

## EXTRACT FROM UK ICO'S GUIDANCE ON SOCIAL NETWORKING AND ONLINE FORUMS<sup>1</sup>

### RUNNING AN ONLINE FORUM OR SOCIAL NETWORKING SITE

#### Establishing the extent to which the person or organisation running the site is a data controller

26. The first issue a person or organisation that runs a social networking site or other online forum needs to consider is the extent to which they are a data controller.

27. The DPA states that:

Data controller means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are to be, processed

28. In relation to any contact information, or other personal data that the site operator processes about its own users or subscribers, it will clearly be a data controller and will need to comply with the DPA.

29. In relation to any personal data that is posted on its site by third party subscribers the issue is less clear cut.

In *The Law Society and Others v Rick Kordowski (Solicitors from Hell)* [2011] EWHC 3185 (QB) Mr Kordowski set up and ran a website on which members of the public were invited, to 'name and shame' 'Solicitors from Hell'. He moderated posts and charged for fee for adding or removing them. Mr Justice Tugendhat had no hesitation in accepting that Mr Kordowski was a data controller under the DPA and this was not disputed by any party. It was clear in the circumstances that Mr Kordowski decided the purposes and manner in which the personal data was processed.

30. In other cases the forum might be provided free of charge or the person or organisation running the site might take much less of a role in moderating content. For example, members of many large social networking sites are able to add posts directly to the site without first having them checked by a site moderator.

31. However, even if the content is not moderated before posting this does not necessarily mean that the person or organisation running the site isn't a data controller. If the site only allows posts subject to terms and conditions which cover acceptable content, and if it can remove posts which breach its policies on such matters, then it will still, to some extent, be determining the purposes and manner in which personal data is processed. It will therefore be a data controller.

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<sup>1</sup> Extracted from the UK ICO's full [guidance](#) by Governance Services on 03/07/2013

## Reasonable Steps to Ensure the Accuracy of Personal Data

32. If the person or organisation running the site is a data controller for the content that it allows third parties to post then it will need to comply with the following provisions of the DPA.

### Schedule 1: Part I

4. Personal data shall be accurate and, where necessary, kept up to date.

### Schedule 1: Part II

7. The fourth principle is not to be regarded as being contravened by reason of any inaccuracy in personal data which accurately record information obtained by the data controller from the data subject or a third party in a case where –

- (a) Having regard to the purpose or purposes for which the data were obtained and further processed, the data controller has taken reasonable steps to ensure the accuracy of the data, and
- (b) If the data subject has notified the data controller of the data subject's view that the data are inaccurate, the data shall indicate that fact.

### Part IV

70(2) For the purposes of this Act data are inaccurate if they are incorrect or misleading as to any matter of fact

33. This means that when a data controller runs an online forum it has a responsibility to take reasonable steps to check the accuracy of any personal data that is posted on its site by third parties and is presented as a 'matter of fact'.
34. Expressions of opinion will not qualify as matters of fact. So, for example, a post which records someone's age or date of birth may be 'incorrect or misleading as to any matter of fact', but a post which gives an opinion on how old someone looks cannot be.
35. What are considered to be reasonable steps for the person or organisation running the site to take will depend on the nature of the site and how active a role the data controller takes in selecting, allowing or moderating content. There may also be a higher expectation where children are the primary users of the site; for further information on this please read our Personal information online code of practice.

36.

Returning to *The Law Society and Others v Rick Kordowski (Solicitors from Hell)* [2011] EWHC 3185 (QB) discussed above.

It was clear that it was Mr Kordowski who decided what content would and would not be included on the site and posts could not be made without his approval. He did not, however, claim to check the accuracy of the posts that he allowed, and the judge noted that “no suggestion is made by him that the words complained of are true or that they are honest opinion”. Although the data subjects had advised Mr Kordowski that they considered the posts about them to be inaccurate he had made no attempt to add this information to the site, or to remove the original postings.

In the circumstances of this case, it is clear that the fourth principle of the DPA had been breached. Given the role Mr Kordowski adopted in deciding what content to publish, the steps he took to ensure accuracy were not reasonable. He also failed to indicate when data subjects disputed the accuracy of the posts.

37. Our expectation of ‘reasonable steps’ would, however, vary depending on the individual circumstances of the case. For example, in a situation where the vast majority of the site content is posted directly by third parties, the volume of third party posts is significant, site content is not moderated in advance and the site relies upon users complying with user policies and reporting problems to the site operator, we would not consider that taking ‘reasonable steps’ requires the operator to check every individual post for accuracy.
38. We would consider ‘reasonable steps’ for a data controller running this type of social networking site to include the following:
- Having clear and prominent policies for users about acceptable and non-acceptable posts
  - Having clear and easy to find procedures in place for data subjects to dispute the accuracy of posts and ask for them to be removed
  - Responding to disputes about accuracy quickly, and having procedures to remove or suspend access to content, at least until such time as a dispute has been settled.
39. A person or organisation running such a site might wish to set up a mechanism which allows it to add a note to a post indicating that the data subject disputes its factual accuracy. In practice however, it will probably be more practical for the site to simply remove or suspend access to the disputed post in this type of situation.

## **ICO INVOLVEMENT IN COMPLAINTS AGAINST THOSE RUNNING SOCIAL NETWORK SITES, ORGANISATIONS AND INDIVIDUALS**

40. We would expect a person or organisation running a social networking site or online forum to have policies in place that are sufficient to deal with:
- complaints from people who believe that their personal data may have been processed unfairly or unlawfully because they have been the subject of derogatory, threatening or abusive online postings by third parties;
  - disputes between individuals about the factual accuracy of posts; and

- complaints about how the person or organisation running the site processes any personal data (such as contact details) given to it by its users or subscribers.
41. We will advise members of the public who approach us about any type of unfair or inaccurate posting about them to do one or more of the following in the first instance:
    - Follow the website's procedure for dealing with inaccurate unfair or derogatory postings,
    - Contact the website administrator,
    - Take the matter up directly with the organisation or individual who has posted the personal data, if they feel this would be appropriate
    - If it is alleged that a posting is libellous, threatening or constitutes harassment then consider taking legal advice or contacting the police.
  42. The ICO will not consider complaints made against individuals who have posted personal data whilst acting in a personal capacity, no matter how unfair, derogatory or distressing the posts may be. This is because where an individual is posting for the purposes of their personal, family household or recreational purposes the section 36 exemption will apply.
  43. The ICO will consider complaints about posts made by businesses, organisations, or individuals acting for non-domestic purposes in the normal way, using a proportionate approach. Further information about our how we do this can be found on the Complaints page of our website.
  44. Where we believe it is necessary and proportionate in order to promote compliance with the DPA, we may work with a person or organisation running a site to ensure its policies and procedures for dealing with complaints and disputes about the content that it allows are adequate. Only where the person or organisation is a data controller will we consider complaints about a site's failure to deal with an individual complaint.

## **OTHER CONSIDERATIONS**

45. Even if section 36 does not apply it is possible that another exemption might.
46. As mentioned above there is an exemption at section 32 from certain provisions of the DPA. This would apply if a data controller posted personal data on an online forum:
  - for one of the special purposes of journalism, art and literature
  - in the reasonable belief that publication would be in the public interest; and
  - in the reasonable belief that compliance with the provision of the DPA in question would be incompatible with the special purposes.
47. Additional guidance is available on our guidance pages if you need further information on other parts of the DPA. Further guidance on section 32 of the Act will shortly be produced following a recommendation from the [Leveson Inquiry into the culture, practice and ethics of the press](#).
48. You may also find it helpful to read our [Personal Information online code of practice](#).