Beware the ‘curse’ of twitter – a warning for regulated professionals

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Beware the ‘curse’ of twitter – a warning for regulated professionals

In recent years the power of regulators has increased dramatically. All regulators are more proactive in taking enforcement action against individuals in breach of rules in previously uncharted areas, for example the personal use of Twitter. In recent months, the Solicitors Regulation Authority (SRA) issued clear communications regarding the high standards

of behaviour it expects from law firms and solicitors. For example, a Warning Notice regarding the use of threatening drafting in non-disclosure agreements. The SRA believes this could discourage individuals from making disclosures to regulators and law enforcement agencies. In addition, they issued guidance making it clear that instances of sexual harassment within law firms should be reported to the SRA.

Suspension of a solicitor because of a series of posts on Twitter

An example of enforcement action by the SRA demonstrates the power of regulators extends beyond the office into personal lives. The Solicitors Disciplinary Tribunal suspended Deborah Daniels for 18 months as a result of her activity on Twitter. This case is specific to solicitors, however all regulated individuals should understand how their online activity can affect regulatory status.

Sending offensive and wholly inappropriate tweets

In 2016 and 2017 Ms Daniels, a partner in a firm based in Yorkshire, sent a series of tweets from her personal twitter account. These tweets were, by her own admission, offensive and wholly inappropriate. In particular they expressed hostility towards and/or a hatred of Islam, Catholicism and Judaism. Similarly, she used the same twitter account to comment on photographs of a woman wearing a niqab and a drag artist/person of transgender in a way that was offensive, wholly inappropriate and/or discriminatory. Consequently, in doing so she breached two of the mandatory principles with which she was expected to comply. Namely 'act with integrity' and 'behave in a way that maintains the trust the public places in you and in the provision of legal services'.

The factor that justified the immediate suspension from practice was the content of one of the twitter posts. In March 2017, Ms Daniels commented on an article about a photograph of a woman wearing a niqab and a drag artist/transgender person

sitting together on the New York subway. Disapprovingly, her comment included the words ‘they both look stupid and unemployable and therefore pointless’.

Most importantly, the reference to them being ‘unemployable’ was particularly concerning for the Tribunal. During the hearing, Ms Daniels had been unable to provide reassurance that she did not discriminate based on appearance during recruitment to her firm. Accordingly, it found that there was a need to protect the public and a suspension order was necessary. As a result the Tribunal identified a link between an opinion posted online and the potential to cause harm to the public. Particularly if this opinion manifests itself in the recruitment of individuals into the legal profession.

Personal tweets

Although the tweets were sent from Ms Daniels’ personal twitter account, that account clearly identified her as a solicitor and the Tribunal found that they were capable of damaging (and did in this case damage) the trust placed in the legal profession by the public. The Tribunal accepted that tweets can be drafted and posted spontaneously, without regard for the wider ramifications. However, in this case Ms Daniels’ conduct was ‘persistent and protracted’ and it was ‘highly predictable’ that such behaviour would cause harm to the legal profession. Moreover, they did not accept the excuse that the ‘curse’ of twitter (being the ease with which users can post messages) was partly to blame for her actions.

Not paying regard to public opinion

An aggravating factor was that Ms Daniels continued to tweet inappropriate messages despite members of the public raising concerns both about the content of her twitter posts and that they were authored by a solicitor. On more than one occasion a member of the public tagged the SRA in a reply to one of Ms Daniels’ tweets, however she still did not cease. Consequently, the Tribunal found this to amount to serious

misconduct.

Ramifications of offensive personal tweets

This case serves as a useful reminder to regulated professionals that personal conduct has the ability to impact on their regulatory status, with potentially severe consequences including law enforcement. It is also consistent with case law in the Employment Tribunal. An employer can dismiss an employee fairly for conduct on Twitter and other personal social media accounts where the employer can be identified and therefore there is a risk of damage to its reputation.

BDBF are employment law specialists. If you have any queries about social media policies, please contact Clare Brereton, Associate on claretaylor@bdbf.co.uk or 020 3828 0350.

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