

# Shared Insights

## Perils and pitfalls of social media in the health and care sector

### Panel of speakers

**Charlotte Harpin** – Partner, Browne Jacobson

**Alexis Hearnden** – Barrister, 39 Essex Chambers

**Ed Pollard** – Partner, Browne Jacobson



# Introduction

This session focussed on the risks arising from the use of social media and WhatsApp by both patients and staff in the health and care sector and the practical steps all organisations should be taking to mitigate those risks.

The session included a discussion on:

- The use of WhatsApp and other messaging to share confidential data.
- Audio and video recording, both covert and otherwise, by staff and patients.

The session was chaired by Charlotte Harpin, Partner at Browne Jacobson. We were delighted to be joined by Alexis Hearnden, Barrister at 39 Essex Chambers and Ed Pollard, Partner at Browne Jacobson who gave practical insights into this topic.

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# How we can help

- Review and advise on appropriate policies and procedures on the use of social media and instant messaging services.
- Provide training on appropriate use, with case study based break out sessions to aid learning.
- Review existing arrangements and provide risk advice on any gaps or areas where we would recommend updates.
- Advise on professional regulatory issues arising in specific cases.
- Advise on the use of social media, instant messaging and videography by patients in specific cases and on solutions to manage problematic use (including, where appropriate, removal of content; harassment; injunctions; liaising with the police in relation to potential criminal proceedings).

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# Recent headlines

**Charlotte Harpin** – Partner,  
Browne Jacobson

To illustrate the importance of these issues, and their increasing prevalence, Charlotte introduced some recent headlines around this topic:

- [NHS staff are using WhatsApp to share patient data, bypassing “outdated” NHS technology.](#) [24 October 2024] and [Patient care will suffer if new legislation threatens the use of end-to-end encrypted messaging in the NHS](#) [18 January 2024]
- [NHS staff secretly filmed woman being restrained whilst suffering from a mental health breakdown, and then shared it on WhatsApp](#) [5 January 2025]
- [Employment Tribunal finds that Countess of Chester Hospital NHS Foundation Trust deleted WhatsApp messages, judge “troubled”](#) [4 October 2024]
- [NHS staff are being harassed by members of the public who are filming them and threatening to post the footage online](#) [6 April 2025]
- [GPs can be held accountable for what they say in private WhatsApp chats, confirmed by GMC guidance](#) [30 January 2024]
- [Information Commissioner calls for checks on NHS staff to ensure they are using WhatsApp safely and not compromising patients’ data safety](#) [26 November 2024]



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# When does social media become a matter for professional regulation?

**Alexis Hearnden** – Barrister,  
39 Essex Chambers

Alexis explained that social media has gradually been recognised by professionals and regulators as pertinent to professional conduct. This recognition underscores the blurred lines between personal and professional lives, especially in less public aspects of professional activities.

She reinforced the need for organisations to examine issues that have arisen and assess how they can act to prevent regulatory and disciplinary challenges.

Alexis set out the two foundational pieces of legislation:

1. [Article 10 of the European Convention on Human Rights \(ECHR\)](#): the right to hold and express opinions, extending explicitly to freedom of speech. This covers all forms of human expression, not just socially acceptable or sensible comments. However, it is a qualified right, meaning interference can be justified under certain conditions such as public safety, health protection, and protecting others' reputational rights.
2. [The Equality Act](#): This legislation often comes into play in cases involving workplace 'banter' and bullying. Since October 2024, there has been a preventative duty imposed on employers to take proactive steps to prevent sexual harassment.

To avoid difficulties, organisations should consider a macro-scale approach. An interesting piece of research is the white paper by Walking the Talk, ["Shaping a Culture of Inclusion"](#). This synthesises research relevant to cultural reviews in large organisations, particularly in the healthcare sector. It emphasises that merely having a policy is insufficient without active, personal involvement and role modelling, especially at senior levels.

The research suggests that setting clear boundaries and addressing breaches consistently is crucial. This includes senior members of staff acting when they see unacceptable behaviour, such as inappropriate messages in WhatsApp groups.

There are resources available on the use of social media, such as NHS England guidance. There are various options for organisations to mitigate potential issues, including:

- Policies and codes of conduct.
- Designated social media champions.
- Setting clear expectations and boundaries within communication forums like WhatsApp groups or email chains.

The Health and Care Professions Council has issued helpful [guidance "Using Social Media Wisely"](#). It is important to think before you post and share about

- Who can see what you post.
- What your privacy level is.

- How you are ensuring you protect confidentiality.
- Who has originated any content you share.

There have been instances of people sharing content and not knowing the originator, who may hold values which the sharer does not endorse or wish to align themselves with.

The [guidance](#) from the General Medical Council (GMC) on online behaviour stresses that professional responsibilities remain consistent in digital spaces, including the importance of accuracy in communication. Whilst a certain degree of professional dissent is acceptable and even encouraged, it is vital to address dangerous misinformation promptly.

In Alexis' case work for regulators and professionals in different settings, interpersonal difficulties often arise through social media, with many cases involving inappropriate relationships or misconduct initiated or perpetuated online.

Cases of bullying, sexual misconduct, harassment, and inappropriate behaviour within WhatsApp groups highlight the risks associated with such platforms. For instance, in a notable GMC case involving doctors sharing inappropriate content over several years all members were equally culpable with no distinction made for those who did not engage.

The case of [Lambert-Simpson](#), dealt with the private nature of a group where offensive comments intended to be humorous were shared. The judge's remarks in this case highlighted the importance of regulatory bodies being able to identify problematic attitudes, even if expressed privately. Hostility can thrive in attempted humour and the private context may be revealing. Alexis explained this case showed opinions thought to be expressed privately can portray problematic attitudes that might show up professionally.

The balance between freedom of expression and discrimination is a recurring challenge. Professionals have a platform online to express views on contentious issues, and finding appropriate boundaries is a task that many regulators are navigating, especially in relation to contentious topics, such as the conflict in Gaza and people holding gender-critical views.

Alexis finished by stating that where views or feelings are shared privately, or semi-privately, they are likely to attract the protections afforded by Article 8 of the ECHR, but as the cases show, regulators may still regulate private life and care should still be taken to avoid conduct or messages which amount to discrimination or harassment.

## Key takeaways

Alexis concluded by stating that organisations can support navigating these grey areas by establishing clear boundaries and promoting kindness. The digital world is an integral part of professional life, and it is important to consider the impact of online actions on real people. As the use of technology in monitoring and recording in sensitive settings increases, it is crucial to revisit the fundamental rules and consider the implications of increased scrutiny.

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# Issues arising in the Courts from social media use

**Ed Pollard –**  
Partner, Browne Jacobson

Ed explained that the perils associated with social media usage in healthcare settings can be categorised into

**Data-Related Risks:** Social media platforms, when used in a healthcare context, can inadvertently become part of medical records if they contain patient data. This will happen the moment a healthcare professional uses such platforms to communicate about a patient, making the content disclosable and subject to legal scrutiny.

**Individual Risks:** For individual healthcare professionals, the language used on social media can lead to regulatory issues. A common concern is the potential of bringing the profession into disrepute, a broad concept that captures various professional missteps.

In addressing these challenges, Ed suggested that the medical profession could proactively engage with social media and recording technologies during consultations and meetings.

Despite some reluctance, largely due to fears of exposure, the majority of recordings of consultations have supported the professionalism of healthcare workers. Ed proposed that healthcare professionals initiate recordings with patient consent, which could mitigate risks and enhance transparency. However, Ed recognised that this would need appropriate data protection consideration and practical issues around storage would also need to be taken into account.

Ed gave some examples to illustrate these challenges and what can be learned from them:

- 1. WhatsApp Communication:** An inquest highlighted the use of WhatsApp by a ward team, where a message about a patient's critical condition became a medical record due to someone mentioning it in the group chat. This underscores the importance of recognising any social media communication as potentially disclosable medical records. The time stamps of all the messages were captured and meant there was a clear chronology for the coroner.



2. **Email Disclosures:** Some doctors continue to be surprised that emails are disclosable, including those containing casual or unprofessional remarks about patients or their families. These communications are part of the medical records and are subject to disclosure during legal proceedings.
3. **Social Media Use by Patients:** The use of social media by patients themselves can also have significant implications. For instance, postings on platforms like TikTok by patients can reveal insights into the ward environment and staff, potentially affecting the perception and management of care. Additionally, the influence of social media extends beyond the ward, affecting patient behaviour and interactions.

Ed also discussed the broader implications of social media in monitoring patient interactions and behaviours, which can be insightful but also challenging. The reach of social media can influence

patient behaviour, sometimes negatively, as seen in cases where individuals receive harmful advice or encouragement related to self-harm or suicide.

## Key takeaways

Professionals embracing social media and recording technologies in healthcare settings can serve as a protective measure rather than a liability, but it has to be managed very carefully. There are examples of where professionals expose themselves by the use of technology. Once any patient information is on social media, it is disclosable and forms part of the record. By proactively adopting these technologies, healthcare professionals can safeguard their practices and provide clear, defensible records of their professional conduct.



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# Discussion

## Question and answer session

In questions at the end of the session, it was reinforced that there is no distinction between messages sent on personal or work devices – the content of the message is what is important and includes gifs and emojis. Professionals should be cognisant of this and remind themselves that they should not write anything that they would be uncomfortable with if it was read out in Court.

Patients and families involved in incident investigations can share staff names with third parties, which can lead to harassment. If this arises keep a clear log of contact to demonstrate an established pattern of behaviour. Stalking Prevention Orders can be issued by the police but will need clear evidence.

In terms of what information would be deemed identifiable, pseudonyms and initials can lead to identifiable messages and must be handled carefully.

Whilst some matters are outside the reach of the regulator, that line has blurred – so if there is something in private misconduct that can lead to professional disrepute, it is in scope.

A question was also asked on the sharing of statistics, and these being used online to disparage services. Charlotte considers that the sharing of statistical information is an important aspect of transparency and accountability. The most effective way to share this information, while ensuring staff are appropriately protected from unreasonable negative reaction, should be considered and kept under review, along with broader measures to support staff working in particularly high-profile services.

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