



GUIDANCE NOTES FOR LEGAL PRACTICES

The use of email

Email is now the principal method of communication for most businesses including lawyers and their clients and contacts. The risks are similar to those that lawyers have always faced with written communication but for email they are increased by the speed and informality with which it is used.

How do you write your emails?

When composing letters we tend to use traditional structures and slightly formal language. Many lawyers were taught that when writing a letter they should imagine it being read out in court. Few of us apply this to emails and we tend to use informal language in them and write as we would speak.

- Never use abbreviations or slang in a business email
- Beware of using humour or sarcasm; without vocal expression and tone of voice, comments can easily be misunderstood
- If writing more than a few lines, consider drafting a letter and sending it as an attachment to the email instead
- Write emails from the bottom upwards, not from the top down – in other words, write the text first, and then fill in the title and the recipient. That way you are less likely to send an email before it is finished

Email is speedy and can lead to a very rapid exchange of correspondence over a short period of time. There is a tendency to feel that because someone has sent us an email, we should reply to it immediately. It may be better however to allow time to consider the issues before responding, particularly if you are working on another matter when the email arrives. There is no obligation to reply to an email as soon as it is received. Never reply to an email in anger, it is always better to wait until your feelings have cooled before responding to something that you consider rude or unfair.

System (mal)functions

Beware of accidentally using ‘reply to all’ when in fact you meant to reply to only one person. If there are any ‘blind copy’ recipients of the original email they will also see your response. Another easy error is to use ‘reply’ instead of ‘forward’ and to send comments on the email back to the original recipient. Make it a rule to stop and check the address line before sending. In fact, when writing an email it is best to leave the address line blank until you have finished writing the text.

Pop-up functions such as auto-fill are also highly risky. Many systems will auto-fill the recipient’s name after you have typed a few letters – if you are not wary, you may find that an incorrect name has been entered.

It is also common to send an email without an attachment that you intended to include; double-check for these. Make sure that documents are given distinctive, not generic names – calling something ‘report on title’ or ‘list of documents’ is asking for trouble.

Managing clients’ expectations

Clients, like lawyers, are likely to make some assumptions. The first one is that when they send an email you have received it almost instantly. The second assumption is that you will reply to it immediately. It is important to make your policy on responding to emails clear to all clients at the outset.

Emails are not always received or read instantly – your firm’s server could be down, the client may have made an error in the email address, it could be mis-identified as junk mail or spam. Even if the email reaches your inbox, you may be engaged on another matter, out at court or travelling and not able to respond instantly. Clients should be advised that while you will reply to emails within a reasonable time, they may not receive a response immediately or even on the same day. They should also be warned that if a matter is urgent then they should telephone your office to confirm their instructions or to ensure that an email has been received.

As noted previously it is often better to pause before responding to an email in order to give full consideration to the matter. With mobile access to emails it can be tempting to send a response even when not in the office, but this runs a number of risks – without the file in front of you, you may not have all the facts to hand and could give incorrect advice. Accuracy is more important than speed in legal work; clients are paying for your service and a hasty response from a hand-held device may be very quick but is unlikely to be giving them a good service.

Mobile devices

There are security issues around the use of handheld devices as they are easily lost or mislaid. Any such devices should be encrypted and should use a system which backs up emails received and sent at regular intervals.

When typing on a phone or even a tablet it is easy to make mistakes. Predictive text may insert words that were not intended and it can be hard to review what you have written. You may be unable to read attachments at all.

There are almost no circumstances where it is appropriate to send a lengthy email via a handheld device, no matter how pressing the matter – a phone call is usually better or a short email confirming that you will deal with the matter at length when you are in the office. If you are in circumstances where a phone call is not possible then should you really be working on the matter at all? Imagine that you are at dinner with friends (or in a meeting, at the theatre, at a sporting event or enjoying a family lunch) – would you allow a client to knock on the door or come to your table, interrupt you and ask for advice? Don't let your mobile device do this – free time is meant to be spent relaxing and if you try to work during these times you will not be giving it your full attention.

Use of email

It is unrealistic to expect that staff will never use their work email for personal use and no matter what your firm's policy on this it is almost impossible to prevent. All staff should however be warned that their work email address is not for personal use and that they should not use work computers to access the internet for personal reasons.

You may have a 'reasonable use' policy and you should undoubtedly have restrictions on your internet access to prevent staff from accessing gambling or pornography sites.

Staff may simply not recognise the risks they are running nor appreciate that by using the firm's email address they are directly associating their employer with the content of the email. Few of us would write a rude joke on the firm's letterhead and then post it to a friend, but sending the same joke by email is seen as acceptable. In extreme cases sending offensive material could be a criminal act or could expose your firm to litigation.

New staff should all be made aware of the firm's policies and it may be prudent to have a message which is shown every time someone logs on to the system to remind them of this. While you may have a clause in your firm's employment contracts permitting you to access personal emails, in reality you will not be able to do this on a regular basis because of the volume of email traffic. By far the best safeguard is to have properly planned policies in place and to train all staff on the risks involved.

This training should include not only the confidentiality risks but also cover the dangers of opening emails from unrecognised addresses or clicking on attachments which may introduce malware or viruses into the firm's systems. Staff should also be made aware of the risks of commenting on social network sites in a way which identifies them as a member of the firm.

Solutions

- Set clear staff policies on personal use of email, when it is appropriate to use email for work, and on how email should be stored
- Have regular training sessions on email risk and the risks involved in using mobile devices
- Amend your terms of business so that clients have a clear message on your email response time
- Encourage staff not to respond to emails out-of-hours
- Investigate software options which may prevent emails being forwarded, pick up certain trigger words and reduce spam

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