

MIKE PITT, employment, company and commercial law specialist, of Oldham's Pearson Hinchliffe, warns companies not to wait for a lawsuit before resolving the issue of storing and retrieving e-mails.

WHAT do you typically do when you get to work in a morning? Like millions of others, you probably make yourself a coffee, read the post, fire up your computer and check your e-mail.

So common has this routine become that it is hard to remember the time – a mere 15 or so years ago – when e-mail in the UK was restricted to a small number of university academics who exchanged learned papers on what was then known as Janet, the Joint Academic Network.

With the rise of e-mail from plaything of geeks and boffins to indispensable tool of the modern business world has gone a change in the way the law expects companies to deal with the e-mails they send and receive.

When most written business communications were on paper and kept in rows of filing cabinets, it was relatively easy for businesses to produce documents proving that they acted in a certain way and that they complied with legal regulations.

Today, though, around three-quarters of all discovery requests in legal cases are for e-mail. It is therefore vital that e-mails be archived so they can be retrieved successfully. Firms that cannot retrieve the information required by the courts may be fined.

What does this mean for companies in Oldham and throughout Britain?

Fortunately, technology provides an answer to the problem that technology itself has created. Now that the cost of storing data electronically has fallen, I advise my clients to archive all incoming e-mail as it arrives in the company and before it is delivered to the recipient. Outgoing e-mail should similarly be archived before it is sent outside the organisation.

The reason for storing all e-mail in this way is that individual employees cannot be expected to know which e-mails need to be retained and which they can safely delete.

The company's e-mail policy should state that staff may have access only to their own archived e-mails, and should not be able to delete them from the archive.

Companies should then categorise their e-mails according to content and give different retention periods to each category. Any spam that gets through the office's normal filtering procedures should be retained for the shortest period. E-mails that deal with contractual, legal or commercially sensitive matters should be kept for longest. Obviously, firms should also ensure that their e-mail storage policy complies with data protection legislation and does not infringe the right to privacy.

While some Oldham firms seem to believe that it may be cheaper to pay any fines they may incur rather than introduce a proper e-mail retention policy, this is short sighted. The law regarding e-mails is still developing and we can expect a tightening of legislation as scandals come to light.