

Social Media Guidance

1. The BSB recognises that you are likely to want to use social media for a variety of 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. Although your right to freedom of expression is protected under the Human Rights Act 1998 (Article 10 of the European Convention on Human Rights (“**ECHR**”)), Article 10 is a qualified right which must be balanced against other rights and values guaranteed by the ECHR (such as the rights and reputation of other members of the profession or consumers of barristers’ services).
3. 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:

“...that 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.”¹
4. The BSB may consider taking regulatory action against you where your conduct is potentially in breach of the standards set out in the BSB Handbook and such action is proportionate and justifiable in all the circumstances. We will undertake a careful balancing exercise on a case-by-case basis to determine whether any proposed regulatory action that may interfere with your Article 10 rights is justified and proportionate.
5. The BSB has written this guidance to help you understand your duties under the BSB Handbook as they apply to your use of social media. This applies to you in both a professional and personal capacity.
6. Social media use includes posting material online, private messages to individuals, organisations or groups, sharing content, promoting your business as a barrister, or networking. This might be on social networking sites like Facebook, LinkedIn or Twitter, content communities such as YouTube, or Internet forums.
7. If you are the subject of a report concerning your use of social media, the BSB will consider the matter carefully and in line with the processes explained on the BSB’s website and will take this guidance into account, while also having regard to your Article 10 rights.
8. 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.

¹ Nikula v Finland (2004) 38 E.H.R.R. 45.

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

9. If you use social media whilst acting in a professional capacity, your conduct could bring into question your compliance with certain Core Duties and rules in the BSB Handbook that apply to you when you are practising or otherwise providing legal services.² 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.
10. The term “*practising*” is broadly defined in the BSB Handbook. It includes all activities, including the business-related activities, of a practising barrister.
11. Given the very public nature of social media, it is not always easy to say whether comments made on social media are made in one’s professional or non-professional capacity. However, if you do use social media outside your professional life and the nature of the communication is private, your conduct could still bring into question your compliance with certain Core Duties and rules in the BSB Handbook which apply to you **at all times**. Such rules 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).

Case Study 1

The BSB receives a report that a barrister has sent seriously offensive private messages on LinkedIn to a person with whom the barrister had recently “connected” on the platform (but did not know offline).

As this conduct occurred on a professional social networking platform, which the barrister joined and used in a professional capacity (e.g. to advertise their services and network) we would regard this conduct as having occurred in a professional capacity (as we consider it is a business-related activity of a practising barrister). This means that the provisions of the BSB Handbook that apply when ‘*practising*’ or ‘*otherwise providing legal services*’ are relevant. The conduct involves seriously offensive communications for which the barrister is likely to be regarded as in breach of the duty to act with integrity (**CD3**) and to not behave in a way which is likely to diminish the trust and confidence the public places in them or the profession (**CD5**).

12. **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 (i.e. if they are supplying, or

² Both the terms “practising” and “legal services” are defined in Part 6 of the BSB Handbook.

offering to supply, legal services and hold themselves out as a barrister). Unregistered barristers should read our '[Unregistered Barristers Guidance](#)' for more information.

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

13. 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. For example, your conduct on social media may demonstrate a lack of integrity, it may breach client confidentiality, or it may be conduct which is likely to diminish the trust and confidence which the public places in you or in the wider profession.
14. 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 degree of 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.
15. 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 rules which apply to you.

Case Study 2

The BSB receives a report that, during the course of a court hearing, a barrister sent a group WhatsApp message to several people involved in the proceedings (including the instructing solicitors and the client) about the case. At the time the message was sent, the barrister's client was sworn in and was still involved in giving evidence as a witness.

Unless the court had given its permission for the communication, the barrister would likely have breached **CD3** and/or **Rule C9.5** when communicating with their client about the case while the client was giving evidence. This conduct could also be a potential breach of **CD5** and/or **Rule C8**.

16. The following is a non-exhaustive list of examples of types of conduct on social media that may amount to a breach of the BSB Handbook depending on the particular circumstances:
 - 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 **Rule C8**. 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.
 - Making comments that are critical of judges or the judiciary beyond what is "discreet, honest and dignified"³, that are insults, or that are so serious that they overstep the

³ [Steur v Netherlands](#) (2004) 39 EHRR 33 at [38].

permissible expression of comments without a sound factual basis⁴, as this may be a breach of **CD1, CD3, CD5, rC3** and/or **rC8**.

- Sending confidential communications to a client over social media where confidentiality cannot be guaranteed, as this could risk breaching your duty to keep the affairs of each client confidential (**CD6**).

Case Study 3

The BSB receives a report about a barrister who frequently tweets about their gender critical views using their personal Twitter account. A transgender woman (who openly states their transgender status in their Twitter profile) responded to one of the barrister's tweets, challenging their views. The barrister then sent several tweets directed at the transgender woman, in which the barrister deliberately misgendered and threatened them.

In this case, the barrister's conduct in specifically targeting the transgender woman, threatening, and intentionally misgendering them are likely to be considered seriously offensive and discriminatory. This conduct could diminish public trust and confidence in the barrister and/or the profession (and thus be a breach of **CD5**) and/or could reasonably be seen by the public to undermine the barrister's integrity (and thus be a breach of **Rule C8**).

17. You should also be alive to the potential risk of revealing on social media that you are in a particular location at a particular time (perhaps via a "geotagged" status, update, or post), as this may inadvertently provide a link between you and a particular client. This could risk breaching your duty under **CD6**, which requires you to keep the affairs of your client confidential. You should check the settings of the social media you use, as well as any privacy policies.
18. There are certain types of conduct which we consider are likely to be a breach of **CD3, CD5, CD8** and/or **rC8**. This is conduct which is not afforded the protections guaranteed by Article 10 ECHR, by virtue of Article 17 ECHR (i.e. 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,⁵ Islamophobia,⁶ and Holocaust denial.⁷
19. Expressing a view on something could also impact others and may amount to a breach of the BSB Handbook if it diminishes public trust and confidence in the barrister or in the profession as a whole (**CD5**). For example, conduct which might demonstrate how a barrister perceives certain groups (eg where a barrister expresses discriminatory views) might alienate members of the public who identify themselves as part of that group and make them feel uncertain about engaging a barrister or trusting that the profession will act in their best interests.

⁴ *Morice v France* (2016) 62 EHRR 1 at [139].

⁵ *Pavel Ivanov v Russia* (dec.) (2007) 35222/04.

⁶ *Norwood v the United Kingdom* (dec.) (2004) 23131/03; *Seurot v France* (dec.) (2004) 57383/00.

⁷ *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; *Witzsch v. Germany* (no. 2) (dec.) (2005) 7485/03.

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

20. In considering a potential breach of the BSB Handbook relating to your conduct on social media, the BSB will take into account:

- a. How a hypothetical, ordinary reasonable reader/listener/viewer would be likely to respond to your conduct on social media, having regard to the wider context in which it occurred. This will involve an objective assessment based on a “natural and ordinary meaning” of what you post. The social media platform which you used may also be relevant. Case law⁸ tells us that the hypothetical reader is neither naïve nor suspicious; is able to read between the lines and pick up an implication; is allowed a certain amount of loose thinking without being avid for scandal; and does not, and should not, select one bad meaning where other meanings are available. The views and/or reaction of any individual who reported the conduct to us, while potentially relevant, is unlikely to be determinative.
- b. The content of your conduct (including the type of speech engaged, such as whether it is “mere gossip”⁹ or contributes to a debate in the public interest¹⁰), the manner in which it was expressed (including the language used), the mode of publication, and the broader context. While the right to hold and say something may be protected by Article 10, the manner in which it is expressed could be a potential breach of the BSB Handbook and therefore we may have a regulatory interest in it.
- c. 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.

Case Study 4

The BSB receives a report that a barrister has posted a series of tweets on Twitter in which they were highly critical of various domestic political figures and the current government. The reporter has concerns that the tweets indicate that the barrister will not be able to represent clients independently who hold opposing political views.

As the content of the barrister’s expressions in this case are of a political nature, which sits at the top of the hierarchy of free speech values, the barrister’s Article 10 rights are engaged. The manner in which the barrister expressed those views in this case was not in breach of the standards set out in, or necessarily implicit from, the BSB Handbook (e.g. they were not seriously offensive). Further, a barrister expressing their political opinion on social media does not necessarily mean they cannot independently represent a client in a case where the subject matter is political or where the client has opposing political views. The BSB is unlikely to have a regulatory interest in this conduct.

⁸ See, for example, Jeynes v News Magazines Ltd & Anor [2008] EWCA Civ 130, Koutsogiannis v The Random House Group [2019] EWHC 48 (QB), and Sivanathan v Vasikaran [2022] EWHC 837 (QB).

⁹ Khan v Bar Standards Board [2018] EWHC 2184 (Admin).

¹⁰ Vajnai v Hungary (2010) 50 E.H.R.R. 44.

21. If you use social media whilst you are acting in a non-professional context, we will also consider the matters set out in the '*Guidance on the Regulation of Non-Professional Conduct*' when considering whether we have a regulatory interest¹¹ in your conduct. In particular, we may have a regulatory interest in your conduct where:

- a. it involves criminal conduct which you have a duty to report promptly to the BSB in line with rule C65.1 and rule C65.2 of the BSB Handbook¹²;
- b. it is, or is analogous to, conduct that might contravene relevant standards of the BSB Handbook that apply to practising barristers (including standards that are necessarily implicit from the Handbook); and
- c. it is sufficiently relevant or connected to the practice or standing of the profession so as to engage the Core Duties and rules which apply to you at all times, taking into account the context and environment in which the conduct occurred.

¹¹ By "regulatory interest" we mean the circumstances in which we, as a regulator of the profession, may have a legitimate concern about conduct which has the potential to engage provisions of the BSB Handbook and which is apt for further consideration in accordance with our processes. This might include, for example, undertaking an initial risk assessment to inform whether a matter is suitable for onward referral for supervision activity or enforcement action.

¹² Namely, if you are charged with an indictable offence in England and Wales (or an offence of comparable seriousness elsewhere) or you are convicted, or accept a caution, for a criminal offence which is more than a minor criminal offence (as defined in Part 6 of the BSB Handbook).