

CARELESS WHISPERS

The manner in which the unknown crime writer Robert Galbraith was recently unmasked as J K Rowling, and the furore that followed that revelation, has served as a stark reminder of the danger of being tempted to share a client's confidences with others.

Christopher Gossage, a partner in the law firm instructed by J K Rowling, had confided the author's true identity to his wife's best friend, making the disclosure in what he believed to have been a 'private conversation' and 'in confidence to someone he trusted implicitly'. The reality is that there is no such thing as 'a private conversation' or speaking 'in confidence' in the same way that there is no such thing as 'off the record' (see [bulletin 06/05](#) Off The Record – Can You Keep A Secret?) As soon as the information had been imparted Mr Gossage was in breach of duty and it was just a question of whether or not he would be found out. Once upon a time he would probably have got away with it but social media has changed all that. His wife's friend shared the news with a journalist on twitter and Mr Gossage had to come clean. This resulted in a rebuke and a £1,000 fine by the Solicitors' Regulation Authority and his law firm also paid substantial damages in settlement of legal proceedings brought by J K Rowling. The embarrassment factor was, of course, unquantifiable.

This serves as a reminder to all professionals, including insurance brokers, to take their confidentiality obligations seriously - not just in terms of document management but also in casual conversation. Most brokers appreciate that their document management system needs to recognise the obligations owed to clients, and to other parties where such obligations have been assumed contractually. The problem is that the best document management system in the world will not protect a broker who adopts a cavalier approach to the rules when discussing client business. Much confidential information gleaned from clients will be of little interest to anyone, making it very easy for the broker to respect his confidentiality obligations. However the same professionalism must be afforded to the well-known figure with an interesting medical history, or the high-profile business about to be taken over by another, where the temptation to let slip some details is perhaps more obvious.

Mr Gossage fell into the trap of thinking that he could safely spill the beans about his famous client's well kept secret, because of who he was speaking to. Bending the rules in this way is always going to result in a breach of duty and hence to an E&O exposure heightened by the reach of social media. Added to that is the reputational damage which in the long term may prove the more costly.

RISK MANAGEMENT MESSAGE

- Ensure your document management system is developed with confidentiality obligations in mind, including any that may have been contractually assumed (see Document Management Guideline sections 3.12 – 3.14);
- Remember that confidentiality obligations are not limited to documents but equally apply to discussions about information concerning a client;
- Obtain client consent before releasing, verbally or otherwise, any information received from, or concerning, a client to another party;

- Do not be tempted to relax the rules depending on the identity of the recipient of the information – if someone is not entitled to receive information then do not disclose it to them without client consent;
- Remember it is irrelevant whether you consider a conversation to be private/in confidence or otherwise - if the recipient is not entitled to the information the duty of confidentiality will have been breached.
- Social media means that information spreads widely and quickly, and has significantly increased the possibility that any breach will come to light, with the resultant E&O exposure.
- There is also a considerable reputational risk associated with being caught – would you trust a broker known to have gossiped about the affairs of other clients?

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