



Top of the class

How schools can lead by example when it comes to online communications

Recent updates by the Teaching Council (the “**Council**”) and the Data Protection Commission (“**DPC**”) serve as a welcome reminder for schools on the use of social media by staff and the publication of content online.

Given the central role that social media and data protection play in our everyday lives, it is incumbent upon schools, having regard to employment and data protection obligations, to have in place appropriate policies and procedures to promote and ensure, in so far as is practicable, the responsible use of social media by staff and students alike.

While many teachers may consider the private use of social media to be unconnected to their employment and, as such, outside the scope of the school and their professional responsibilities, the Council’s Guidelines on the use of social media (the “**Guidelines**”) provide clear and welcome guidance for schools and teachers on the implications of social media use in this regard. The DPC has also recently highlighted its concerns in and around schools publishing content online.

In view of these updates, this article outlines the importance of developing and updating school policies and procedures to ensure compliance with best practice.

The Council’s Guidelines

While still in draft format, the Guidelines state that teachers should keep personal and professional social networking sites separate and should not communicate with students through personal social media. In particular, before posting anything online, teachers should ask themselves:

- “Might what I’m posting reflect poorly on me, my employer or my profession?”
- “Is this post for personal or professional reasons?”

- “Who will see this post? (Colleagues, parents, students etc.)”
- “Am I confident that the posting, if accessed by others (Colleagues, parents, students etc.) be considered reasonable and appropriate for a professional?”

While the Guidelines are framed as instructive, they should be read in conjunction with the Teaching Council Code of Professional Conduct, which states that teachers should:

“ensure that any communication with students, colleagues, parents, school management and others is appropriate, including communication via electronic media, such as e-mail, texting and social networking sites.”

It is worth bearing in mind that where a complaint of a serious nature is made to the Council which relates to one or more of the grounds set out in Section 42(1) of the Teaching Council Act 2001-2015, the matter can progress to an inquiry. These grounds include professional misconduct, poor professional performance and conduct contrary to the Code of Professional Conduct for Teachers.

While the Guidelines may assist a school when developing its policy on social media, they should not replace it. This was clearly demonstrated in the Labour Court decision of *William McCamley v Dublin Bus*,¹ where the respondent employer successfully defended a claim of vicarious liability by pointing to a workplace policy which prohibited conduct “...prejudicial to the reputation and welfare of fellow employees.”

¹ [2016] 27 ELR 81

Update from the DPC

In its recent update, the DPC² confirms that while the General Data Protection Regulation (“GDPR”) does not prohibit taking photos in public, for example at school events, it is when this photo is published in a newspaper or online, potential data protection issues can arise. Generally speaking, in this context schools will primarily rely on consent and/or legitimate interest as a lawful basis for the processing of data.

When a school seeks to publish a photograph of a student online, depending on the age of the student, the consent of the student and/or his/her parent/guardian will need to be obtained. Consent must be freely given, specific, informed and unambiguous. It must also be possible for the student and/or the parent/guardian to withdraw their consent at any time. Where the school claims to have a legitimate interest in the publishing of content which includes a student, this requires a balancing exercise to ensure that the rights and interests of a student are taken into account, especially where the student is a child.

It is natural that schools will want to publicise certain events such as the opening of new facilities or award ceremonies, however, it should carefully identify the appropriate legal basis in the particular scenario where photos are taken and published.

Takeaways

Schools should at all times be able to demonstrate an effective and robust social media policy which is consistent with best practice. This includes:

- clearly defining what is considered appropriate and inappropriate use of social media
- outlining the consequences of inappropriate social media use and when this may result in disciplinary action
- ensuring that staff are aware of the risks arising from the publication of online content in both a personal and professional capacity
- linking policies with each other in a consistent manner eg data protection policy, social media policy, communications policy etc

Our specialist Education Law Team regularly assist and advise education bodies in drafting and updating policies and has extensive experience advising on a range of employment and data protection related issues/disputes arising in the above context. Please feel free to contact any of our team members for advice.



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² DPC, “Taking photos at school events – Where common sense comes into play,” 12 April 2019

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