



# Social Media and The Law: Reloaded

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# Agenda

- New statistics
- New cases
- Any new conclusions?

# A Question of Scale

- Facebook ~~1.3 billion March 14~~ 1.49 billion MAUs (Aug15)
- Instagram 400m MAUs (Aug 15)
- But QQ is catching up (829m, Jan 15)

# A Question of Scale



# Who, What & When?

- 25 to 34, at 29.7% of users, is the most common age demographic
- Facebook users are 76% female and 66% male
- 4.5 billion likes generated daily as of May 2013
- 1 – 3pm midweek is top posting time

# General Principles

- Employment Rights Act 1996 Section 98(4)
- A potentially fair reason +
- Fairness - “in accordance with equity and the substantial merits of the case”
- The “band of reasonable responses”
- The importance of fair procedures

# ACAS Guidance

- Contrast serious reputational attacks and “letting off steam”
- Nature of Job & Seniority
- Seriousness of misconduct
- Nature of organisation
- Terms of any policy
- Disclosure of confidences
- Risk of reputational damage
- Impact on job
- Mitigating factors

# New cases

- **Williams v Leeds Utd FC**
- Employee under notice of redundancy
- Employer trawls email account
- Dismissal on basis of emails 5 years old?



# Texts

- **Mason v Huddersfield Giants**
- Text sent by 3<sup>rd</sup> party
- Wrongful Dismissal?
- Cf. unfair dismissal?

# Revenge Porn

- **Anecdotal evidence**
- Secondary School Teacher
- Victim of revenge attack - photos posted to FB
- School approached by parents – threat of dismissal
- Some other substantial reason?

# Texts & Consistency

- **MBNA v Jones (30.10.15)**
- Work function at Chester Races
- A punch followed by threatening texts
- Dismissal vs FWW?

# Facebook

- **British Waterways v Smith (Aug 15)**
- Remarks made about BWB on FB lead to internal mediation
- Manager digs out posts 2+ y/o including remarks about drinking on standby
- Permissible to rely on old (*known*) posts to dismiss?

# Facebook

- Trasler v B&Q
- Facebook criticisms of the employer
- Threatening? Gross misconduct?
- Contribution?
- Contrast with:

# Facebook

- **Weeks v Everything Everywhere**
- Facebook again
- Work, the Circles of Hell, and reputational damage
- Threats towards fellow colleague who tipped off the employer

# Reputational Risk: factors

Consider:

- How serious was the disclosure?
- How many people saw it?
- Who saw it?
- Were there complaints?
- Was the employer's identity clear?
- Was confidential information disclosed?

# Facebook – devil in the detail

## ➤ Blue v FSA

- Joining in on others' FB exchange regarding hitting a colleague:
- “Aye right, i wish.”
- Whether outside the band of reasonable responses



# Summarising the approach?

- See e.g. Lake v Amey (2015)
- A reluctance to set special principles in social media cases
- But the authorities are becoming clearer as to the sort of factors being taken into account
- See the Lake summary on IER's website

# End

➤ Social Media and the law will return...