

# Business Use of E-Mail and the Internet - Risks and Management Control Measures Required

A few years ago a well-known insurance company was ordered to pay £450,000 in damages and costs and issue an apology to a private healthcare group that it admitted libelling by e-mail. The settlement broke new ground as it was the first time a company had received damages for being libelled by e-mail.

The case illustrates the dangers inherent in the use of e-mail. As a means of communication, e-mail has a number of significant differences over the more traditional methods. In particular, e-mails have the informality and immediacy of telephone conversations, whilst being a recorded medium. Also, with automatic forwarding and copying, a message/announcement can reach many employees (and potentially other readers) in an instant.

The European Commission conducted a survey in September 1998 and found that 43% of all small businesses with 10-50 employees were using the Internet. Other research indicates that the average employee with access to the Internet uses it for personal reasons for around one hour each day.

## MISUSE OF THE E-MAIL SYSTEM CAN PLACE EMPLOYERS AT SIGNIFICANT RISK.

The dangers include:

- **Defamation** - even if e-mails are only sent on an "internal" system there can be defamation claims if an external party gets to know of the contents.
- **Harassment of other employees** and "external" recipients of the message outside the business. A recent survey has suggested that a large percentage of e-mail users at some time or other receive what is sometimes called "flamemail". This is the transmission of strident, abusive, even threatening and/or harassing (particularly sexually harassing) messages via e-mail systems.
- **Breach of copyright**
- Where e-mails attach/annex extracts from another party's original (copyright) work, potentially a breach of copyright occurs (involving both civil and criminal liabilities).
- **Disclosure of confidential information**
- Users of an e-mail system can unwittingly disclose confidential information.
- **Inadvertently entering into a contractual arrangement**
- Again, with the informality and immediacy of the e-mail system, employees communicating with an external party (e.g. a customer) can unwittingly enter into a contractual arrangement (the details of which will be recorded!).
- In terms of **what steps the employer should take:**
- First and foremost, the employer must produce and issue to all staff a code of practice on the proper use of e-mails. Some of the code should form part of the employer's disciplinary rules. The sort of matters which need to be covered in a code include:
- making it a disciplinary offence to send defamatory or harassing e-mails
- making it a disciplinary offence to view or download pornographic or other offensive material
- rules covering the retention of copies of e-mails (e-mails are a form of documentation which could be discoverable in legal proceedings, i.e. used for or against the business if they are relevant to the action and are not 'privileged')
- only to use the e-mail system/Internet on authorised and recognised company business
- restricting the material which can be sent via e-mail, e.g. listing out categories of "prohibited material"
- listing those categories of employees authorised to use the internal (and external) e-mail system
- Review of all security policies and procedures. Ensure proper reference is made to the issue of e-mails and access to the Internet.
- Ensure that imported software and files are scanned for viruses before being opened or written to any storage device.

- Regular monitoring of the use of e-mails and of any Code of Practice. Employees should be made aware that no e-mails are 'private' and that the employer reserves the right to read e-mails and to audit the employee's use of the e-mail system.
- A comprehensive training programme (with updates and refreshers) on the proper use of the Internet e-mail facility.
- Ensure that external e-mails comply with the legal disclosure requirements relating to business correspondence by
  - in the case of a company, showing the business name, place of registration, registration number and address of the registered office
  - in the case of a partnership or sole trader by disclosing names of the business owner or partners and an address for the service of documents

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