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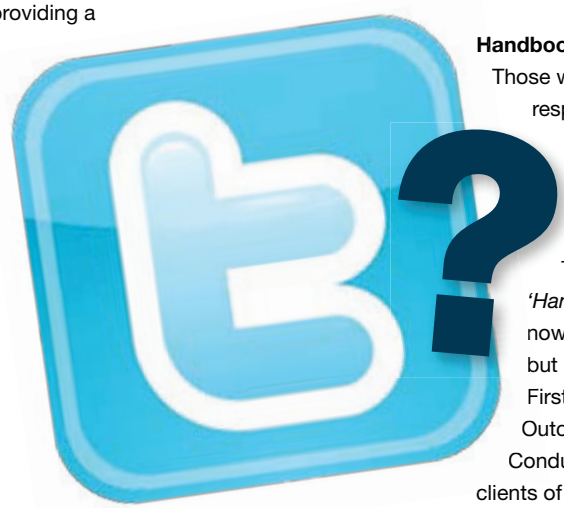
TO TWEET OR NOT TO TWEET?

Social media

It cannot have escaped the attention of even the most technophobic of lawyers that a communication revolution is under way. Those of us admitted in the 1980s have seen the implementation of faxes; the internet, e-mails and websites; text messaging; and now an array of *'social media'* devices such as Facebook, Twitter and Linked-in. All of these developments have enabled lawyers to communicate in new, and usually faster, means than before, but have also presented new challenges in ensuring that the core principles of providing a professional service to clients are safeguarded.



The main challenge presented to law firms by all such devices is that of client confidentiality (Outcome 4.1), which is all the more of an issue because the boundaries between acting for the firm and acting personally can easily become blurred. Furthermore, revealing to third parties that a named person is a client without their permission could amount to a breach of confidentiality – a real issue in relation to the increasingly common Linked-in professional networks. There are also problems of poor judgment, since it is all too easy to fire off an instant response which, once posted, is unlikely to be capable of being retracted. A related concern is the comments that personnel can make about their employers in chat rooms, risking reputational harm for the practice itself.

The Law Society has now issued a Practice Note on this topic (20 December 2011), which can be found on the Law Society website under *'Practice Support'*. The thrust of this note is to recommend the adoption of a suitable social networking policy, whilst recognising that a formal written policy might not be necessary in smaller firms. In due course, however, all Lexcel accredited firms will be required to do so as this has now been included in the new version of the standard (*'Lexcel v5'*) which was introduced at the start of the year.

Most firms would be well advised to address this issue if they have not done so already. The main steps are to appoint someone to take responsibility for it and then to set out what is permitted within the firm in relation to client information and communication, and also to set out the limits on what might be said about the firm, perhaps as an amendment to the employment contract.

Handbook Edition 2

Those with compliance responsibilities might wish to note that there is now a slightly revised version of the new SRA Handbook in place. The changes made in *'Handbook edition 2'*, as it is now referred to, are not great, but are worth a mention. First, there is clarification in Outcome 1.16 of the Code of Conduct that the duty to inform clients of any act or omission which could give rise to a claim against the firm is confined to current clients and does not therefore extend to former ones. The clarification was needed as a result of the definition of the term *'client'* in chapter 14 of the revised Code which includes *'where the context permits... prospective and former clients'*.

The other main changes of note are those that have been made to the Accounts Rules – now the *'SRA Accounts Rules'* in place of the former Solicitors Accounts Rules 1998. Along with some changes to reflect the ability for the SRA now to regulate the new alternative business structures, there has been clarification in relation to payments of client interest (Rule 22) and, in particular, the need to pay interest earned on a separate designated client account in full since tax will have been deducted at source. Firms that have not changed their terms of business so as to refer to a suitable policy as now required should be sure to do so as soon as possible. ■