has been recorded then its storage, use and transmission is covered by the Data Protection Act 1998 (as a recording is no different from any other form of private data stored electronically) and the Lawful Business Practice Regulations (LBPR).

The Data Protection Act 1998 defines 8 principles concerning data which have to be adhered to and defines data subjects, data classes and the data controller. Unless the particular use of data is exempt, which would depend largely upon the organisation's use (ref section 9 Data Protection Notification Handbook), then such use would need to be registered.

The LBPR rules apply to the use of a recording including its onward transmission. Whether registration is necessary, or the data use is exempt, the Data Principles would still apply and it would seem sensible, and important, to have a policy which covers: Data Principles registration and use 1, 2, 3 & 4 security (*such as access & availability*) 7 & 8 retention (*such as storage and disposal*) 5 subject access by those recorded 6 and how the policy is policed.

### Frequently Asked Questions

**Isn't it illegal to make recordings or listen to or store them without the prior permission of the customer?** No, it is not illegal to make recordings or to listen to them as long as you have taken reasonable steps to let both parties know that a recording is being taken and that you have registered as a data user or are exempt from registration. Please note that this advice is not meant to cover employers recording or monitoring private calls made by their employees.

**Do you have to make customers aware of a recording?** Yes, you must take those "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 that solicited the call or some other method or all of them.

**Can I record on behalf of a client and then email the recordings to them?** This is slightly more tricky as obviously you would have to have taken the reasonable steps, have valid legal reasons and have registered your use but your client may not. Whilst you may have done your bit, if your customer has not, then you might be liable for his failure and it would be sensible to ensure that your customer has registered. Also Data Principle 8 requires that data is not sent outside the EEA without adequate protection so it would seem sensible that you ensure your customer is registered. The LBPR rules allow recordings as evidence of business transaction as well as standards are being met so as long as the reasons why a client would want the recordings would be a valid circumstance under the rules then onward transmission is legal. It would be sensible to ensure that your contract with your client determines the valid reasons why you would be sending the recordings to them. Further, it would seem sensible to ensure that he gives you an indemnity against his failure to adhere to the legal requirements.

### Disclaimer

This document contains replies to frequently asked questions about the legal issues and requirements of making and storing voice recordings in a business context and a brief interpretation of the various regulations and laws governing them. All information supplied by **BtL** is without liability and in no event shall **BtL** be held liable for any consequential special incidental direct or indirect damages arising out of the use that you the reader, your company or any third party makes of the information supplied. Further **BtL** shall not in any event be held liable for any claims whether in contract tort or howsoever arising resulting from or in connection with your use or otherwise of the information supplied.

**Please note:** This advice concerns the recording and monitoring of calls in the commercial arena. It does not deal with the position on private calls made by your staff nor does it deal with the legal requirements for mandatory monitoring under e.g. the Financial Services Act.