

# Opnemen gesprek werknemer



## Is het opnemen van gesprekken werknemer legaal?

Het opnemen van telefoongesprekken van medewerkers is niet verboden. Er kan verschil gemaakt worden tussen gesprekken tussen de medewerker en een klant en prive-gesprekken van een medewerker. Het opnemen van alle gesprekken van een medewerker kan gezien worden als "afluisteren" als er geen prive-gesprek vanaf het werk gevoerd kan worden zonder dat dit wordt opgenomen.

In Engeland zijn richtlijnen opgesteld voor bedrijven inzake verantwoordelijkheden over het opnemen van telefoongesprekken voor zakelijke doeleinden. Bedrijven en organisatie die alle telefoongesprekken automatisch opnemen, moeten zorgen voor de mogelijkheid dat een medewerker een prive-gesprek kan voeren dat niet opgenomen wordt. Personeel moet er ook van op de hoogte zijn dat persoonlijke gesprekken met de eigen telefoon opgenomen kunnen worden en zij moeten toegang kunnen krijgen tot een telefoon waarvan geen gesprekken worden opgenomen. Bedrijven die geen alternatief bieden voor vertrouwelijke gesprekken, kunnen in strijd handelen met artikel 8 van de Europese Conventie voor Mensenrechten dat het recht op privacy omhelst.

## Recording telephone conversations on private networks:

1. This note contains new advice to companies that provide telephone services to their employees. This is published at the request of the Home Office who wish to alert such companies 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 recent ruling in the European Court of Human Rights (ECHR). 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.

### The Present Position

2. 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.

3. 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. Annex 1 provides an extract of the relevant section of the SPL/TSL.

4. 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.

### Why new guidance now?

5. Effective as the SPL/TSL rules have been they were not designed to address the broader legal issues, pertaining to privacy, that can arise with recording and monitoring. These rules effectively regulate how an organisation should give relevant parties warning about recording or monitoring, but do not fully elaborate the privacy rights of employees in the workplace. The new advice, based on the ECHR judgment, focuses on the reasonable expectation of privacy that employees are entitled to in the workplace - an entitlement conferred by the European Convention on Human Rights that is going to be incorporated into UK law by the Human Rights Act 1998.

6. The purpose of the new Home Office guidance is to clarify what employers need to do now, in advance of proposed legislative changes, to comply with the Convention and the lessons learned from the judgment.

7. Under the new advice, the present SPL/TSL rules remain valid, but the new Home Office advice is based upon the principle that "everyone has the right to respect for his private and family life, his home and his correspondence" established by the European Convention on Human Rights. It may not therefore be sufficient simply to warn

employees that their phone calls at work may be recorded or monitored in order to remove their expectation of privacy. This is because it is not reasonable to assume that people at work will never make or receive calls touching on personal and domestic matters. One lesson to be drawn from the judgment is that there is a legitimate expectation of privacy for such calls.

8. This means that there has to be some way in which employees at work can make or receive personal calls that will not be recorded or monitored. The circular suggests that one way of doing this would be for an employer to provide adequate access to payphones in the workplace with an undertaking that they will not be subject to any form of recording or monitoring. However this is not the only way of meeting this objective. The key issue is that there are some lines at work which members of staff can use for private calls secure in the confidence that calls made from them will not be recorded or monitored.

9. It is equally important that employees continue to be informed that recording or monitoring may take place on official work phones, as already required by the SPL/TSL. The main reason for this is that once there has been a clear explanation that calls made on a particular system may be recorded or monitored, anyone making calls on that system is acknowledging the possibility that those calls may be recorded or monitored. This can be interpreted as implied consent and removes the expectation of privacy. As Ofcom has previously advised, the necessary information can be given within a work environment in a number of ways including terms and conditions of employment, staff notices, posters and global e-mails.

10. External callers also need to be advised of the possibility of recording or monitoring. Companies have devised a number of appropriate ways to meet this requirement, including the use warnings in advertising and customer literature.

#### **What else should be done?**

11. 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.

12. 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**

13. 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

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