PHARMACY LAW & ETHICS ASSOCIATION

SOCIAL MEDIA AND PROFESSIONAL CONDUCT

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Legal Framework

- Pharmacy Order 2010, article 6 (1A) provides that the pursuit by the Council of its over-arching objective includes to promote and maintain proper professional standards and conduct for members of the pharmacy professions.
- Article 51 (4) provides that a person's fitness to practise may be regarded as impaired because of matters arising outside Great Britain and at any time.
- See also Medical Act 1983, section 1 (1B), (to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession), section 35C (3) (misconduct may arise outside the UK, or at any time when the person was not registered); see also Dentists Act 1984; Opticians Act 1989; Nursing and Midwifery Order 2001; Health and Social Work Professions Order 2001.
- Regulators have power to set standards of conduct and performance expected of registrants; see, for example, article 48 of the Pharmacy Order 2010, and section 35C of the Medical Act 1983. Guidance issued includes, the General Pharmaceutical Council, *Demonstrating professionalism online, July 2016*; General Medical Council,

> *Doctor's use of social media, March 2013;* HCPC, *Guidance on social media – think before you post, September 2017;* Bar Standards Board, *Guidance for barristers using social media, February 2017*; and The Law Society, *Social media, June 2018.*

Misconduct

Wingate and Evans v. Solicitors Regulation Authority; Solicitors Regulation Authority v. Malins [2018] EWCA Civ 366

Integrity (lack of)—broader concept than honesty—integrity connotes adherence to ethical standards of one's profession

In giving the judgment of the Court of Appeal, Jackson LJ (with whom Sharp and Singh LJJ agreed) said:

> 96. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.
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> 97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in *Williams* at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.
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> 98. I agree with Davis LJ in *Chan* [*Solicitors Regulation Authority v. Chan, Ali and Abode Solicitors* [2015] EWHC 2659 (Admin)] that it is not possible to formulate an all-purpose, comprehensive definition of integrity. On the

other hand, it is a counsel of despair to say: "Well you can always recognise it, but you can never describe it".

99. The broad contours of what integrity means, at least in the context of professional conduct, are now becoming clearer. The observations of the Financial Services and Markets Tribunal in *Hoodless* [*v. Financial Services Authority* [2003] UKFTT FSM007] have met with general approbation.

100. Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty……

101. The duty to act with integrity applies not only to what professional persons say, but also to what they do….

102. Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public. Having accepted that principle, it is not necessary for this court to reach a view on whether *Howd* [*Bar Standards Board v. Howd* [2017] EWHC 210 (Admin)] was correctly decided.

Bar Standards Board v. Howd; Howd v. Bar Standards Board [2017] EWHC 210 (Admin)

Inappropriate and offensive behaviour by barrister at chambers marketing event—conduct capable of diminishing trust and confidence in the Bar—professional misconduct—medical evidence establishing that barrister's behaviour was consequence of his medical condition

In allowing H's appeal against the findings of guilt by a disciplinary tribunal of the Council of the Inns of Court, Lang J said, at [48], that, in principle, H's inappropriate and, at times, offensive behaviour towards female barristers and junior members of staff at a chambers marketing event attended by professional clients could be capable of diminishing the trust and confidence that the public placed in him, as a barrister, or in the profession, contrary to Core Duty 5 (behaviour that is likely to diminish trust and confidence in the barrister or the profession), since it occurred in the course of his professional life, and it was not an entirely private matter. The learned judge said, at [55], that she had had the benefit of seeing more comprehensive medical evidence than the tribunal, because further evidence was adduced at the appeal. In her judgment, the medical evidence established, on the balance of probabilities, that H's inappropriate and, at times, offensive behaviour was a consequence of his medical condition. It also established that his excessive consumption of alcohol was very likely to have been a response to the onset of his medical condition, and it probably had the unfortunate consequence of exacerbating his disinhibition and loss of judgment. In these circumstances, H's behaviour plainly was not reprehensible, morally culpable, or disgraceful, because it was caused by factors beyond his control. It did not reach the threshold for a finding of serious professional misconduct.

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

Barrister—allegations about fellow barrister received in professional context in confidence from client—allegations broadcasted in robing room—messages sent via LinkedIn - disciplinary proceedings justified-serious misbehaviour

K, a practising barrister of twenty years' call, faced three allegations of professional misconduct contrary to Core Duty 3 (a failure to act with integrity) and CD5 (behaving in a way that is likely to diminish the trust and confidence that the public places in the barrister or

in the profession) of the BSB Code of Conduct (9th edn). The first and second counts alleged that, on two occasions in February and May 2016, in the robing room at Crown Court in the Midlands, K broadcasted serious allegations made by his former client, M, against a fellow barrister, J, including allegations of rape, assault, and conspiracy to murder M. The third count alleged that, in March 2016, approximately one month after broadcasting the first allegation, K contacted J's wife via LinkedIn, a professional networking site, and made reference to issues concerning J. K pleaded guilty to all three counts at a disciplinary tribunal hearing held on 22 March 2018 and received a sanction of seven months' suspension on each charge to run concurrently. The tribunal said that, as a member of the Bar of some seniority, K was in possession of highly confidential and sensitive information (about a fellow barrister) that hitherto was unproven and which he should have known could not, and should not, have been repeated in the two robing rooms. The tribunal was not provided with a coherent explanation for the LinkedIn messages. On appeal to the Administrative Court against conviction and sanction, Warby J, after a review of the authorities in crime, said, at [16]–[39], that it does not follow that a plea of 'guilty' is always a bar to the quashing of a conviction, but that, in the instant case, it was wholly improbable that the tribunal would have taken a different view had K denied his guilt and argued that the threshold of gravity was not crossed on the agreed facts. The learned judge said, at [36]:

> The authorities make plain that a person is not to be regarded as guilty of professional misconduct if they engage in behaviour that is trivial, or inconsequential, or a mere temporary lapse, or something that is otherwise excusable, or forgivable. There is, as Lang J [in *Howd v. Bar Standards Board, Bar Standards Board v. Howd* [2017] EWHC 210 (Admin); [2017] 4 WLR 54] put it, a "high threshold". Only serious misbehaviour can qualify. I am not sure that the threshold of gravity is quite as rigid or hard-edged as

> [counsel for K] suggests [namely, that the behaviour must be "seriously reprehensible" before it can amount to professional misconduct]. I do not believe that in *Walker* [*Walker v. Bar Standards Board*, 19 September 2013, unreported] Sir Anthony May was seeking to crystallise an exhaustive definition of professional misconduct. Rather, he was reaching for a touchstone to help distinguish the trivial or relatively unimportant from that which merits the "opprobrium" of being labelled as professional misconduct. Nor do I read Lang J's decision in *Howd* as seeking to set out precise parameters for what can and cannot qualify as professional misconduct. Indeed, [at [58]] she used three separate terms, "reprehensible, morally culpable or disgraceful". I think it is perhaps unhelpful for this principle to be tied too firmly to particular phraseology. But even on the footing that the right test is that of "seriously reprehensible" it seems to me that, when [K's] behaviour is properly evaluated, it comfortably meets this standard, and that this is in effect the approach which the Tribunal adopted.

The robing room charges

The learned judge continued, at [40]–[41], to find that, so far as the robing room charges were concerned, K was present in a professional workplace, among professional colleagues, in his capacity as a member of the Bar, speaking about allegations about which he had learned from a professional client. The person against whom these allegations were made was a professional man, a member of K's own profession, whom he did not know personally. He named that man when making the allegations. The robing room cannot be viewed as a 'no-go area' for the regulator. All depends on the facts. As to whether disciplinary proceedings were appropriate because there was a satisfactory alternative remedy in the form of a claim for defamation, the learned judge said, at [49], that disciplinary proceedings are quite different

from civil claims for damages or injunctive relief. A barrister who, in the course of their practice, gravely libels an individual by speaking or writing defamatory words on an occasion that enjoys no privilege against suit for defamation may properly be brought before a disciplinary tribunal for the purposes of vindicating professional standards and upholding public interest. An award of damages and costs in the civil proceedings might have an impact on the question of sanction, but it would not do away with the need for disciplinary proceedings. The learned judge, at [50]-[51] said that K was right to hold back from any argument that his behaviour could not be characterised as lacking integrity, saying that, as Jackson LJ observed in *Wingate v. SRA* "integrity is a broader concept than honesty". The tribunal was entitled to and did form the view that, by broadcasting in two robing rooms serious allegations of wrongdoing against a named professional, K engaged in conduct that was likely to diminish public confidence in himself, and the profession

The LinkedIn charge

At [53] – [55], Warby J said that the same was true of the conduct that led to the LinkedIn charge, though less grave in character. This was not a "broadcast". It was a brief, private exchange of communication. It was not malicious, and may indeed have been intended to be sympathetic. However, he chose to rely on information he had received from his client M to write to the wife of the man accused, about the impact of these matters on M. These were matters that were very personal and private, and which would have been upsetting for J's wife. He used a professional website to do this. He did not know J's wife, other than as someone with whom he had connected via that website. He wrote to her uninvited, without prompting from her; the only prompt was an automated one, generated by the website because he had linked with her. There was a strong probability that she would object to such intrusion, as she evidently did by referring the matter to the BSB. K had failed to offer any justification or even any explanation of why he did so. This was not just indiscreet and ill-

judged. It was, as the tribunal evidently concluded, a serious failure of standards. It was a significant failure to separate the professional from the personal. It was conduct likely to lower public confidence in the professional standards of the Bar. 3 months suspension.

Human Rights

R (Gaunt) v. The Office of Communications [2011] 1 WLR 2355, CA

Broadcast—offensive insults—breach of Ofcom Code—no interference with Article 10 ECHR rights

The claimant, a talk show host, interviewed a local authority councillor responsible for children's services about a controversial proposal to ban smokers from becoming foster parents on the grounds that passive smoking was likely to harm children. During the course of the interview, the claimant became aggressive and called the councillor, among other things, 'a Nazi' 'a health Nazi', and 'you ignorant pig'. The Office of Communications (Ofcom), the relevant regulatory authority for complaints from members of the public, found that the interview breached Ofcom's Broadcasting Code, and rejected the claimant's representations that its finding would involve a disproportionate interference with the claimant's right to freedom of expression under Article 10 ECHR. Dismissing the claim for judicial review, the Administrative Court (Sir Anthony May P and Blair J) held that the Court's task was to determine whether Ofcom's finding constituted a disproportionate interference with the claimant's Article 10 right to freedom of expression and that, since the interview was political and controversial, the claimant's freedom of expression had to be accorded a high degree of protection, but that such protection, although capable of extending to offensive expression, did not extend to gratuitously offensive insults or abuse that had no contextual content or justification, or to repeated abusive shouting, which served to express no real content ([2011] 1 WLR 663). In dismissing the claimant's appeal, the Court of Appeal (Lord Neuberger MR, and Toulson and Etherton LJJ) said that, when considering whether the

interview broke Ofcom's Broadcasting Code, the interview had to be considered as a whole and in its context.

R (Pitt and Tyas) v. General Pharmaceutical Council [2017] EWHC 809 (Admin)

Standards for Pharmacy Professionals—impairment of fitness to practise arising at any time—misconduct outside workplace— maintaining of confidence in the profession—no violation of Articles 8 and 10 ECHR

The claimants, two pharmacists and members of the Pharmacists' Defence Association, sought permission to challenge the GPhC's *Standards for Pharmacy Professionals,* due to come into effect on 1 May 2017. The new standards, which replaced the Council's *Standards of Conduct, Ethics and Performance* dated July 2012, contained standards, amongst others, of showing respect for others, treating people politely and considerately, and meeting accepted standards of personal and professional conduct. The new standards could apply in a pharmacy professional's private life and not only in their professional work or during working hours. Of particular relevance was paragraph 6 of the Introduction which states:

> "The standards need to be met at all times, not only during working hours. This is because the attitudes and behaviours of professionals outside of work can affect the trust and confidence of patients and the public in pharmacy professionals."

Singh J, in refusing permission, said that the Standards are intended to guide the conduct of pharmacy professionals and the relevant obligation in the Standards is to behave appropriately at all times. There may be occasions that occur outside normal working hours and perhaps in a context that is completely unrelated to the professional work of a pharmacist that may be relevant to the safe and effective care that will be provided to patients. For example, if a pharmacy professional were to engage in a racist tirade on Twitter, that may

well shed light on how they might provide professional services to a person from an ethnic minority. Article 51(4) of the Pharmacy Order 2010 expressly states that fitness to practise may be impaired as a result of matters arising 'at any time'. The new Standards were not ultra vires the Pharmacy Order 2010 or contrary to Articles 8 and 10 of the Convention. The claimants could not be regarded as victims of alleged violations of articles 8 and 10. The new Standards were not inherently and necessarily incompatible with the right to respect of private life in article 8 or the right to freedom of expression in article 10. At [69] – [74], the learned judge said that whether their application to any particular case will breach those rights will depend on the facts of that case. In particular, there is likely to be an intensely fact-sensitive assessment which will be required when applying the principle of proportionality. Article 48 (3) of the Pharmacy Order 2010 provides that where any registrant is alleged to have failed to comply with standards set under article 48, that failure (a) is not, of itself, to be taken to constitute misconduct on the registrant's part; but is to be taken into account in any proceedings against the registrant. The new Standards do not have the force of law, still less of primary legislation, and the claimants need have no concern that their Convention rights could or would be breached by the implementation of the new Standards.

R (Ngole) v. University of Sheffield and Health and Care Professions Council (Intervener) [2017] EWHC 2669 (Admin)

Facebook posts by university student—claimant undertaking work course leading to registration as qualified social worker—claimant expressing religious views on homosexuality—exclusion of claimant from programme—no infringement of Articles 9 and 10 ECHR

The claimant enrolled as a mature student on Sheffield University's Master of Arts (MA) degree in social work in September 2014. This was a two-year course leading, on successful completion, to registration and practice as a qualified social worker. From

September 2015, at the beginning of his second year, the claimant wrote around twenty short posts on his personal Facebook account to the effect that same-sex marriage was a sin. The claimant cited a number of Biblical passages and among the posts was a reference to same-sex marriage as detestable to God, an abomination, a wicked act, and the devil having hijacked the US Constitution. The posts were drawn to the attention of the university authorities and, in February 2016, the claimant was excluded from further study on the programme leading to his professional qualification. An appeal hearing before the Appeals Committee of the University of Sheffield Senate was dismissed on 31 March 2016. The claimant brought judicial review proceedings to challenge the lawfulness of the Appeals Committee's decision, and was granted permission to argue whether the decision was an unlawful interference with his rights under Articles 9 and 10 ECHR, and whether the decision was arbitrary and unfair—in effect, public law irrationality. The claim failed and the Administrative Court held that the university had acted within the law. The deputy judge said that at the centre of the case was the matter of the claimant's removal from his course on *fitness to practise* grounds; this was not a simple student conduct disciplinary case. The university defended its actions by reference to the relevant regulatory framework. The university's MA Social Work programme was a course approved or accredited by the Health and Care Professions Council (HCPC), capable of leading to professional registration on successful completion. When the claimant enrolled on the course in September 2014, he signed a student entry agreement confirming that he had accessed and read the HCPC's student guidance on standards of conduct and ethics, and would strive to conform to the HCPC's expectations as set out therein. The HCPC did not directly regulate student or trainee social workers and successful completion of an HCPC-approved course does not guarantee registration. However, the HCPC had published Standards of Education and Training Guidance, directed at providers of courses to help them to ensure that the relevant standards

were maintained, and had issued Guidance on Conduct and Ethics for Students, which stated that students must be aware that conduct outside their programme may affect whether or not they were allowed to complete their programme or register with the HCPC and should make sure that their behaviour did not damage public confidence in the profession. The HCPC also published an informal version of its guidance on the use of social media, which included students in its expected audience. The guidance stated that persons may use social networking sites to show their views and opinions, but that the HCPC 'might need to take action if the comments posted were offensive, for example if they were racist or sexually explicit'. The Court noted that the substance of the university's decision to remove the claimant from the course was on the basis that he was not fit to continue preparing for professional registration as a social worker. The Court said that professional discipline, rightly, sits relatively lightly on its members outside the workplace, but it is never entirely absent where conduct in public is concerned.

[NB. This case has been heard in the Court of Appeal and judgment has been reserved.]

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

Barrister—serious allegations about fellow barrister received in professional context in confidence from client—allegations broadcasted—disciplinary proceedings justified under Article 10(2) ECHR—rights of others engaged under Article 8(2) ECHR

As stated above, on two occasions, in the robing rooms of crown courts in the Midlands, K, a barrister, spoke words that suggested to those who were present and heard them that a fellow male barrister had stalked and then raped a female barrister who had been K's client, and caused serious threats to her life when she complained of this. In between these episodes, K sent two messages via LinkedIn to the barrister's wife, alluding to the allegations against her husband. On appeal against a finding of professional misconduct, K

contended that his utterances in the robing room were speech protected by Article 10(1) ECHR and the messages to the barrister's wife were 'correspondence' within the scope of Article 8(1). Warby J, in dismissing these claims, said, at [58]–[60], that he was not persuaded by the BSB's submission that disciplinary proceedings did not involve an interference with Convention rights; the real issue was whether the interference with those rights that the disciplinary proceedings represented is justified under Articles 8(2) or 10(2), as appropriate. In his judgment, it was, and clearly so. The learned judge said that a, if not *the*, central function of the BSB's regulatory regime is 'the protection of the reputation and rights of others'. Core Duty 5 (behaviour that is likely to diminish trust and confidence), which the tribunal found had been breached in this case, is expressly aimed at maintaining public confidence in barristers and the profession generally. That is a reputational matter. Other barristers have a proper and legitimate interest in ensuring that their reputations are not tarnished by association with those who misconduct themselves professionally. On the facts of this case, the 'reputation and rights of others' engaged by the facts included, prominently, the barrister against whom the allegations were made. His rights under Article 8(2) were engaged. Further, in this case, Warby J said, at [63], the female barrister had been K's client and the disciplinary matters served the function of 'preventing the disclosure of information received in confidence' from K's client. The same reasoning applied to the LinkedIn charge. The pursuit of disciplinary proceedings in respect of a wholly inappropriate communication with the spouse of the barrister concerned was a legitimate aim, corresponding to a pressing social need, and was itself proportionate to such need. Her private rights under the Article were plainly engaged. A person whose spouse gets caught up in disputes and litigation in which lawyers are instructed on the other side has a reasonable expectation that they will refrain from exploiting what they have learned in that capacity for the purposes of unwanted

intrusions into their lives, with unwelcome comments on inherently hurtful, private and personal matters.

Sanction

Thilakawardhana v. Office of the Independent Adjudicator and University of Leicester (Interested Party) [2015] EWHC 3285 (Admin)

Medical student—Facebook post - University terminating registration—OIA dismissing complaint—whether reasons of University appeal panel intelligible and adequate—reasoning, albeit brief, was adequate—decision of OIA not irrational

The claimant, having completed three years of a course leading to a degree in medicine at the University of Leicester, posted a threatening message on the Facebook page of a fellow student, PS. The posting, known as a meme, was viewable by the Facebook friends of PS. At the same time, the claimant wrote a private message to PS on Facebook containing about 170 words, some of which were offensive and when taken in conjunction with the meme, could be construed as threatening. PS complained to the university, who instigated disciplinary proceedings. The claimant's conduct gave rise to the distinct question whether, as a medical student, he was fit to practise medicine. A panel of the university, consisting of three lay members, including two doctors, decided that the claimant was not fit to practise and that his registration as a medical student should be terminated. That decision was upheld by an appeal panel of the University. The claimant made a complaint to the Office of the Independent Adjudicator (OIA) about the termination of his registration as a medical student, but, in May 2015, the OIA decided that the complaint was not justified. In dismissing T's claim for judicial review of that decision, His Honour Judge Jarman QC said that the main issues arising from the grounds were based on irrationality and failure to give adequate reasons. Whilst the appeal panel, in its decision letter, dealt with matters very

shortly and did not repeat all the points on which the claimant had relied, it was clear that the appeal panel had a copy of the initial report and took into account the provocative behaviour of PS and the claimant's mitigation. The appeal panel made no express finding as to the claimant's intention to carry out his threats against PS, but it did not need to. In the professional judgment of the appeal panel, one member of which was a hospital consultant, the posting and sending of the meme and message led inextricably to a finding that the claimant was unfit to practise. The panel had clearly considered whether there were any sanctions or remedial actions that could be put in place, which might address the shortcoming before the completion of the claimant's course, but concluded that his fundamental unsuitability for the profession could not be corrected. The reasoning of the appeal panel, albeit brief, was adequate. It had not been shown that the approach of the OIA to the decision of the appeal panel was irrational. The OIA was entitled to conclude that the appeal panel had viewed the meme and the message objectively to determine whether, together, they were likely to undermine the trust of a reasonable member of the public in the profession, regardless of whether members of the public saw the same and regardless of whether PS felt threatened. It was entitled to conclude that the appeal panel had acted reasonably in relation to the facts and its conclusion that the claimant was not fit to practise as a doctor.

R (Thilakawardhana) v. Office of the Independent Adjudicator for Higher Education and University of Leicester (Interested Party) [2018] EWCA Civ 13

Medical student—university terminating registration—OIA dismissing complaint—appeal on sanction dismissed

Permission to appeal was granted solely in relation to sanction. The Court of Appeal (Gross, McFarlane, and Sales LJJ) said that a number of considerations loomed large in the

appeal, including the seriousness of the consequences of the decision by the University to terminate the appellant's registration as a medical student, and the correct approach to be adopted by the Court to decisions of the panel and appeal panel and the Office of the Independent Adjudicator (OIA). Gross LJ said, at [4], that the matter came to the Court of Appeal by way of an appeal from the judge and, nominally at least, as a challenge to the decision of the OIA. However, the reality in this case was that the critical inquiry related to the decision of the appeal panel. The original panel consisted of three lay members, including two doctors. The appeal panel consisted of two senior academics (the senior pro-vice-chancellor, who acted as chair, and a reader in the Department of English), together with a consultant at University Hospital, Leicester. In dismissing the appeal, Gross LJ said that, as it is well established, the Court approaches decisions of professional and university tribunals dealing with fitness to practice with deference, both as to findings of impairment and as to sanction. *Higham v. The University of Plymouth* [2005] EWHC 1492 (Admin), [2005] ELR 547, concerned a medical student expelled in the first year of his course. In observations especially pertinent to the present case, Stanley Burton J (as he then was) said:

> 28. It is obvious that judgments as to whether an individual is fit to enter and to continue in an academic course leading to practise as a doctor are best taken by academics who are responsible for the conduct and teaching of that course, and the staff who are medically qualified have a special part to play in such decisions. Judges are not, in general, medically qualified, and do not have experience of medical practice or of teaching and training students to become practising doctors.

In the instant case, the appellant invited the Court to substitute its view for that of the appeal panel; if decided in the appellant's favour, it would effectively rule out expulsion as a sanction and the Court would effectively be replacing it with a sanction of suspension. In the

course of argument, McFarlane LJ helpfully deployed the description of a spectrum of behaviour impairing an individual's fitness to practise. Whilst accepting that the appellant's conduct was not so extreme that expulsion was the only proper sanction open to the appeal panel, the Court was unable to say that the appellant's conduct was such that expulsion was a disproportionate sanction not open to the appeal panel, so that the Court should mandate the substitution of suspension in its place. McFarlane and Sales LJJ agreed.

Commentary

Consistent with the over-arching objective in article 6 of the Pharmacy Order 2010, the GPhC is empowered by article 48 to set standards relating to the conduct, ethics and performance expected of registrants. Article 51 (4) expressly states that fitness to practise may be impaired as a result of matters arising "at any time" (a point emphasized by Singh J in *Pitt and Tyas).* Similar provisions exist with other regulators.

The GPhC's guidance *Demonstrating professionalism online,* states that social media is a powerful way for pharmacy professionals to collaborate with their peers, colleagues and the general public, but it can blur the boundaries between personal and professional use – always think about the expectations and perceptions of patients, colleagues and employers.

The GMC's guidance, *Doctors' use of social media,* states that the standards expected of doctors do not change because they are communicating through social media rather than face to face or through other traditional media. Social media cannot guarantee confidentiality whatever privacy settings are in place.

The BSB's guidance for barristers using social media states "Remember you are bound by Core Duty 5 not to behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession <u>at all times".</u>

The Law Society's guidance, *Social Media,* states that social media can offer many professional and personal benefits, but alongside the benefits, it is important to be aware of the potential risks involved. One of the fundamental considerations that those participating in social media activity should take into account is the potential blurring of the boundaries between personal and professional use, and the importance of recognizing that the ethical obligations of professional conduct apply in an online environment.

A series of cases has clearly shown that behaviour in a social context or the use of social media may give rise to a breach of professional conduct: *BSB v. Howd, Khan v. BSB, Ngole v. University of Sheffield, Thilakawardhana v. University of Leicester.* Reliance on Convention rights, particularly Articles 8 and 10 may not greatly assist at the end of the day if the conduct concerned is found to be serious.

In relation to behaviour outside professional life, the issue is where is the line to be drawn? Indeed, is there a line at all? The occasion may be entirely social and the practitioner may make no reference to him/her being a member of a profession, but that may not necessarily stop an investigation by the regulator, or disciplinary proceedings being brought on the grounds of a failure to act with integrity, or that the practitioner has behaved in a way that is likely to diminish the trust and confidence that the public places in the practitioner or in the profession. Whilst regulators' Guidance is just that – namely, guidance, and it does not have the force of law (see *Pitt and Tyas v. GPhC),* the issue whether the practitioner's conduct has brought the profession into disrepute is likely to be fact-sensitive and the application of the principle of proportionality.

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