

# **Social Media in the Workplace: A Handbook**

**Chris Bryden**

*Barrister, 4 King's Bench Walk*

**Michael Salter**

*Barrister, Ely Place Chambers*



Published by Jordan Publishing Limited  
21 St Thomas Street  
Bristol BS1 6JS

Whilst the publishers and the author have taken every care in preparing the material included in this work, any statements made as to the legal or other implications of particular transactions are made in good faith purely for general guidance and cannot be regarded as a substitute for professional advice. Consequently, no liability can be accepted for loss or expense incurred as a result of relying in particular circumstances on statements made in this work.

Please note that on occasion strong or obscene language is cited in this book where extracts from case reports are reproduced. Such language is included for contextual and illustrative purposes only and is not condoned by the authors or publisher.

© Jordan Publishing Ltd 2015

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any way or by any means, including photocopying or recording, without the written permission of the copyright holder, application for which should be addressed to the publisher.

Crown Copyright material is reproduced with kind permission of the Controller of Her Majesty's Stationery Office.

**British Library Cataloguing-in-Publication Data**

A catalogue record for this book is available from the British Library.

ISBN 978 1 84661 898 7

Typeset by Letterpart Ltd, Caterham on the Hill, Surrey CR3 5XL

Printed in Great Britain by Hobbs the Printers Limited, Totton, Hampshire SO40 3WX

# CONTENTS

Preface	v
Acknowledgements	ix
About the Authors	xi
Table of Cases	xvii
Table of Statutes	xxiii
Table of Statutory Instruments	xxv
<b>Chapter 1</b>	
<b>Introduction</b>	<b>1</b>
<b>Chapter 2</b>	
<b>Social Media and Internet Use at Work: An Overview</b>	<b>7</b>
Introduction	7
Examples of internet and social media use	8
Internet usage	8
Social media	9
Monitoring internet usage at work	9
General considerations	10
Email usage: specific issues	11
Social media: specific issues	14
Personal vs professional social media use	14
Who owns a social media account?	14
Dismissal for personal use	16
Pre-employment vetting	23
<b>Chapter 3</b>	
<b>IT and Social Media Policies and Internet Monitoring</b>	<b>25</b>
Introduction	25
Social media and recruitment	25
Monitoring policy	31
<b>Chapter 4</b>	
<b>Disciplinary Issues and Investigation</b>	<b>35</b>
Introduction	35
Scope	36
Harm and misuse	38
Disciplinary issues	41

Genuine belief of guilt	42
Belief based on reasonable grounds which result from a reasonable investigation	44
Reasonable responses	46
Personal vs private posts: what is the difference?	49
Policies	50
Social media: how it can work	59
Conclusion	60
<b>Chapter 5</b>	
Whistleblowing and Regulatory Issues	63
Whistleblowing	63
Regulatory considerations	77
Conclusion	84
<b>Chapter 6</b>	
Analysis of the Protection from Harassment Act 1997 ('PfHA')	87
Introduction	87
What is online harassment?	87
Definition of online harassment	88
The scope of the PfHA 1997	92
Course of conduct	97
Application to social media in the workplace	98
Tortious liability: the PfHA 1997	99
Non-molestation orders	105
Conclusion	107
<b>Chapter 7</b>	
Cyber-harassment and Cyber-bullying in Employment Law	109
Introduction	109
Harassment by third parties	116
Choice of forum	123
Remedies	124
Introduction	124
Practical steps and guidance	130
Conclusion	130
Criminal law	130
Conclusion	132
<b>Chapter 8</b>	
Intellectual Property Rights in Social Media	133
Introduction	133
Conclusion	145
<b>Chapter 9</b>	
Controls and Checks on Social Media Presence	147
Post-termination restrictions	147
Defamation	157

Right to be forgotten	167
Conclusion	171
<b>Chapter 10</b>	
<b>Social Media and Comparative Law</b>	173
Canada	173
Australia	183
United States	190
Europe	196
Extra-territoriality	197
Conclusion	197
<b>Chapter 11</b>	
<b>Future Developments</b>	199
<b>Chapter 12</b>	
Conclusion	205
<b>Chapter 13</b>	
<b>Precedents, Flowcharts and Templates</b>	211
Do you need a policy?	211
Formulating the policy	212
Considerations for the policy	213
Implementing the policy	214
Sample social media policy	215
Social media policy	215
Sample pre-employment vetting online policy	219
Pre-employment vetting online policy	219
Sample restrictive covenant template	222
Restrictive covenant template	223
Flowcharts	225
1. Social media implementation	225
2. Consultation on policy	226
3. Social media misconduct	227
4. Types of claim	228
5. Contractual terms	229
<b>Chapter 14</b>	
<b>Case Study</b>	231
Part 1: Policies	233
IT rules	233
Introduction	233
Use of Equipment	233
Email, internet and social media	233
Unauthorised Use	234
Commentary	234
Disciplinary Procedure	236
Commentary	237

Part 2: The Offending Posts	239
Commentary	239
Part 3: Disciplinary Proceedings	241
Commentary	241
Notes of Disciplinary Hearing	243
Commentary	243
Commentary	245
Notes of Appeal Meeting	248
Commentary	249
Part 4: Pleadings	251
Commentary	277
Part 5: Witness Evidence	281
Commentary	287
Part 6: Judgment	289
Judgment	289
Reasons	289
Introduction	289
Background	289
Documents and evidence	291
General	291
Witness evidence	291
Bundle	291
The material facts	292
The law	295
Contract of employment	295
Conclusions on the issues	297
Conclusions on the complaints of unfair dismissal	302
Commentary	303
<b>Chapter 15</b>	
<b>Other Materials</b>	311
Protection from Harassment Act 1997	311
Equality Act 2010	320
Family Law Act 1996	321
Defamation Act 2013	331
Human Rights Act 1998	332
Data Protection Act 1998	334
<b>Index</b>	345