

This article was first published in *The Times* on 1<sup>st</sup> February 2011

## **Phone tapping: the criminal perspective**

In January 2007 Clive Goodman, the former royal editor of the *News of the World*, was sentenced to four months imprisonment for phone hacking. His co-defendant, Glenn Mulcaire, a private investigator, was sentenced to six months.

Four years later, the *New York Times* published an article suggesting that phone hacking at the *News of the World* went beyond Goodman and Mulcaire (the only individuals made subject to criminal proceedings in 2006-07). In addition, a former *News of the World* reporter, Sean Hoare, said that he was “actively encouraged” to engage in phone hacking while at the paper.

Last week the Director of Public Prosecutions announced that the Crown Prosecution Service (CPS), led by Alison Levitt QC, are to adopt a “robust approach” in a fresh review of all the *News of the World* phone hacking evidence, both new and old.

So what does the criminal law say about phone hacking?

The legislation is contained within the Regulation of Investigatory Powers Act 2000 (RIPA). It is a criminal offence to intentionally and unlawfully intercept telecommunication at any place within the UK in the course of its transmission. Both public and private telecommunication systems are covered by Sections 1(1) and 1(2) respectively.

What the law requires is modification or interference with the telecommunication system or operation itself and monitoring (including wirelessly) to make the communication available to someone outside the parties to it.

To put it simply, actual “hacking” into a system is needed.

Unlawfully accessing voicemail recordings are within the scope of RIPA, although opinion seems to be divided as to whether voicemail can be intercepted if they have already been listened to by the intended recipient.

The correct approach on reading RIPA seems to be that voicemails can be unlawfully intercepted even after they have been listened to by the intended recipient. Section 2(7) states: "...the times while a communication is being transmitted by means of a telecommunication system shall be taken to include any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise have access to it."

Section 2 (8) goes on to say: "includes communications which are diverted or recorded so as to be available to a person subsequently." Accordingly it appears that where communication is stored "in a manner that enables the intended recipient to ... otherwise has access to it" (that is, a saved voicemail) it is being transmitted within the meaning of RIPA and is capable of being unlawfully intercepted.

The types of evidence that the CPS is likely to need - and direct the police to obtain - to be in a position to charge are:

- identifiable victims of hacking;
- witnesses, such as Hoare, who are able to give evidence that hacking was planned and took place;
- incriminating e-mail exchanges;
- records of private voicemail Pins held by the newspaper, or connected individuals;
- evidence direct from the telecommunication providers whose networks were hacked.

Whether or not sanctions are likely will largely depend on the type and amount of evidence the police are able to obtain and place before the CPS during the fresh review. Those convicted of unlawful interception can be imprisoned for a maximum term of two years and in addition will suffer considerable reputational damage.

*The author is a partner and white collar crime specialist at IBB Solicitors*

**If you would like to talk to us about the issues raised by this note, please contact:**

Anil Rajani  
01895 207832  
anil.rajani@ibblaw.co.uk

IBB Solicitors  
Capital Court  
30 Windsor Street  
Uxbridge UB8 1AB

Tel: 08456 381 381  
Fax: 08456 381 351  
www.ibblaw.co.uk

*This briefing note is only intended to provide general guidance and is not intended to constitute legal advice.*

© IBB Solicitors 2011