



Telephone Recording Report 2011 Rev 2 (Rules, regulations and forthcoming changes for Irish market)

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Introduction

What regulations are driving firms to record calls?
Who needs to know if calls are being monitored?
How long to keep records?

Companies, organisations and individuals covered by regulations.

Financial sector: These include Treasury Departments of Banks plus stockbrokers and money-brokers. These companies/firms are required to record calls including mobiles (see Financial Regulator and Financial Ombudsman below).

Retail/service companies: These include pension, insurance, financial advisers and where orders are taken over the phone and conditions etc are explained such as brokers, travel agents, etc.

Health and Emergency Services: In stressful situations misunderstandings can occur. The use of recorders on phone calls on landlines, mobile and radio gives protection to both the professional and the public.

Data protection:

Since voice recordings are treated as personal data then the Data protection Commissioner has jurisdiction over all types of recordings. He has issued rules on notification, storage and access to this data. See below



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Financial Regulator

Overview:

- All phone calls to be recorded
- Recordings to be kept for minimum 2 years or longer depending on content.
- Must inform callers that calls are recorded and for what purpose
- Mobile phone calls need to be recorded from May 1st 2010 in conjunction with normal phone lines.

Financial Regulator: Markets in Financial Instruments Directive (MiFID) 30 July 2009

This is a European Union law that provides harmonized regulation for investment services across the 30 member states of the European Economic Area (the 27 Member States of the European Union plus Iceland, Norway and Liechtenstein).

Effective from 1 May 2010, MiFID (Market in Financial Instruments Directive) firms should record all telephone calls (including mobile phones) and electronic communications involving client orders. These records must be maintained for a period of at least 2 years and until the record is no longer of any relevance to any complaint, disciplinary action or investigation.*

Previously the ISE (Irish Stock Exchange) Rulebook required that:

All member firms are required to record telephone lines and voicemails relating to the provision of advice and the acceptance and execution of instructions including orders between Registered Persons and the firm's clients whether they are institutional or private clients.

And:

In instances where a Registered Person takes an order from a client on an unrecorded phone line such as a mobile phone the Registered Person following completion of that conversation will be required to telephone the instructions into a recorded line of the firm and ensure that the order is placed in accordance with Clients' Best Advantage.

And:

Where a member firm records a telephone conversation it shall maintain such recording for a period of at least three months unless otherwise required by its home state regulator.

Biúró an Ombudsman um
Sheirbhísí Airgeadais



Financial Services Ombudsman

Financial Ombudsman

Overview

The Financial Ombudsman is recommending that calls be recorded

“In a recent decision made by me I found in favour of a Complainant (who had entered into a contract with a Financial Service Provider over the phone) because the Financial Service Provider did not retain transcripts or records of the call. The Complainant’s assertion, in the absence of other evidence... was deemed acceptable.”

“It would therefore be in the interests of the Providers to consider retaining appropriate records- including where necessary, phone recordings for the period within which a person can complain to me.”

“It would be important that... individuals be informed that conversations are being recorded and the purpose for which they are being recorded.”

Joe Meade

Financial Services Ombudsman
19th November 2007

Concerns about motor insurance policies cancelled over the phone - €800 award

The Complainant had a motor insurance policy with the Company and on 1 August 2006 August 2006, the Ombudsman found it unacceptable that the Company would cancel a policy via telephone when the policy conditions specifically require cancellation in writing. The Ombudsman also expressed his concerns that the Company did not notify the Complainant in writing of the cancellation of his policy for approximately two months. The Ombudsman felt that had the Complainant made his request in writing, this element of the dispute would not have arisen and he also noted that the Company could not provide any audio, cd or transcripts of the relevant telephone conversations. The Ombudsman accordingly requested the Company to make an award of €800 for the inconvenience and confusion caused to the Complainant.

The Ombudsman also asked the Company to review its policy of not recording phone calls and referred this aspect to the Financial Regulator.

Insurance policy sale; Injured carpenter gets €10,000 award as bank did not keep recording of cold call; title of policy was also misleading,

A dispute involving a misunderstanding arising from the selling of an insurance policy over the phone by a bank was submitted to the Ombudsman. The Complainant was a self-employed carpenter who suffered a serious injury at work in which he broke both his arms. He had purchased the policy some three weeks earlier. When he made a claim under the policy, his claim was rejected. It turned out that the policy he had entered into was for 'personal accident insurance' but this policy provided cover only for 'permanent disability or death'. The Complainant was under the clear impression that the type of cover he had been sold provided cover for the type of accident he had had, but it did not.

It turned out during the Ombudsman's enquiries that the policy had been sold as a result of a telephone call from the bank to him as a credit card customer of the bank. It was unsolicited; a 'cold call'. The Ombudsman looked for a copy of the recorded conversation, or at least a transcript of it. The bank said that these were not available. The Ombudsman also noted that the detailed Policy Conditions did not issue until ten months after the accident occurred and this was not satisfactory.

The question the Ombudsman then had to consider was whether the Complainant had been misled by the bank's sales representative as to the type of policy he was buying. In considering this the Ombudsman noted, *inter alia*, that the Complainant had previously a Payment Protection Plan with the bank but this was cancelled by him, some months before the 'cold call' was received as he stated it came to light in his own review of his insurance needs that the policy only covered 3% of any balance outstanding on his credit card bill in the event that he was hospitalised for a period of 15 days or more.

The Ombudsman also noted that as he was self-employed, he had public liability insurance cover with another Company which would more than adequately cover the Complainant for this type of accident. However the Complainant stated that as he felt he was covered, and was led to understand that he was covered under the policy now in dispute when the accident did occur, he did not notify the other company within the 48 hours in which he was required to and therefore fell outside those terms. The Ombudsman was satisfied that the Complainant was conscious of what form of insurance cover he needed.

The Ombudsman concluded that since the contract had been entered into on the telephone it was not acceptable that no record was available as to what had transpired, e.g. whether all aspects of a complex policy were outlined clearly to the customer. He also found that the description of the policy was such as could well lead a reasonable Complainant to believe that he had cover for the kind of accident which happened to him unless the bank could prove otherwise to the Ombudsman. The bank was unable to do so and accordingly the Ombudsman decided to uphold this complaint and awarded compensation of €10,000. He also directed the Company and the Bank to change the title of the product as it was misleading to call it 'personal accident policy'.

The Ombudsman is conscious that many contracts and indeed other issues are carried out on line and over the 'phone. In those circumstances he pointed out to all Financial Service Providers that where he is dealing with a complaint that hinges on contractual commitments entered into over the telephone he would be disposed to find in favour of a Complainant where the Provider could not provide the necessary evidence to rebut the claim being made. It would therefore be in the interests of the Providers to consider retaining appropriate records- including, where necessary, telephone recordings relating to such contractual commitments - for the period within which a person can complain to the Ombudsman i.e. six years.

Data protection Commissioner

Overview

- Voice recordings are personal data according to the Data Protection Acts.
- If recording occurs then it needs to be made known to the individuals concerned.
- The specific purpose for which the recordings are made also needs to be made clear.
- The calls can only be used for that purpose
- Written policy be made available to the public if requested
- "Recommend" that callers be given an option not to have the call recorded.
- An individual has a right to get a copy of any such recording made of her/his call in audio or transcript format
- In the absence of records by the institution then the public complainant probably will be believed.

What are the data protection requirements for organisations recording telephone calls?

Voice recordings are personal data under the Data Protection Acts. The recording of such calls – whether of customers or employees – needs to be made known to the individuals concerned. The specific purpose for which the recordings are made also needs to be made clear. For instance, an indication that calls are being recorded for training purposes means that the calls can only be used for that purpose and cannot be used for any other purpose such as dispute resolution.

We would recommend that a written policy be in place in relation to call recording so that it can be made available to the public if requested (a data retention policy in relation to how long copies are retained should be included in such a document). Even where an organisation has a comprehensive and general policy of recording all (external) phone calls, it is advisable that it examines the potential to offer callers an option not to have the call recorded. This follows the data protection principle of proportionality, specifically the requirement that data are relevant and not excessive.

An individual has a right to get a copy of any such recording made of her/his call. The copy could be provided in audio or transcript format

Case Study: Bank-recording of telephone calls (Data Protection Commissioner)

"I received a complaint from an individual who stated that in the course of her employment for a particular company she received a telephone call from one of the major international banking organisations based in Ireland. In the course of the call, she heard 'pips' on the line and, on enquiring, was informed that the call was being recorded but no explanation for the recording was given by the person representing the bank.

My Office contacted the banking organisation involved and inquired why people were not made aware that such recording was taking place and the security procedures in place.

It was explained to the bank that, from a data protection perspective, it had the capacity to identify the individual by accessing the telephone recording system and using this in conjunction with other data held by the company thereby bringing it within the scope of the Data Protection Act."

Credit Card Transactions

If a Merchant takes payment details through a designated call centre and records the conversation through an analogue format such as a tape, the information has to be treated with the same level of security that normal paper transaction records receive. The tape should be stored in a secure facility and must have restricted access.

All staff members must be trained in appropriate procedures in handling data as well as undergo a background check before being offered an employment position. Tapes must also be encrypted if they are used for storing card data

PCI DSS

PCI DSS is a mandatory compliance standard for new and existing merchants. The introduction of PCI DSS aims to ensure that all cardholder information is always stored, processed and transmitted securely. Every merchant that accepts credit and debt cards as payment is required to comply with the PCI Data Security Standard.

Why is PCI so important?

PCI compliance is very important in reducing the risk against data security breaches and fraud. Merchants run a high financial risk if compromised as they could receive financial penalties from MasterCard and Visa if deemed non compliant at the time of compromise. Not only is there a financial risk but also a risk to customer trust and loyalty as customers expect that their cardholder details are stored, processed and transmitted securely.

Merchant Responsibility

All merchants are required to complete either a self assessment questionnaire or have an onsite assessment conducted by a Qualified Security Assessor as well as conducting vulnerability scans on their external facing IP's (internet connections).

EU Consumer Credit Directive

The Directive on credit agreements for consumers which requires to be transposed by 11 June 2010 was published in the Official Journal of the European Union

"2. In the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to the second indent of Article 3(3)(b) of that Directive shall include at least the items referred to in points (c), (d), (e), (f) and (h) of paragraph (1) of this Article, together with the annual percentage rate of charge illustrated by means of a representative example and the total amount payable by the consumer.

(c) the total amount of credit;

(d) the duration of the credit agreement;

(e) the borrowing rate; the conditions governing the application of that rate, any index or reference rate applicable to the initial borrowing rate, the charges applicable from the time the credit agreement is concluded, and, where applicable, the conditions under which those charges may be changed;

(f) the annual percentage rate of charge, illustrated by means of representative examples mentioning all

(h) in the case of credit agreements as referred to in Article 2(3), where applicable, an indication that the consumer may be requested to repay the amount of credit in full at any time;"

Time Limits on keeping records:

- The Data protection Commissioner agrees to 3 years for Telephone Companies to keep information but would rather shorter time. He does not give ruling on private companies.
- Financial Regulator states minimum 2 years.
- Financial Ombudsman says to keep information "for the period within which a person can complain to me." (Minimum 6 months?)

Conclusions

- If recording occurs then it needs to be made known to the individuals concerned both on outgoing and incoming calls.
- The specific purpose for which the recordings are made also needs to be made clear.
- The calls can only be used for that purpose
- Written policy be made available to the public if requested
- "Recommend" that callers be given an option not to have the call recorded.
- An individual has a right to get a copy of any such recording made of her/his call in audio or transcript format
- In the absence of records by the institution then the public complainant probably will be believed.
- If calls are being stored with personal details etc. then encryption is necessary.
- Depending on the industry, records to be kept for minimum 6 months

Sources

Markets in Financial Instruments Directive (MiFID) 30 July 2009

Regulations and recommendations of:

Financial Regulator

Financial Ombudsman

Data Protection Commissioner.

Please note: These are the views of Acer Networks expressed in this document and if in doubt contact the relevant authority.