

MR IAN MANN (2): ADVICE ON CLIENT EMAILS AND TEXT MESSAGES

How has client correspondence changed with developments in technology?

Because of the multiplicity of ways that we are now communicating with clients through different uses of technology, correspondence between lawyer and client has definitely become more informal. For example, here at Harneys, we correspond with our clients very regularly through emails, occasionally through WeChats, texts and WhatsApps, a lot, of course, through the telephone. In an email, one tends to be more formal; in text messages, WeChats and WhatsApps, people tend to be less formal simply because it takes longer to write things.

Now, there are huge dangers with essentially sending text messages over your phone to clients because they all have to be captured and recorded in the system that we use to ensure that all correspondence is kept on an e-file and that takes a little bit more work for most firms than e-mail capture. Also, it's very easy to think that because you're just sending a text that it's not really advice or it's simply giving someone a casual steer that you might not be liable for - that simply isn't correct. You will be liable for advice you give in those text messages in the same way that you would be liable if you had issued an old-fashioned, written opinion signed as an original. It's absolutely the same thing in the modern context. Clients do enjoy having, I think, a combination of means of communication. They like to have the formal e-mails that set out plans, strategies, budgets, but they do when they just want quick answers to things, want to be able to contact modern lawyers by text, or WeChat or WhatsApp. And it's important to be able to do that to reciprocate so long as you are satisfied that it is an effective means to communicate complex messages.

What advice do you have for lawyers who are writing emails?

When you write an e-mail as a young lawyer, it's easy to think that because it's not a formal written opinion or because it's not a formal letter that somehow it's more casual and that you don't need to think as carefully about the drafting or that the same issues of liability vis-à-vis professional negligence somehow don't apply or are watered down in some way and that's a dangerous trap to fall into because every advice that we give in whatever form – oral, by text, or e-mail, or written opinion – comes with professional obligations.

In an e-mail, it's very important to understand that the client will very often see a snippet of the e-mail in the first few lines on their phone. And so, often, in particular to get the client's attention, the first few lines of an e-mail are really important. So, if the key message of the e-mail is "We need you very urgently to sign a document," then you really ought to put that in the first few lines because in the inbox of one's phone, that will be the first thing they see. Even if they choose to scroll past your e-mail, they are likely to see that in the prompts on their phone, so it does affect the way in which we communicate by virtue of the fact that e-mails are often received by way of a phone.

I think e-mail correspondence has to be seen as a very distinct form of communication to legal opinions because they're often written at greater speed. One is not expected as one used to be expected when writing formal legal opinions to set out all of the case law that supports your propositions. Usually, even with fellow professional clients, e-mail advices tend to be shorter and to the point. Sometimes, you are asked by a client to issue a lengthy legal opinion, citing case law, and that is often because your advice has been sought as a second opinion to what another lawyer has done or that opinion is for regulatory purposes, for example, for a listed company. Or, for example, if the client is asking your advice as a precursor to you being an expert witness in court and they want a detailed explanation of something or they're seeking to instruct another expert, they need really legal advice for the purpose of court proceedings. But the general trend is moving away from old style written opinions to advice contained in e-mails, which tends to be much shorter.