



APSE seminar

# The legal risks of social media use by employees in the Local Government context

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# Today's Session

- Context:
  - Use of social media within public sector is growing fast
  - 98% of councils are using some form of social media (BDO Survey – May 2013)
- The risks of social media use and its potential for attack
- Key issues to consider and manage
- Common pitfalls and essential safeguards
- Social media guidance for civil servants
- Communication costs savings of social media

# Does social media use increase legal risks?

- A common perception is that there are significant risks – we have seen high profile press reports on issues arising from use of sites like Facebook and Twitter
  - E.g. Anton Casey – sacked after Facebook comments about "the stench of public transport" in Singapore and his description of a taxi driver as "a retard". Employer quotes *"Crossinvest Asia is deeply concerned by the recent comments made by Mr Anton Casey on social media, which have caused great distress among Singaporeans"*.
  - Sally Bercow libellous tweet about Lord McAlpine
- Fear of legal / reputational fallout is a common blocker to successful use of social media as a business tool
- Blocking access is no longer always the answer due to widespread access - now only 1 in 3 local authorities block access as compared with 1 in 2 last year
- Social networking can easily blur the line between professional and personal relationships – which can lead to legal claims! However, the risks can be managed



# Key issues

- Recruitment
- Harassment
- Misconduct
- Copyright and IP
- Defamation

# Risks: Using social media in recruitment

- If information on social networks is used to reject candidates, then an inference of discrimination can be drawn if that information refers to a 'protected characteristic' e.g. marital status, sexual orientation, age, religious beliefs or ethnic origin
- Ensure your recruitment process and paper trail bears up to scrutiny

# Risks: Claims of harassment from staff

- Local authorities can be liable for harassment of employees if this occurs ‘in the course of employment’
  - Unwanted conduct because of a ‘protected characteristic’ that has the purpose or effect of violating dignity or creating a hostile, degrading, intimidating, humiliating or offensive working environment.
- Personal Facebook / Twitter accounts where employees are ‘friends’ with colleagues
  - Wall posts? Tagging? Friend requests?
  - Opinions on sexuality, race, religion and political belief?
- Ensure harassment / E & D policies cover online behaviour

# Risk: Stress at work claims

- Bullying / harassment resulting in a stress related illness
- All employers have a duty of care to protect the health and safety of staff in the course of their employment
- Online conduct by staff, customers and other third parties can lead to stress related illnesses.
- Ensure there is a clear process for raising issues and investigate complaints

# Risks: Employee misconduct

What about inappropriate / offensive online behaviour by staff?

- Smith v Trafford Housing Trust (2012) - demotion of an employee for commenting on gay marriage was unlawful as his comments could not be said to amount to 'gross misconduct'
- Preece v Wetherspoons plc (2011) – a duty manager was fairly dismissed for making inappropriate comments about customers on Facebook – despite having been verbally abused by those customers earlier that day
- Teggart v Teletch UK Limited (2011) - employee fairly dismissed for posting vulgar comments about female employee on Facebook

Ensure there is a clear policy and take appropriate action is key



# Risks: Employee misconduct

- A common argument raised is that comments made on social networks are private and outside the work domain but these arguments have generally not succeeded – see:
  - Gosden v Lifeline Projects Ltd (2009)
    - ‘chain’ email containing racist and sexist material could not have been intended to be private.
- Ensure staff understand that online communications are not private

## Risks: Copyright ownership

- Copyright arises automatically in any original written or artistic work – no test of quality
  - E.g. posts, tweets, profiles, blogs, photos
- Copyright in works created by an employee in the course of their duties belong to an employer
- If copyright is infringed and the post was made by an employee in the course of employment, the local authority employer may be liable.
- Re-use of content posted online depends on terms and conditions of website
  - Twitter, LinkedIn and Facebook allow for re-posting

# Some other risks and common pitfalls

- Defamation
- Data protection breaches
- Loss of confidential information
- Failure to deal with inappropriate online behaviour by staff
- Failure to deal with customer postings
- Ignoring employee unrest
- Assuming that 'surfing' leads to a loss of productivity

# Essential Safeguards – employee use

- Social media policy / guidelines
  - What is your organisation's approach to social media use?
    - Balancing trust against control
  - Make it clear what is acceptable / unacceptable
    - Defamatory, offensive, obscene, discriminatory or harassing online behaviour
    - Derogatory comments about staff, customers, company.
    - Misuse of confidential / sensitive information
    - Use of copyrighted information / third party IP

# Essential Safeguards – employee use

- Additional guidelines on personal use
  - Customers / suppliers / colleagues as ‘friends’?
  - No expectation of privacy
  - Reasonable use in work time?
- Business use
  - Who is responsible for it?
  - Who can use it?
  - Are they clear on how to use it?
  - Who will monitor it?

# Essential safeguards: copyright risks

- Create – original content
- Consent – obtain beforehand if possible
- Credit – the author if you do copy
- Clarify – business policy on copyright, online etiquette and brand name use

# Essential Safeguards - Third Party Use

- Establish terms of use on posting of information
- Prohibit postings that are defamatory, discriminatory, offensive, threatening or in breach of copyright or IP
- Disclaim liability for acts of third party users relating to postings
- Allow company to remove posts at its discretion
- Ensure comments are monitored and issues are dealt with quickly

# Conclusions

- Ensure you have clear guidelines in place for staff and third party use
- Ensure there is top down buy in
- Ensure there is no expectation of privacy
- Raise awareness and provide training
- Deal with issues arising through social media use, both in working time and outside it
- Ensure your policies are subject to regular review





*“Your brand is what people say about you when you’re not in the room...”*

Jeff Bezos, Founder of Amazon