



The Bar Council

## Obtaining or using information from publicly available social media accounts

<b>Purpose:</b>	To assist barristers in determining whether and when they may obtain and use publicly available material on social media accounts in the conduct of a case
<b>Scope of application:</b>	All practising barristers
<b>Issued by:</b>	The Ethics Committee
<b>First issued:</b>	April 2019
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<b>Status and effect:</b>	<b>Please see the important notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.</b>

### Introduction

1. This document addresses the question of whether you may either use or obtain relevant and publicly available material from social media accounts (e.g. Facebook, YouTube, Twitter, LinkedIn etc.) of involved parties, as part of your preparation for a case. This includes searching for, obtaining and printing out evidence from the social media accounts of individuals involved.

2. The relevant Core Duties include:

- **CD3** You must act with integrity and with honesty
- **CD4** You must maintain your independence
- **CD5** 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

3. It is clear that barristers should not attempt to access accounts that are not open to public view (see CD3, CD5). The BSB Handbook describes this as serious misconduct:

*“Serious misconduct includes, without being limited to...*

*seeking to gain access without consent to instructions or other confidential information relating to the opposing party’s case” (gC96.3).*

### **Accessing publicly available information**

4. It is accepted that evidence from social media accounts, such as Facebook entries, can be produced by clients and attached to statements prepared by counsel. It would also appear that there is nothing in the rules which prevents barristers themselves actually obtaining information which is publicly available such as that on a Facebook profile, and using this information to prepare documentation as evidence for the case.

5. Nonetheless, you should remain extremely cautious about producing such a document. As a default position, you should not do this if there is an alternative option (such as a solicitor or other individual able to search for and produce this document). You are an advocate, not an investigator. There are risks that come with crossing that line. You should, therefore, carefully consider your Core Duty of Independence (CD4), and whether this could become compromised as a result of accessing such material yourself.

### **Practical considerations for barristers**

6. If you locate information from a social media account which is relevant to an upcoming hearing, it is advisable in the first instance to alert your instructing solicitor to obtain copies of the relevant entries so as to avoid the situation where you as the barrister are called to give evidence.

7. In the case that you do choose to produce such a document, you should first have a frank conversation with the client, setting out the risks of doing so. If the evidence becomes disputed, it may be that you are obliged to withdraw from the case, and become a witness in the case, with all the implications as to costs that might flow from this. This risk should be made clear to the client. In a criminal case, for example, a barrister could look online at an individual’s Facebook account and see that it contained information that “X” was at a certain place on a particular date. If that information was subsequently deleted or changed and “X” denied that such information was ever on Facebook (or contended that a printout of the same was hacked) then the barrister could well find themselves becoming a witness in the case.

8. The first question must be *“What is the purpose of producing this evidence/document?”* In some cases, it is not the role of the barrister to put evidence

before the court with an explanation of why it is relevant (e.g. in a family care case, this is the role of the social worker or guardian). If a barrister is acting for a parent in a family case or a lay client in a PI case, then the source of the information could more helpfully come from the lay client themselves.

## **Conclusion**

9. There is no ethical prohibition which prevents barristers accessing, obtaining or reproducing anything from an online social media account which is publicly available. However, barristers should be extremely cautious about doing so for the reasons outlined above, especially when there are alternative routes for that information to be made available which do not carry the same level of risk.

## **Important Notice**

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not “guidance” for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please see [here](#).