

CURRENT GUIDANCE

Valid from: 20 September 2023

September 2023

BSB guidance for barristers using social media

Introduction

1. The BSB recognises that you are likely to want to use social media for a variety of personal/private and professional reasons. However, your obligations as a barrister mean that you must also act in a way that complies with the BSB Handbook.
2. We have written this guidance to help you understand your duties under the BSB Handbook as they may apply to your use of social media. This applies to you in both a professional and personal/private capacity.
3. In relation to your personal/private social media use or where you might use social media in a professional capacity other than as a barrister, you should also have regard to our [‘Guidance on the Regulation of Non-Professional Conduct’](#), which sets out what we will consider when assessing whether we are likely to have a regulatory interest in non-professional conduct. In general terms, the closer your non-professional conduct is to your professional activities as a barrister, workplace or relationships and/or the more it reflects how you might behave in a professional context, the more likely we are to have a regulatory interest in it.
4. Where case studies are used in this document, they are used for illustrative purposes only. Whether or not such or similar conduct engages our regulatory interest or amounts to a potential breach of the BSB Handbook depends on a close analysis of the particular facts on a case-by-case basis.

General principles

5. Social media use includes (but is not limited to) posting or commenting on material online, sharing content, promoting your business as a barrister, or networking. This might be on social networking sites like Facebook, Instagram, LinkedIn or Twitter/X, content communities such as YouTube, or online forums. However, the principles from the BSB Handbook, case law and statute which are discussed in this guidance may also be relevant to other forms of communication.

6. We recognise that you may want to participate in online debate and discussion on a range of issues, including matters of general public importance. The BSB also understands that your use of social media is likely to engage your right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR)¹, which includes the right to hold and express opinions and to receive and impart information and ideas. However, Article 10 is a qualified right which must be balanced against other rights and values protected by the ECHR (such as the rights and reputations of other members of the profession or consumers of barristers' services).
7. The European Court of Human Rights has recognised that lawyers, by virtue of their profession, have a special status which justifies placing certain restrictions on their conduct:

“...the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. Such a position explains the usual restrictions on the conduct of members of the Bar... Regard being had to the key role of lawyers in this field, it is legitimate to expect them to contribute to the proper administration of justice, and thus to maintain public confidence therein.”²
8. We may consider taking regulatory action against you where your conduct on social media is such that it is potentially in breach of the BSB Handbook. The BSB is more likely to have a regulatory interest in social media use where the *manner* in which you express yourself is inconsistent with your obligations under the BSB Handbook. We are less likely to have an interest in the *substance* of the views that you hold (however unpopular they may be). However, there may be cases where the views or opinions that you express may mean that regulatory action is justifiable, for example, where you post material online which is dishonest or discriminatory.
9. For example, conduct which is discriminatory may demonstrate a barrister's attitude towards people from certain groups (particularly minoritised and/or vulnerable groups) and might indicate how the barrister will interact with those people in the future, including how they may provide legal services to them. Such conduct may also alienate clients, future clients, and members of the public who identify as part of those groups and make them feel uncertain about engaging the barrister and/or the profession or trusting that the barrister and/or the profession will act in their best interests. This could be seen as a risk to access to justice, and it is therefore likely to be in the public interest to regulate such conduct.

¹ See s1 and Schedule 1 to the Human Rights Act 1998.

² Nikula v Finland (2004) 38 EHRR 45.

10. Before taking any regulatory action in relation to your use of social media, we will consider each matter in line with the processes explained on our website. We will also take this guidance into account, while having regard to your Article 10 rights and any other rights that may be engaged (for example, Article 8 (the right to respect for private and family life, home and correspondence) or Article 9 (the right to freedom of thought, conscience and religion)). We will undertake a careful balancing exercise in each case to determine whether any proposed regulatory action is justified.

Case Study 1

We receive a report about a barrister (**B**) using a racist slur on Twitter/X when responding (in opposition) to a post by another user, who is Black, who had invited a local authority to remove a public statue of a historical figure who had profited from the Transatlantic slave trade. B identifies as a barrister in her Twitter/X bio.

As this conduct occurred in B's non-professional life, we would first have regard to the 'Guidance on the Regulation of Non-Professional Conduct' to determine whether we have a regulatory interest in B's conduct. The use of racist language targeted at an individual in an online, public social media post in which it is easy to identify B as a barrister means B's conduct is likely to be sufficiently relevant or connected to the standing of the profession and potentially engages **CD5**. As such, we are likely to have a regulatory interest in this conduct. We would have regard to B's Article 8 and Article 10 rights before taking any regulatory action to ensure any interference is justified.

What rules of the BSB Handbook are relevant to this Guidance?

11. If you use social media whilst acting in a professional capacity, your conduct could bring into question your compliance with certain Core Duties and Conduct Rules in the BSB Handbook that apply to you when you are practising or otherwise providing legal services.³ These include:
 - **Core Duty 3:** You must act with honesty, and with integrity.
 - **Core Duty 5:** You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.
 - **Core Duty 6:** You must keep the affairs of each client confidential.
 - **Core Duty 8:** You must not discriminate unlawfully against any person.

³ See the definition of "legal services" in Part 6 of the BSB Handbook.

12. The term “*practising*” is to be interpreted broadly and includes all activities, including the business-related activities, of a practising barrister.⁴
13. However, if you use social media outside your professional life, your conduct could still bring into question your compliance with certain Core Duties and Conduct Rules in the BSB Handbook which apply to you at all times and so you should always be mindful of what you post or share online. Of the rules that apply to you at all times, the ones that are most likely to be relevant to your use of social media include:
 - **Core Duty 5:** You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.
 - **Rule C8:** You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4).
14. **Remember that CD5 and rC8 apply to you at all times, even if you are an unregistered barrister.** However, the rules that apply to practising barristers, such as CD3, CD6, and CD8, will also apply to unregistered barristers if they are practising in accordance with rS9 of Part 3 of the BSB Handbook (ie if they are supplying, or offering to supply, legal services and hold themselves out as a barrister). Unregistered barristers should read our [‘Unregistered Barristers Guidance’](#) for more information on how the BSB Handbook applies to them.

What type of conduct may be in breach of the BSB Handbook?

15. In general terms, any conduct on social media which might be said to be inconsistent with the standards expected of barristers may amount to a breach of the BSB Handbook.
16. The inherently public nature of social media means that anything you post online could theoretically be at risk of being read by anyone and could be linked back to your status as a barrister, regardless of whether you identify yourself on social media as a barrister. This exposure can have an impact on the extent to which public confidence in you or the profession is likely to be diminished by your use of social media. Posts or comments visible only to a limited audience may nevertheless amount to a potential breach of the BSB Handbook because there is a risk they could resurface or be shared more widely than intended (such as through saving or screenshotting).

⁴ See the definition of “practice” in Part 6 of the BSB Handbook.

17. Given the potentially wide scope of conduct that might engage relevant provisions of the BSB Handbook, it is not possible to provide an exhaustive list of the types of conduct that might amount to a potential breach. You should therefore at all times consider whether your conduct risks contravening any of the Core Duties and Conduct Rules which apply to you, bearing in mind any other relevant BSB guidance.
18. The following is a non-exhaustive list of examples of the types of conduct on social media that may amount to a breach of the BSB Handbook, depending on the particular circumstances and the risk posed to the regulatory objectives:⁵
- Posting material online that is dishonest, as this may be a breach of **CD3**, **CD5** and/or **rC8**.
 - Making comments that target a person or groups of people which are seriously offensive, discriminatory, harassing, threatening, or bullying. Comments of this nature may be a breach of **CD5** and/or **rC8**. This includes making comments which are of an indecent, obscene, or menacing character or which are gratuitously abusive. However, the use of foul language alone is unlikely to amount to a breach of the BSB Handbook.
 - Sharing communications or hyperlinks to content posted by others which are seriously offensive, discriminatory, harassing, threatening or bullying, without making it clear that you disagree with the content, as this may be taken as an endorsement of that content. Such conduct may be a breach of **CD5** and/or **rC8**.
 - Comments about judges, the judiciary, or the justice system which involve gratuitous attacks or serious criticisms that are misleading and do not have a sound factual basis.⁶ Comments of this nature may be a breach of **CD1**, **CD3**, **CD5**, **rC8** and/or **rC9**.
 - You should also be alive to the potential risks to your ability to keep the affairs of your client confidential (**CD6**) when you are using social media. Such risks could arise if you send confidential communications to a client over social media in circumstances where confidentiality cannot be guaranteed, or if you reveal your location on social media at a particular time, thereby linking you to a particular

⁵ s1 of the [Legal Services Act 2007](#).

⁶ See [Morice v France](#) (2016) 62 EHRR 1 and [Ottan v France](#) (Application no. 41841/12).

client (perhaps via a 'geotagged' status, update, or post). You should familiarise yourself with the settings of the social media you use, as well as any privacy policies.

Case Study 2

We receive a report about a male barrister's (**B**) conduct on LinkedIn, in which, over a period of months, he publicly commented and posted about a female barrister (**F**). Both B and F use LinkedIn for networking and marketing opportunities in relation to their practice as barristers.

The report indicates that B and F know each other professionally, having represented opposing parties in a long-running civil litigation case, which concluded shortly before B started commenting and posting about F. F's client was successful in that claim. It is reported that whenever B writes about F on LinkedIn, it is always in response to content F has posted herself, including her comments on posts made by others whom B does not know. In doing so, B tends not to engage with the substance of F's posts (whatever they may be), but instead mounts a personal attack on F's character and credibility as a barrister. For example, B often alleges that F lied in the civil litigation case to win her client's case, aggressively belittles her intelligence, and uses derogatory and sexist terms. F alleges that this is a campaign of harassment against her due to the ongoing nature of the conduct.

Although this conduct occurred on a professional social networking platform, which B joined and used in a professional capacity (for example, to advertise his services and to network) we would need to consider the facts carefully to assess whether the conduct occurred while 'practising' or 'otherwise providing legal services' (and thus potentially engaging all of the Core Duties and Conduct Rules in the BSB Handbook).

However, in any event, B's series of posts, spanning a number of months, may amount to bullying, harassing and sexist behaviour and may engage **CD5**. We are likely to have a regulatory interest in such conduct. We would have regard to B's Article 8 and Article 10 rights before taking any regulatory action to ensure any interference is justified.

Case Study 3

We receive a report about a barrister's (**B**) conduct on social media, specifically regarding his involvement in an anonymous Instagram account "@theanonymouslawyer".

@theanonymouslawyer is a public Instagram account that posts about legal issues and high-profile cases and has several thousand followers. B's ownership of the account was exposed by a legal journalist on Twitter/X. Another barrister (**K**) reported that B published a series of posts and stories about K on @theanonymouslawyer which contained untruthful statements that K had lied about their academic history, which K claims are part of a "smear campaign". K provided evidence with their report proving B's statements were untrue.

As this conduct occurred in B's non-professional life, we would first have regard to the 'Guidance on the Regulation of Non-Professional Conduct' to determine whether we have a regulatory interest in B's conduct. The posting of false and misleading content about another barrister in a public online environment is likely to be sufficiently relevant or connected to the practice or standing of the profession and potentially engages **rc8** and **CD5**. As such, the BSB is likely to have a regulatory interest in such conduct. We would have regard to B's Article 8 and Article 10 rights before taking any regulatory action to ensure any interference is justified.

What will the BSB consider when assessing whether conduct on social media may be in breach of the BSB Handbook?

19. In considering a potential breach of the BSB Handbook relating to your conduct on social media, we will take into account:
 - a. How a hypothetical, ordinary reasonable person⁷ would be likely to respond to your conduct, having regard to the wider context in which it occurred. This will involve an objective assessment based on the "natural and ordinary meaning" of what you post. The social media platform which you use may also be relevant. The views and/or reaction of any individual who reported the conduct to us, while potentially relevant, is unlikely to be determinative.

⁷ See, for example, *Jeynes v News Magazines Ltd & Anor* [2008] EWCA Civ 130, *Koutsogiannis v The Random House Group* [2019] EWHC 48 (QB), and *Sivananthan v Vasikaran* [2022] EWHC 837 (QB).

- b. The substance of what you post (including the type of speech engaged, such as whether it is “mere gossip”⁸ or contributes to a debate in the public interest⁹). We recognise that political speech is afforded the highest level of protection under Article 10 and is something in which we are unlikely to have a regulatory interest. However, we are likely to have a regulatory interest in conduct which is not afforded the protections guaranteed by Article 10, by virtue of Article 17 ECHR (ie conduct which is aimed at the destruction of the rights and freedoms of others). Case law from the European Court of Human Rights has found that this includes extreme or grave forms of hate speech, a threat of or incitement to violence, xenophobia, racial discrimination, Antisemitism,¹⁰ Islamophobia¹¹ and Holocaust denial.¹²
- c. The manner in which you express your views (including the language used), the mode of publication, and the broader context. While the right to hold a view and say something may be protected by Article 10, if there is something objectionable about the manner in which it is expressed, this could be a potential breach of the BSB Handbook and therefore we may have a regulatory interest in your conduct.
- d. The impact of your conduct. This may include the impact on individuals or organisations, and/or on public trust and confidence in you or the profession. The purpose behind your conduct may not always be relevant.

⁸ Khan v Bar Standards Board [2018] EWHC 2184 (Admin).

⁹ Vajnai v Hungary (2010) 50 EHRR 44.

¹⁰ Pavel Ivanov v Russia (dec.) (2007) 35222/04.

¹¹ Norwood v the United Kingdom (dec.) (2004) 23131/03; Seurot v France (dec.) (2004) 57383/00.

¹² See Lehideux and Isorni v. France (1998) at [47], M'Bala M'Bala v. France (dec.) (2015) 25239/13, Garaudy v. France (dec.) (2003) 65831/01 and Witzsch v. Germany (no. 2) (dec.) (2005) 7485/03.

Case Study 4

We receive a report that a barrister (**B**) has posted a series of posts in a private Facebook group in which she is highly critical of the actions of the government of a foreign country. The reporter, who is from that country, expressed concerns that the posts indicate that B may not be able to represent properly clients who are also from that country.

As this conduct occurred in B's non-professional life, we would first have regard to the 'Guidance on the Regulation of Non-Professional Conduct' to determine whether we have a regulatory interest in B's conduct. B's posts were of a political nature, were aimed at a government, and did not target individuals or deploy seriously offensive or discriminatory language. As such, B's conduct is unlikely to be sufficiently relevant or connected to the practice or standing of the profession and we are unlikely to have a regulatory interest in it.

B's posts are also likely to be protected by her Article 8 and Article 10 rights, and as B's views are political in nature, they are likely to attract a high degree of protection. Interference with B's rights is unlikely to be justifiable in these circumstances.

Further support

20. You (and, where appropriate, your clerks and other staff connected with barristers' professional practices) can contact the Bar Council's confidential Ethical Enquiries Service on 020 7611 1307 or Ethics@BarCouncil.org.uk to obtain assistance with identifying, interpreting and complying with professional obligations under the BSB Handbook.

September 2023
Bar Standards Board