Legality of recording conversations with customers: UK Law

- How are recordings used, are they used in court?
- What is ethical?
- Factors in the growth of recording
- The rules
- The Privacy of Messages condition of the Self-Provision Licence (SPL) and the Telecommunication Services Licence (TSL)
- How does Ofcom explain what the above rules mean?
- How are companies letting people know that calls are recorded?
- How does Ofcom themselves let their callers know that Ofcom may record them?
- Further information

How are recordings used, are they used in court?

Is recording conversations legal? What is British telephone recording law? It is surprising how seldom a recording is used in court, we almost never hear of it. This is partly because most recordings are used for sales training or note taking. However when it is used for recording agreements in most cases the recording helps to diffuse the dispute, rather than to escalate it. The reason for this is that most disputes escalate because one party thinks that the other party is being difficult, lying, or is not fulfilling what they committed to.

Suppose in your company you have a dispute with a customer about what was agreed on the phone, and you listen back to the recording. There are three possibilities. One is that you can hear that the customer is absolutely right, and so you give in with an easy heart. Another possibility is that you are right and the customers is clearly wrong. You then have a choice of playing the recording to the customer and then normally the customer will back down, or you may still give them what they want, but at least you know that your systems are correct, and the customer knows that you are being generous. The third possibility is that you can hear from the recording that no clear agreement was made; the customer says "I will buy it for £100, and your agent says "OK, £110 it is", and the the customer says "that is good, here is my credit card for £100", and the agent replies "we will charge £110", and it is possible to hear that the conversation was confused, and so it is much easier to come to a satisfactory outcome.

We heard of a doctor's night service that used to receive complaints from patients which took a great deal of time to resolve. They started recording the calls that they received. Then whenever they had a complaint, they used to say to the patient "we are very sorry that you are not happy, and as a reputable organisation that cares about your health and how we look after you we want to make sure that we do the right things, and do what we say that we do; please come into the surgery, we will listen to the call together and correct whatever it is that we did not do as we said". When the calls were listened together with the patient they could both hear that in many cases the patient had the details wrong, the times wrong, the name of the doctor wrong - so much so that 80% of the complaints just evaporated. Think of the similar savings in time and improvements in customer service that could be made in your organisation.

What is ethical?

At Century we feel that there is a clear distinction about what is ethical when recording calls as well as is recording conversations legal.

In the normal business situation you record your own calls for use in training, customer service or to resolve issues with customers and in these cases you know what was said because either you or one of your employees was a party to the call in the first place. The call will only be used within the company or perhaps with the customer. It does not seem to us that there is any ethical difference between having a telephone conversation and telling a colleague about it or having a telephone conversation and letting a colleague listen to a recording of it. We believe that there is a parallel between receiving a letter and telling a colleague about it, or letting them read the letter. The only difference between the colleague reading the letter or listening to the recording or being told about them is that by reading or listening to the original they know word for word what was said.
What is not ethical would be for someone else, for example a competitor, to bug your offices or telephone lines and so to learn your commercial secrets. Note that in this case the competitor was not one of the parties to the original telephone call, nor would they notify you that the call was being recorded.

UK law rightly makes such third party interception where neither party to the call knows that the call is being recorded illegal except by the Police for law enforcement, which is outside the scope of this page.

Factors in the growth of recording

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.

The rules

Where organisations do feel it necessary to record or monitor calls - for whatever reasons - the rules under which they so do 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.

Here is an extract of the relevant section of the SPL/TSL:

The Privacy of Messages condition of the Self-Provision Licence (SPL) and the Telecommunication Services Licence (TSL)

(7.1) The Licensee shall not use or allow to be used any Apparatus comprised in or connected to the Applicable Systems (except for Apparatus connected to or comprised in the Applicable Systems for the purpose of law enforcement or in the interest of national security) which is capable of recording, silently monitoring (except for monitoring where the meaningful content of the Message is not monitored) or intruding into Live Speech Telephone Calls, unless he complies with paragraphs 7.3 and 7.4. This paragraph shall not apply if the Licensee is an Emergency Organisation or if the Director has consented to the Licensee not complying with any or all of paragraphs 7.3 and 7.4 and has not withdrawn that consent.

(7.2) The provisions of each consent given under paragraph 7.1 shall be entered in the register kept by the Director for the purpose of section 19 of the Act.

(7.3) The Licensee shall make every reasonable effort to inform parties to whom or by whom a Live Speech Telephone Call is transmitted before recording, silent monitoring or intrusion into such Call has begun that the Live Speech Telephone Call is to be or may be recorded, silently monitored or intruded into.

(7.4) The Licensee shall maintain a record of the means by which parties to whom or by whom a Live Speech Telephone Call is transmitted have been informed that such Call is to be or may be recorded, silently monitored or intruded into. The Licensee shall furnish to the Director such information on request.

How does Ofcom explain what the above rules mean?

The following is a verbatim extract from "Explanatory Guide to the Self Provision Licence (SPL) and the Telecommunications Services Licence (TSL)":
"18. The condition provides that you should make every reasonable effort to inform all parties to a call that it may or will be recorded, silently monitored or intruded into. The particular means by which you choose to do this are not specified in the condition. Acceptable options, depending on circumstances, might include warning tones, pre-recorded messages, spoken warnings by the operator or written warnings included in publicity material, telephone directories, contracts, terms of business, staff notices, etc. It may not always be possible to warn first-time callers with whom you have had no previous contact but what is important is that you have a systematic procedure in place which provides the necessary information wherever this is a realistic possibility."

At the beginning of the guide Ofcom say that they offer "a helpful interpretation of the licences" that has "no legal standing of its own" and "While it is Ofcom's responsibility to enforce licence conditions, their interpretation is ultimately a matter for the courts." Nevertheless, as they say themselves, Ofcom are the body responsible for enforcing these conditions and from the italics that we have put in you can see how flexible Ofcom are in this matter.

**How are companies letting people know that calls are 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. Warnings can also be given in literature, terms and conditions, letterheads and on websites.

Really the recording of calls now is almost becoming the norm as can be seen by the notifications in advertisements, as companies address the issue, however much or little recording that they do. At Retell we have never heard of a company being thought badly of because they record calls - why should they, they are just showing that they want to be precise and accurate and to train their staff well?

**How does Ofcom themselves let their callers know that Ofcom may record them?**

If you are concerned that your company should be giving a voice announcement before each phone call is put through to let callers know that the call may be recorded, you may find it interesting that Ofcom themselves do not give such a voice announcement that calls may be recorded. They do however advertise it on their website as below:

"Please note that calls to the Contact Centre may be monitored or recorded"

**Further information**

What has been written above should be all you need to know about recording in your company, but for further background information including when you can record without the parties consent (i.e when you have not notified them in advance) see the page on this site where we have posted the Lawful Business Practice Regulations or see the DTI website directly.

Useful Websites

[www.ofcom.org.uk](http://www.ofcom.org.uk)

[www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

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