

# THE TWITTER TRAP

**ALASDAIR DAVIDSON**, PARTNER AT BEDELL, CITES HOW TO RUIN A BUSINESS IN 140 CHARACTERS OR LESS.

The use of social media increasingly hits the headlines, both within and outside the Channel Islands. There have been some notable examples of celebrities and public figures falling headfirst into the 'Twitter trap', ranging from an MP's allegedly racist comments and football managers criticising referees to Guernsey Deputies commenting on their fellow States members.

There is no denying that social media use through Twitter, Facebook, LinkedIn and blogs has dramatically changed the way in which many of us approach both social and business communication. Accessibility to the Internet and use of smartphones with inclusive data plans in particular ensures that social media is relied upon more and more as a cheap and fast means of getting news and information out to the world. However, that ease of use, access and spontaneity ensures it's just as easy to come a cropper with real legal headaches too.

Here are a few pointers to bear in mind:

## 1. If it's illegal offline, it's illegal online.

Just because you are using a new form of media doesn't mean what you say isn't caught by the law. In the UK there have been convictions based on threats made on Twitter, a successful claim for libel and even a holidaying British couple barred from entering the USA thanks to tweets one of them had made about 'destroying America' – it's irrelevant that this may have been a spectacular sense of humour failure.

## 2. 140 characters can ruin a reputation.

Bad news used to take weeks to gain traction in the press whereas now it can travel the world in minutes. If you wouldn't put something down in a letter or a printed article don't blog, Tweet or Facebook it either.

## 3. Whose followers are whose?

If an employee is using his own Facebook or Twitter account to promote a business, who owns the intellectual property of the information used on that account? In the United States there is ongoing litigation concerning this very issue and businesses need to give serious thought about how they should go about protecting intellectual property in a social media context. Further, a business should consider the framework in which it deploys social media, with a distinction made between an employee's personal interest and that of the business. Companies have long fought to protect their financial information using restrictive covenants but how will that work with new social media when an employee leaves, taking their LinkedIn contacts with them?



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## 4. Ease of use? Ease of abuse

As well as considering the threats to intellectual property, businesses also need to be alert to improper staff use of social media. This is not confined to staff spending hours web surfing instead of working and there have been examples from across the public and private sectors alike of staff misconduct via social media. Whether it's a police firearms unit posing with their firearms, inappropriate comments about patients by NHS staff, bullying of coworkers or investment traders addicted to Facebook, social media abuse is a real life issue with which employers must contend.

## 5. Judges use Facebook too

The spread of social media has provided new and, frankly, easier ways to pursue information in court cases. It is possible to uncover pretty much everything that has been posted publicly using social media of any form, just using a web search. It's as easy for a prospective employer to find those 'private' snaps posted from a student party years before as it is for litigators to track down that incriminating email or tweet. We now use 'E-Disclosure rooms' for the handling of vast quantities of data and now audit trails, data retrieval capabilities together with proper archiving of backups are essential in the modern regulatory environment.

If you think judges still wear long wigs, use quill pens and can't cope with social media, think again. In the US spouses have been ordered to exchange their Facebook and dating website passwords in a divorce and the courts in Australia and New Zealand have long ordered service of claims by Facebook. English courts have followed suit and trials are often tweeted live by journalists. The Channel Islands' courts are very adaptable and there is no reason they wouldn't follow this trend - there are some judges here on Facebook.

There is no need to worry unduly about social media use and businesses should embrace all that is good about it – just give thought to managing the legal risks whilst considering the upside. Such management should also include building social media issues into a business' risk assessment where relevant. Make the most of the advantages offered by social media but plan carefully to safeguard your business interests and avoid the Twitter trap.