

Social media – should employers be forced to turn a blind eye?

By [Nathan Combes](#)

The latest research paper on workplaces and social networking published by ACAS[1] suggests that employers should not make use of social networking in the context of recruitment. That is all very well but is it realistic?

The use of social networking sites by individuals continues to grow at a rapid pace; with recent surveys revealing that there are presently 26 million Facebook users in the UK and that approximately half of all the UK's internet users now engage in social media dialogue in one form or another.

ACAS's report rightly highlights the various legal issues that can arise when an employer decides to access an employee's social networking profiles. In particular, the report seeks to dissuade employers from viewing individual social media profiles when short listing applicants for jobs. The report highlights the potential privacy and equality issues that can arise from employers using social media in this way.

In terms of privacy, the argument is that an employee's use of social media should effectively be viewed as a private activity and not one that the employer has any right to be interested in. I do not think that a blanket ban on employers accessing this type of information is realistic and doubt the accuracy of the report's suggestion that an individual's use of social media can always be characterised as a private activity. There are many different types of social media and I am inclined to think that it will be a futile exercise to expect employers to ignore them completely. Most social media sites allow individual users to limit the extent to which other users can view their content and so is it reasonable for individuals to expect information that is potentially available to millions of internet users to be treated by their existing or future employers as private/confidential; isn't this approach a little bit naïve and out of sync with the way that people actually use social media? Certainly, in so far as some social media sites are concerned there is a pressing need for individual privacy settings to be made easier for individuals to understand and control. However, ultimately can we really be surprised that employers are increasingly becoming interested in information which employees freely decide to place in the public domain?

For example, I am inclined to think that is legitimate for employers to take account of information gleaned from an individual's social networking profile to the extent that that information has been made public by the employee and is relevant to the decision of whether or not they should be offered employment. Would anyone really have an issue with an employee who is refused employment because of racist and/or homophobic comments made by them on social media sites? If I was in the business of employing people then I would think that it made absolute sense to use social media in this way (not least because arguably the decision not to offer employment to this type of individual in the first place will assist employers who are intent on creating a harmonious and diverse workforce).

ACAS's report goes on to suggest that an employer's use of social media during a recruitment process could lead to discrimination. That much is true and I can see why the larger organisations surveyed in ACAS's report (ACAS, BT and HMRC) might seek to outlaw the use of social media in this way. However, I think that it is unrealistic isn't it to expect smaller employers to follow suit. Arguably for these employers social media will provide a potentially useful tool for weeding out potentially unsuitable applicants and many of the individual's tasked with making recruitment decisions will be regular users of social media themselves. These individuals will appreciate that it is impossible to gain a full picture of an individual from their social media profile alone and that individuals at Board level and below tend to present a more relaxed side of themselves on their social media profiles. No doubt a minority will abuse the information that social media sites provides, discriminating against application on the grounds of their sex, race, politics, age etc but I think that the majority will use the information provided by social media (if indeed they choose to access it at all) responsibly in order to underline positive decisions that have already been made about applicants. In either case, the difficulty for applicants in the event that they object in principle to their social media sites being accessed is that they simply won't know that it has taken place.

Now, in case reading this piece had led you to conclude that I support employers making unfettered use of social media – I don't. Of course individuals have a right to expect that employers will not routinely and without good reason monitor their use of social media sites. However, employees also need to act responsibly and in my view there is presently a need for much greater emphasis to be placed on how individuals choose to use social media, the potential implications of that use and the fact that good first impressions count, whether a person in meeting you face-to-face or over the internet. We are at a very early stage in the development of social media. However, it is clear that social media has the potential to make information that we previously regarded as personal freely available. It is right that society is now debating the use of social media and discussions are being had about when it is legitimate for various organisations to seek to access that information and make use of it. However, shouldn't that debate also focus more closely on educating us as individuals so that we can make informed decisions about our individual use of social media and the information that we choose to share on it?

[1] Andrea Broughton, Tom Higgins, Ben Hicks and Annette Cox (The Institute for Employment Studies) 'Workplaces and Social Networking – The Implications for Employment Relations' [2011] Ref: 11/11

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