



# White Paper Conference 'The Social Media Minefield'

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# Social media

- » Most popular social network sites: Facebook; Twitter; LinkedIn; YouTube
- » Exponential rise in use of social media:
  - » Twitter - 305 million active users in the last quarter of 2015 (up from 140 million in 2012);
  - » Facebook – 1.6 billion active users in the last quarter of 2015.
- » Important internal tool and vital for organisation to maintain an active online presence.



# Inherent dangers

- » Blurring of boundaries between public space and private space
- » Underestimation of potential ramifications of 'private' online conduct
- » Reputational impact of derogatory statements about the university
- » Legal risks, for example, of discriminatory comments

**Example:** Paul Chambers' conviction under Communications Act 2003 for tweeting: 'Crap! Robin Hood airport is closed. You've got a week and a bit to get your shit together, otherwise I am blowing the airport sky high!' (Criminal conviction since overturned in High Court, but at cost of two jobs).

# Inappropriate statements made online

- » Typically fall into one of two categories:
  - › Inappropriate comments about fellow students/colleagues that are exposed through social media (person-to-person)
  - › Derogatory comments about the University posted on a social networking site (person-to-organisation)



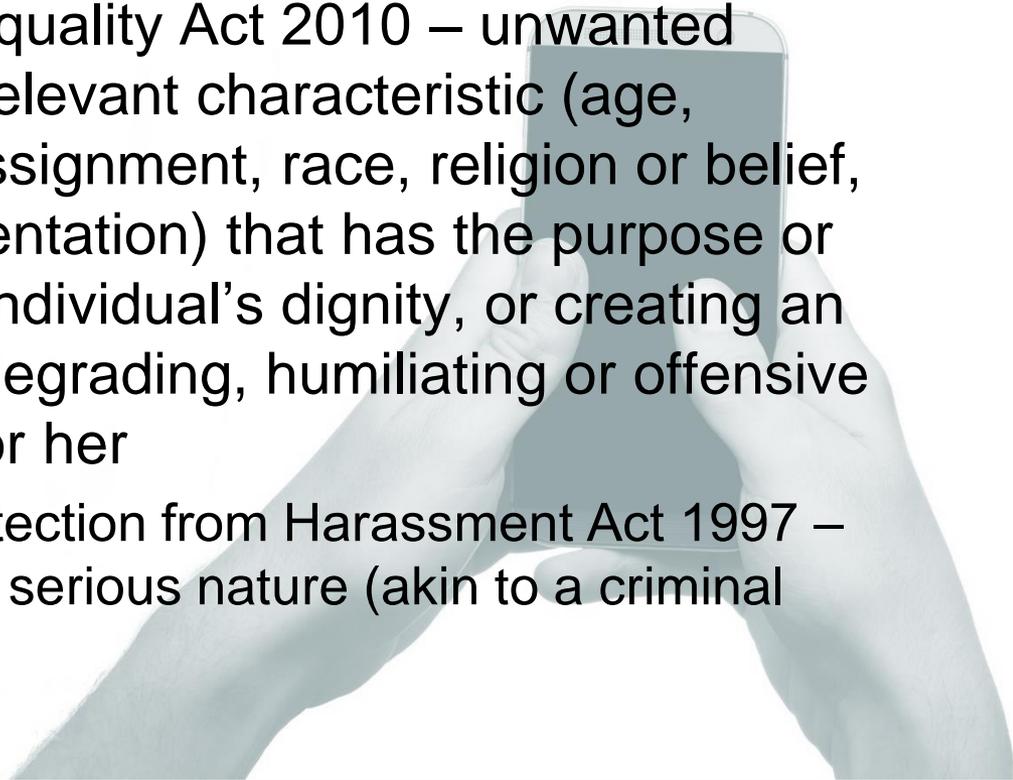
# Legal risks

- » Disclosure of confidential information, for example, students' and employees' personal information – breach of Data Protection Act 1998
- » Breach of copyright or intellectual property rights of others, for example, by posting content without permission of the author or owner



# Legal risks continued..

- » 'Cyber-bullying' – i.e. harassment conducted through social media channels:
  - › 'harassment' under Equality Act 2010 – unwanted conduct related to a relevant characteristic (age, disability, gender reassignment, race, religion or belief, sex and/or sexual orientation) that has the purpose or effect of violating an individual's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him or her
  - › 'harassment' under Protection from Harassment Act 1997 – harassment of the most serious nature (akin to a criminal offence)



# Legal risks continued..

- » Human rights – becoming increasingly common for individuals involved in social media abuse to assert that their behaviour should be protected by:
  - › the right to respect their private and family life, as guaranteed under **Article 8** of the European Convention on Human Rights; and/or
  - › the right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas, under **Article 10** of the European Convention on Human Rights.



- » The ability of individuals to enforce their rights under the Human Rights Act 1998 (which incorporates the European Convention into UK legislation) depends on whether they are making a claim against a private or public sector organisation.

# Legal risks continued...

- » Reasonable expectation of privacy (Article 8):
  - It is highly questionable whether information that an individual makes freely available on an openly accessible website could reasonably be considered part of their 'private life'.
  - The argument that comments on social networking sites like Facebook are personal and thus protected under Article 8 of ECHR has so far been resoundingly rejected by courts and tribunals. For example, case of **Teggart v TeleTech UK Ltd** (Employment Tribunal)
  
- » Right to freedom of expression (Article 10):
  - In the case of **Preece v JD Wetherspoons plc** (Employment Tribunal), involving the posting by an employee of derogatory comments on Facebook about their employer and its customers, the tribunal found that the dismissal was justified regardless of the employee's rights under Article 10 in light of the risk of damage to the employer's reputation.

# Damage to organisation's reputation

Past cases have made it clear that any perceived risk to the organisation's reputation must be shown to have been real rather than merely assumed and fanciful.

- » Internal steps - case of ***Whitham v Club 24 Ltd t/a Ventura*** (Employment Tribunal)
- » Injunction – to have offending material removed
- » Libel proceedings - case of ***Applause Store Productions Limited and Mathew Firshet v Grant Raphael*** (High Court)

# Traversing the minefield

## » **Code of Conduct on the use of Social Media:**

- Needs to be concise and accessible/visible
- Set down clear standards of acceptable online behaviour
- Put students, employees and others associated with the university on notice of the potential consequences if those standards are not adhered to
- Must be well publicised
- Make clear the importance of adhering to the code whenever communicating with others within the community of the university or about the university
- Must be applied pro-actively (for example, by investigating reported misuse) and consistently

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