

Stephen Beagent Associates' Newsletter

Finance and Accountancy Recruitment Specialists

Edition 4



New Rules on Email Marketing – What do they mean?

With the use of email now second nature and life before Internet just a hazy memory, it is hardly surprising that we find ourselves no longer able to live without it. However, with all good things come the not so good, and with email it is the raft of seemingly irrelevant communication which we now receive. It is therefore good to see an attempt to address this problem with the introduction of the recent Privacy and Electronic Communications (EC Directive) Regulations in December 2003.



These regulations cover all electronic mail including email, mobile telephone text, video or picture messaging, and focus on two key areas. Firstly, all marketing messages sent by electronic mail, regardless of who the recipient is, must apply the following rules: the sender must not conceal their identity and the sender must provide a valid address for opt-out requests. Secondly, when it comes to sending unsolicited marketing messages by email to individual subscribers, the sender can only send the message if they have the recipient's prior consent to do so. This rule can be relaxed if the following exemption criteria are satisfied: the recipient's email address was collected 'in the course of a sale or negotiations for a sale'; the sender only sends promotional messages related to their 'similar products and services'; AND when the address was collected, the recipient was given the opportunity to opt-out (free of charge except for the cost of transmission) which they didn't take. The opportunity to opt-out must be given with every subsequent message.

These regulations apply to an 'individual', which means a natural person such as an individual, sole trader or partner, rather than a legal person such as a limited company. However, recipients within limited companies will generally be entitled to a right to 'opt-out' under the Data Protection Act 1998.

The new rules will also apply to email marketing databases compiled before 11 December 2003. However, the regulator will allow email mailing lists that were not obtained on an opt-in basis to be used, provided that they were compiled within the existing legislation at the time of collecting individuals' details. The list must also have been used recently (within the last 12 months) and the individual must not have already indicated that they no longer wish to receive marketing. An opportunity to opt-out must always be given.

To stop unsolicited marketing emails if they are coming from an identifiable UK source, reply to it with an opt-out request. If the emails are coming from an unidentifiable source, do not reply, as this will only confirm to the sender that the email is live and they will continue to send messages. To make a complaint, complete one of the complaint forms on the Information Commissioner's website, (see below for details).

Unfortunately, the regulations will not necessarily deal with the persistent spammers, but this will go some way to dealing with the issue. Spam has serious consequences for businesses in terms of lost productivity, as well as having a negative effect on legitimate commercial or business communications. The EC has recognised this and recently announced that it will be doing more to reinforce the effectiveness of the legislative measures taken so far.

For further information visit www.informationcommissioner.gov.uk

Restrictive Covenants – Are they enforceable?

Much is being made of the recent legal action by the four partners who are set to leave Deloitte, the accountancy firm, for rivals KPMG. The dispute centres on the extent of the notice period and covenants included in Deloitte's limited liability partnership agreement and whether the partners are bound by it.

Unsurprisingly, when signing a new employment contract very few people actually pay attention to those terms that apply to leaving, but if you don't, you too could be constrained by restrictive covenants.

So what are restrictive covenants?

Restrictive covenants can simply be summarised as a term of an employment contract which employers use to protect their business interests by restricting an employee's activities after the employee leaves. Their sole purpose being to enforce a restriction of particular activities under specific conditions. Restrictive covenants can only be used to protect trade secrets, confidential information and goodwill, and to prevent the solicitation of clients, customers and staff. Typically, they tend to be used when an ex-employee starts work for a competitor or starts up in the same type of business locally.

Are restrictive covenants enforceable?

To be upheld, the covenant must be reasonable between the two parties and in the public interest. They must also protect a legitimate business interest, have a scope no wider than is reasonably necessary for the protection of that interest, and they must allow the ex-employee to earn a living within the same type of business. Further more, the clauses must be clearly written with a specific interpretation, and a time limit and geographical area should be specified. Too long a time limit, too great an area or too punitive a restriction will jeopardise the clauses' enforceability. If the termination is in breach of contract by the employer, then any restrictive clauses are unenforceable.

The onus is on the employer to prove in court that the restrictions are necessary and fair and have a 'legitimate protectable interest'. If a court accepts a covenant as being enforceable, an employer may then apply to the High Court for an injunction against the ex-employee continuing their activities. Damages can also be claimed as a result of financial loss due to the unlawful actions.

Many covenants can be less restrictive than they first appear. The majority of companies dislike taking action because of the negative impact it can have on clients and even other employees. Courts, as well, tend to find that many of the covenants are unenforceable mainly due to 'restraint of trade' - common law entitles individuals to work freely and without undue restraint.

Restrictive covenants tend to be relevant to more senior positions within companies, and ACAS, the advisory, conciliation and arbitration service, believes that the majority of restrictive covenants are unenforceable, as courts are more likely to side with the employee¹. However, anyone thinking of signing a document involving a restrictive covenant of any kind must think carefully about what they are agreeing to and should always obtain legal advice prior to signing the documentation. Fighting a covenant can be a costly business and employees who are found to be in breach may find themselves paying for both sides' legal costs, as well as possible damages.

Although there is no single rule to determine whether or not a restrictive covenant is reasonable, what is acceptable will depend on the circumstances of the case, including the nature of the business, the role and the seniority of the employment.

1. Guardian Unlimited - 18th November 2002

Recruitment – ‘the Del Boy of the UK economy’?

Let's face it, recruitment has always had a bit of an image problem - mentioned all too often in the same breath as the words 'cowboys' or 'sharks'. Yet rather than this reputation diminishing, according to *The Recruiter* magazine there are a number of recent surveys which essentially conclude that the recruitment sector is widely considered to be 'the Del Boy of the UK economy'¹!

Now, it would be easy to moan and groan about such a judgement, and protest that 'we're not all like that', but rather than whinging, recruitment agencies would perhaps do well to take a long, hard look at what has created this reputation in the first place. For it is only by continually and consistently evaluating practices and public perception, along with delivering upon promises of high quality service, that the sector can become increasingly recognised as providing an essential service rather than representing a necessary evil.

The bulk of the problem, according to recent press surrounding the topic, stems from our inherent dislike of middlemen, in addition to the thorny question of commission. Interestingly, it is these factors which Recruitment Consultants have in common with other professions notable for their image crises – such as Estate Agents and Car Salesmen. For when commission is involved, we feel we simply can't trust someone's motivation, as a senior marketing figure points out in one article: 'People question individuals' objectives – are they looking for the best candidate or do they only care about making the sale and securing the fee?'²

It is this sort of short term, fee-focused culture, typical of the late 1990s, which certainly has a lot to answer for in terms of recruitment's 'bad press'. Rather than adopting these intensely target-oriented practices, the best agencies will instead be driven by a desire to provide high quality service, recognising that revenue naturally follows on from this, even if return is not immediate.

But even referring to 'the best agencies' can lead us on to rocky ground, as a constant criticising of the opposition ultimately damages the entire industry's reputation, ensuring that an atmosphere of unprofessionalism endures and the associations with 'cowboys' and 'sharks' remain. If recruiters continually 'talk down' competitors and protest about being 'tarnished with the same brush', then they must be aware that they affect the branding and public perception of the sector as a whole, and therefore perpetuate the image they are so keen to dispel.

So what can be done to combat the negativity that seems to follow recruitment around? How can the 'Del Boy' label be avoided, and the professionalism which characterises most recruiters actually be recognised?

Ask most people who come into contact with the recruitment industry and they will tell you that the answer lies in preparing for the long haul, and adopting a much longer-term marketing perspective. Getting to know a company's culture, their recruitment processes, and maintaining open, honest lines of communication at all times are therefore paramount to establishing an effective working rapport, and recruiters must take this into account if they want to build up a positive reputation for themselves and their profession.

Creating an atmosphere of trust is key in developing a mutually beneficial relationship between clients and agencies, and this is essentially where the answer to recruitment's image problem must be seen to lie. As *The Recruiter* points out, '...it all comes down to personal integrity', because if, as individuals, recruiters adhere to high standards of service, and also encourage their colleagues to do the same, then we are undoubtedly taking steps in the right direction. By ensuring best practice 'at home', and demonstrating the professionalism so many recruiters lay claim to, we surely lay the foundations for a 'win-win' situation all round – 'lovely jubbly'...

¹ *The Recruiter*, 4th February 2004, Pg. 23
² *Ibid.*, 4th February 2004, Pg. 23



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Business Babble?

Management-speak, business jargon, buzzwords: whatever terminology one chooses to adopt to describe this often frustrating phenomenon, the reality remains clear – it has become endemic to our corporate age, and seems to grow denser and more wide-spread with every passing day.

The list of examples could go on forever – 'no brainer', 'synergy', 'envisioning', 'disintermediation', 'human capital' – but what impact does this jargon have upon individuals and businesses, and what actually motivates it in the first place?

In terms of impact, it seems these linguistic gymnastics have a lot more to answer for than one might first assume. For example, Deloitte Consulting has developed a free downloadable piece of software called "Bullfighter", which is a new program that searches documents for jargon and unnecessarily complex language. One of the most telling findings resulting from this has shown that a high level of jargon and 'management-speak' in corporate documents may indicate potential trouble for a company further down the line. Interestingly, they point out that a review of Enron's communications shows that when performance began to decrease during the last 3 years, the company's communications had become increasingly laden with ambiguous words and sentences.

Deloitte Consulting also estimate that the use of jargon and buzzwords costs businesses millions of pounds a year, because staff feel less confident in putting forward ideas if they are not familiar with the latest corporate terminology. Certain words or phrases may be designed to sound impressive, but if their end result is less than 100% comprehension, then everyone loses out in the long run.

Aside from losing businesses money, buzzwords can also seriously hamper an individual's job prospects, according to Fish4jobs, who recently carried out a poll of 500 personnel managers to gauge their pet hates. In this survey, jargon such as 'gameplan' and 'thinking outside the box' was highlighted as being more likely to provoke a negative reaction than more traditional bugbears such as unexplained career gaps or over-long, unwieldy CVs.

So if this proliferation of buzzwords is doing us so much harm, then why can't we seem to help ourselves when it comes to using them?

John Lister, a spokesperson for the Plain English Campaign, highlights a number of factors as motivation for this, including, interestingly, a sense of insecurity amongst users and the desire to 'fit in'. As he says, 'It is a bit like the Emperor's New Clothes. Nobody wants to correct the jargon of anyone above them.'

In many ways, the use of this language is locked into a vicious cycle of ignorance, which perpetuates itself because individuals don't understand enough of what's being said to correct anyone. Worryingly then, these words often do not communicate anything, but instead could be said to cover up the fact that someone ultimately has nothing to say. Moreover, it is difficult to criticise what one doesn't fully understand, so those who use confusing jargon are frequently able to get away without justifying their ideas or proposals.

This corporate babble, then, is everywhere, and is not as innocent as might first meet the eye...

Perhaps it's time we starting thinking outside the box to promulgate initiatives in order to leverage maximum effectivity, eh?

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