

McCloud complaint

I wish to complain about the conduct of Master Victoria McCloud since 22 January 2024 and ongoing. I have a number of concerns:

1. LinkedIn post of 22 January 2024 [9]

On 22 January 2024, Dr McCloud posted a long comment on LinkedIn commenting on my case against my former employer (Forstater v CGD Europe [2022] ICR 1). I have a number of concerns about this post.

Firstly, at the time of posting, Dr McCloud's biographic description on LinkedIn was "Judge in the High Court". This is a clear breach of the Social Media Guidance for the Judiciary, which says:

You should not use your official title and it is most unlikely to be appropriate to disclose the fact of your judicial role on any platform or account with unrestricted public access. This is of course public domain information, but it does not follow that it is appropriate to refer to it on your private social media profile. Given the policies identified above, **you should not be posting publicly as a Judge or a magistrate.** Your role as a Judge or magistrate is very unlikely to be relevant to anything you post. (emphasis added) [39]

The first part of this is also stated in the Guide to Judicial Conduct:

Judicial office holders should not use their judicial title on social media and it is most unlikely to be appropriate to disclose the fact of their judicial role on any platform or account with unrestricted public access. [34]

Dr McCloud's official title of Master was not used, but if anything the term "Judge in the High Court" would suggest, to anyone who is not a lawyer, the status of a High Court judge. In any case it does disclose the fact of Dr McCloud's judicial role.

Secondly, and also in breach of the above guidance, Dr McCloud's LinkedIn profile was not set to private (and is still not set to private) so all of Dr McCloud's posts and comments could be seen (and can still be seen) by any member of the public.

Thirdly, in this post Dr McCloud is commenting on the highly political topic of sex and gender and the law. Again this is a clear breach of the Social Media Guidance for the Judiciary, which says, under "Content":

You will be able to identify high-risk topics. It is obvious, for example, that judges and magistrates should avoid participation in online debates about the judiciary, legal system or other topics of political controversy. [40]

Fourthly, in this post Dr McCloud demonstrates a strong animus against people with gender critical beliefs, comparing them to racists, suggesting they should simply keep quiet about

their beliefs / be made to keep quiet about their beliefs by employers, and accusing them of “intellectual bankruptcy”. Such comments are completely inappropriate from a serving member of the judiciary and are apt to undermine confidence in Dr McCloud’s ability to act fairly on anything to do with sex and gender.

In this context I wish to refer also to an offensive reply Dr McCloud posted to Sex Matters on LinkedIn about 4 months ago, saying:

I think perhaps many people in the movement against trans have deep seated issues of their own, perhaps from life experience or childhood, or unresolved gender issues: there is not enough talk about help for them to resolve their personal challenges. I have yet to meet a happy person who self-identifies either as 'a gender critic' or who self-identifies as lacking a gender or sex identity and has come to terms with that suffering themselves. Whatever underlies that condition in life must be painful and deep-seated. Arguably these people are making a cry for help, and feeling self-hate. Hard though it is, pity and gentle encouragement to see a happier side to life are things I think we should give them, in other words to meet their hate with mature love. [8]

I appreciate that I am out of time to make a substantive complaint about this post but I refer to it here because I believe it shows clearly the extent of Dr McCloud’s animus against people with gender critical beliefs. Not a single such person whom Dr McCloud has met is exempt from this “witty” accusation that they are hateful.

Finally, going back to the post of 24 January 2024 [9] Dr McCloud gets the law badly wrong:

- Suggesting that a protected belief is not an “actual protected characteristic” when “religion or belief” is of course one of the 9 protected characteristics in the Equality Act 2010;
- Suggesting that manifestations of a belief are never protected if allowing the manifestation means that “people with protected characteristics feel harassed” – that is not what the law says. Manifestations *are* protected unless the belief is manifested in some particular way to which objection could justifiably be taken;
- Falsely contrasting a belief vs a protected characteristic: “a belief is something you can keep to yourself, a characteristic is not”.

This raises serious concerns about Dr McCloud’s ability to understand and to fairly and accurately state the law in this area.

2. Leaked resignation letter to the Times (22 February 2024) [10]

Dr McCloud appears to have resigned suddenly in late February giving less than 6 weeks’ notice. The resignation letter was leaked to The Times. Extracts were published in The Times on 22 February 2024.

I believe it is obvious from the timing that Dr McCloud resigned in response to complaints made following from the post on 22 January 2024 and the disciplinary investigation that must have followed.

I also believe it is obvious that it was Dr McCloud who leaked the letter to the Times and effectively used it as a press release to further publicise Dr McCloud's views on this issue.

In the quoted extracts Dr McCloud seems to blame the need to resign, quite unfairly, on people with gender critical beliefs rather than accepting responsibility for the misconduct that led to the complaints.

Dr McCloud claims to have "become a target", that "it has been open season on me and others" and even draws comparisons with Rosa Parks, claiming that "for me I am now political every time I choose where to pee. Less prosaically, the judiciary by continuing to let me be a judge is now at risk of being political."

Plainly it is Dr McCloud's conduct on social media and in the press that risks politicising the judiciary, and it is nothing to do with toilets.

This engagement with the media is a clear further breach of the guidance to judges. I am unable to comment on whether it breaches the Media Guidance for the Judiciary (which for reasons unknown does not seem to be in the public domain) but in any event it is obviously in breach of the Guide to Judicial Conduct:

"In general, for good reason, judicial office holders do not talk to the media... it is important to maintain the separation of powers and independence and not comment on matters of controversy or those that are for Parliament or Government." [30]

...

Judicial office holders should be aware ... that participation in public debate on any topic may entail the risk of undermining public perception in the impartiality of the judiciary whether or not a judicial office holder's comments would lead to recusal from a particular case. This risk arises in part because judicial office holders will not have control over the terms of the debate or the interpretation given to their comments.

The risk of expressing views that will give rise to issues of bias or pre-judgment in future cases before the judicial office holder is a particular factor to be considered. This risk will seldom arise from what a judicial office holder has said in other cases but will arise if a judicial office holder has taken part publicly in a political or controversial discussion.

For these reasons, judicial office holders must always be circumspect before accepting any invitation, or taking any step, to engage in public debate. Consultation with their relevant leadership judge before doing so will almost always be desirable.

Any judicial office holder who decides to participate in public debate should be careful to ensure that the occasion does not create a public perception of partiality towards a particular organisation (including a set of chambers or firm of solicitors), group or cause or to a lack of even handedness. [31]

I believe that the source of the leak to the Times should be fully investigated, starting with asking Dr McCloud to confirm or deny being the source. If it was not leaked by Dr McCloud this would be a very serious breach of Dr McCloud's data by someone else, and one which should be reported to the ICO. Has Dr McCloud ever complained about the leak, and if not why not? Has any report been made to the ICO?

3. Further comments to The Times and on LinkedIn (29 February 2022) [15, 19]

A week after the original report in the Times, Dr McCloud made further comments to The Times in a follow-up article. I am not aware whether Dr McCloud obtained permission to speak to The Times and make these comments. I would be surprised if permission were given for the kind of comments that Dr McCloud went on to make.

I had said in a comment to The Times that Dr McCloud fails to accept that "it's not compatible being a judge if you want to comment on contentious political debates". Dr McCloud's response is reported as follows:

McCloud tells The Times: "As a general point, just as I would lay down my life for the rule of law, I would do so for the right to free speech, including theirs."

She says that it is especially important "that where a judge needs to speak up, she is able to do so just as can they", particularly in the face of "gender-critical extremism" from others. [17]

I believe it is clear from the guidance I have already quoted that sitting judges do *not* enjoy untrammelled free speech while speaking as an identifiable member of the judiciary. They are required to refrain from commenting on matters of public controversy so that they can be seen to be impartial in the exercise of their duties.

Dr McCloud is further quoted as saying

"Unless steps are taken to deal with some of the threats and language directed at judges and politicians, which go beyond free speech, our democracy is at stake". [17]

No indication is given what "threats and language directed at judges and politicians" are said to "go beyond free speech" and must be dealt with or "our democracy is at stake". I do not believe such wild assertions enhance Dr McCloud's claim to be above the usual rules for judicial conduct.

As noted by an academic who provided a comment in the same article, limitations on a judge's free speech are expressly permitted under the Human Rights Act 1998 "for the

purpose of maintaining the authority and impartiality of the judiciary”. Dr McCloud does not seem to accept this limitation. [18]

Dr McCloud went on to publicise the second Times article on LinkedIn [19] and in doing so made further comments repeating the claim that judges are entitled to free speech despite what all the guidance says, and bizarrely, tagged me in on this.

Dr McCloud also said “I will have more to say when free to do so”. I find it hard to believe that Dr McCloud was in fact free to make the comments already made.

5. Further comments on LinkedIn during the last 10 days

It now appears from further posts on LinkedIn that Dr McCloud does not in fact propose to retire completely but rather intends to keep sitting in retirement – “after a vacation”. [21]

I understand it is not uncommon for judges to sit on a fee paid basis after retiring. I do not however understand why Dr McCloud anticipates being “more free to speak” at the same time as “sitting in retirement”. Judges who sit on a fee paid basis are also required not to engage publicly in controversial debates. If Dr McCloud is not prepared to be bound by these obligations, perhaps sitting as a judge in any capacity is not the way forward.

It has also now become apparent from further posts on LinkedIn that Dr McCloud has no intention of refraining from commenting on matters of public controversy or indeed from displaying hostility and bias towards people with gender critical beliefs.

I have already noted that Dr McCloud used the term “gender-critical extremism” in the resignation letter that was “leaked” to The Times. Regrettably, this has now become something of a theme for Dr McCloud.

On 8 March 2024 in a post about “fighting hostile #disinformation online” Dr McCloud said this:

I've been 'banging on' recently here on LinkedIn about how extremism online - whether any of the common 'isms', like #racism, or more devious things like #deepfakes, **#gendercriticalextremism**, #falsenarratives or plain old #conspiracy theory is a threat to democracy, in this globally vital election year. (emphasis added) [22]

Also on or about 8 March 2024 Dr McCloud replied to someone posting about coping with stress and burnout:

Yes indeed. As someone in the process of arranging close personal protection just for my leaving drinks from my job as a judge, thanks to **online Gender Critical Extremism calling for action towards me**, and one person at large known to want to kill me, maintaining mental health needs work, support and constant nurture, like looking

after a plant, feeding and watering it. hashtag#endgenderextremism (emphasis added) [24]

On 10 March 2024 Dr McCloud said in a post:

#freedom

I've been posing recently on the twin themes of free speech on the one hand and abuse, racial extremism and ultranationalism on the other, and especially where those intersect with **Gender Critical Extremism**, and I cited the latest research a day or two ago, from Global Network on Extremism & Technology (GNET) about that. (emphasis added) [25]

Also on 10 March 2024 Dr McCloud replied to a trans activist in the United States saying:

Dear Fae, you don't know me, but I recently announced semi retirement as a judge in the UK courts, the first ever trans judge here, where I had worked for 18 years and before that as an advocate, to much the same sort of **Gender Critical Extremism** and ultra nationalist abuse. And at my retirement drinks I, like you, will be having personal protection. A day does not pass without hateful online posts about what evils I am supposed to be perpetrating. Some of that focuses on the fact I've been treated inclusively by womens' events. Thank you for your strength.

hashtag#endgenderextremism (emphasis added) [26]

Also on 10 March 2024 Dr McCloud responded to someone saluting Dr McCloud as a "trailblazer" saying:

Donella thank you so much. **Hate must not win, whether it is the gender critical extremism now growing in the UK under the obscene pretence of what used to be an uncontroversial protected belief, now colonised and mutilated by activists**, or the typical gendered hate in emails or social media which is the sadly routine experience of women in positions visible to the public including me. I can at least now be more vocal and perhaps the judiciary will learn and start to develop systems for protecting judges who are from minorities, especially if they raise concerns internally. I hope we can do better in the next 100 years. (emphasis added) [27]

Would Dr McCloud think it appropriate to continually post and comment on LinkedIn about "Jewish extremism" or "Muslim extremism"?

I have to admit to some hollow laughter at the suggestion that gender critical beliefs "used to be an uncontroversial protected belief". I lost my job in 2019 for expressing such views in my own time on my own Twitter feed. When I brought a tribunal claim, an employment judge concluded that I had no right to protection for my beliefs because he classed them as "absolutist" and "incompatible with human dignity and fundamental rights of others." I had to go to the Employment Appeal Tribunal to get this overturned and it was only in June 2021 that the EAT ruled that my beliefs are protected. This was less than 3 years ago. There has never been a time even after that when transgender activists have not continually sought to shut down gender critical beliefs by accusing anyone expressing them of "extremism", and

in my opinion that is exactly what Dr McCloud is now doing, on a public platform while still a judge and identified as such.

These posts show that Dr McCloud has by now abandoned any attempt at maintaining impartiality and is keen to take a more campaigning role in future (“I can at least now be more vocal”). I do not see how Dr McCloud can continue to sit as a judge while making public comments like these.

I am well aware that if Dr McCloud were to go through with any disciplinary process, the likely outcome would be no more than a warning or a reprimand. However it seems to me that the most likely interpretation of Dr McCloud’s decision to retire at 54 giving such short notice is that Dr McCloud hopes to circumvent any such outcome by retiring as a full time judge, taking a “vacation” from judicial office so that any outstanding complaints are discontinued under rule 139, and then quietly taking up an appointment as a Deputy Master at a later date. If I am right in that suspicion I very much hope that will not be allowed to happen.

I would ask therefore that Dr McCloud be asked to confirm or deny the intention Dr McCloud has expressed on LinkedIn to continue sit in retirement, and if that is confirmed, be asked to take up office as a deputy master immediately on retirement as a salaried master on 12 April 2024, so that any outstanding investigations can continue until they are resolved. I understand masters sitting dates have to be agreed with them so there is no reason why this would preclude any planned holiday.

Alternatively I would ask that the discretion in rule 139 to cease consideration of cases where a judge leaves office *not* be exercised in Dr McCloud’s favour, but rather consideration of the case should continue post retirement, or if need be held over until such time as Dr McCloud takes up judicial office again and resumed at that point.

It cannot be right that any outstanding complaints should be dismissed on a technicality and that Dr McCloud can then start again with a clean slate, especially given the fact that this complaint, the lack of contrition or remorse demonstrated and the repeated flouting of the rules clearly raise issues as to Dr McCloud’s willingness to comply with the obligations placed on judges, and suitability to be a judge at all going forward.



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To add: I think perhaps many people in the movement against trans people have deep seated issues of their own, perhaps from life experience or childhood, or unresolved gender issues: there is perhaps not enough talk of help for them to overcome their personal challenges. I have yet to meet a happy person who self-identifies either as 'a gender critic' or who self-identifies as lacking a gender or sex identity and has come to terms with that suffering themselves. Whatever underlies that condition in life must be painful and deep-seated. Arguably these people are making a cry for help, and feeling self-hate. Hard though it is, pity and gentle encouragement to see a happier side to life are things I think we should give them, in other words **meet their hate with mature love.**

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Dr Victoria McCloud (She/Her) · 2nd

3h (edited) ...

Judge in the High Court | Academic | Speaker | Extremism, Tech, Hum...

Fortunately the Forstater case clarified (at a low level of court) that a belief is protected, **but not to the extent of making others with actual protected characteristics feel harassed**, and not to the extent that by allowing manifestation of that belief, people with protected characteristics are subjected to a detriment. **A belief is something you can keep to yourself, a characteristic is not.** An example is racism: it is a belief you can keep quiet about, but your skin colour you cannot. Employers are used to dealing with people like Gender Critics with religious beliefs that gay people are sinful, and balancing that with the rights of gay people at work. Nothing new here!

The confusion arises because the Gender Critics usually append the word 'ideology' to what they disagree with so as to present a biological characteristic (gender identity) as being a contested 'belief'. An employer treating a person with the protected characteristic of gender reassignment as if they hold a 'belief' will be making a significant error in law just as if they treated a BME person as merely 'believing' they are BME. We do not say that gay men show 'homosexual ideology': this **intellectual bankruptcy** is why the Movement stalled months ago.

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Victoria McCloud transitioned in the 1990s and was the UK's first practising trans barrister

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COURTS

UK's only trans judge quits over risk of 'politicising the judiciary'

Victoria McCloud said she had become a target and was forced to be political every time she chose 'where to pee'

[Catherine Baksi](#) | [Jonathan Ames](#), Legal Editor

Thursday February 22 2024, 1.55pm, The Times

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Britain's only transgender judge has resigned, claiming that she cannot remain on the bench "in a dignified way" and that she risks making the judiciary political.

Victoria McCloud, a High Court master, has told the senior judiciary that she is quitting because "I am now political every time I choose where to pee" and that she has become "a target".

McCloud, 54, has given rulings in cases involving prominent figures including Donald Trump, the MPs Jeremy Corbyn and

Andrew Mitchell, and recently worked on a case involving a KGB double-agent.

The judge transitioned in the 1990s and was the UK's first practising trans barrister.

She was first appointed as a part-time judge in 2006. Four years later, aged 40, she became the youngest person appointed as a Queen's Bench, now King's Bench, master of the High Court — a senior civil judge.

But after 18 years on the bench, in a letter this week McCloud told the senior judiciary: “I have reached the conclusion that in 2024 the national situation and present judicial framework is no longer such that it is possible in a dignified way to be both ‘trans’ and a salaried, fairly prominent judge in the UK.”

McCloud said that she had become concerned over the past couple of years “about the difficult position which has developed recently for a trans person, such as me, in public life but especially as the only such judge”.

McCloud kept her trans identity out of the public eye for much of her time as a judge until her status was revealed by a national newspaper in 2016.

Since then she has appeared in a video and other social media to [promote diversity in the judiciary](#) and to encourage more trans people to consider becoming judges.

In her letter, extracts of which have been leaked to The Times, McCloud says that the judiciary “has used me in social media”, which “has been rewarding and I will cherish the memories”. But she said this “came at a cost because I became a public figure and a target”.



McCloud with her cat Libra at her home in east London

TIMES PHOTOGRAPHER RICHARD POHLE

McCloud, an Oxford University graduate, said the rise of the “gender critical” movement — which holds to what she acknowledges is the “uncontroversial notion” that a person cannot alter their biological sex — has also meant that she can be referred to as a man, despite being legally female.

She argues that as a result, “it has been open season on me and others”. The judge, who will formally stand down in April, added that she feels that “the dignity of the court as well as personal dignity is at stake”.

In the letter, McCloud refers to Rosa Parks, the black US civil liberties campaigner. “Rosa Parks’ choice of seat was political because of the colour of her skin,” McCloud said, adding: “More prosaically, for me I am now political every time I choose where to pee. Less prosaically, the judiciary by continuing to let me be a judge is now at risk of being political.”

McCloud's letter said that it had been "the greatest privilege imaginable" to have served as a judge, but added that that privilege "came with the additional responsibility which fell upon me as the first judge from the 'trans' community in the UK and globally".

The resignation of such a prominent judge comes amid rising concerns about judges' social media activity after the controversy surrounding a district judge who liked a comment from a barrister on LinkedIn that described Israel as a "terrorist". That judge, [Tan Ikram](#), has said that he liked the comment by mistake.

McCloud is widely respected by judicial colleagues and lawyers, but in 2022 a family law barrister registered a formal complaint about the judge with the Judicial Conduct Investigations Office.

The barrister, who is a prominent advocate of gender critical opinions, had accused McCloud of having "irrationally characterised" the lawyer's views on social media.

In the office's ruling, which dismissed the complaint, it said that the barrister had accused McCloud of claiming that the lawyer had "demonstrated some kind of reprehensible bigotry against trans people".

The office said that the barrister had complained she "would not wish Master McCloud to be involved in any legal process where you are involved as either litigant or advocate" and that the judge's "behaviour is unbecoming from a serving judge and ... demonstrates a lack of objectivity about a matter of significant public interest".

McCloud is also a chartered psychologist and author on the law. She has contributed to the *Equal Treatment Bench Book*, which aims to increase understanding of the different people appearing in courts and includes a section on trans people.

As a judge, she is best known for her successful legal challenge to government attempts to reform judicial pensions, winning a

claim for equal pensions for women, ethnic minority and younger judges.

Commenting on her departure, a senior judge, who did not wish to be identified, told *The Times*: “This news is a very sad moment for the country’s judges and our courts. She is one of the most highly respected judges we have. People listen to what she says.”

Harminder Bains, a partner at Leigh Day, who has appeared in front of McCloud on numerous occasions, described her resignation as “a devastating loss to the judiciary”.

Baines added that McCloud had been “at the forefront of advancing the judiciary into the 21st century and she is a paradigm of what a judge should be — fair, transparent and efficient.”

The lady chief justice — the most senior judge in England and Wales — and McCloud have been contacted for comment.

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Judge's resignation triggers trans debate

[Catherine Baksi](#)

Thursday February 29 2024, 12.01 am, The Times

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Engaging in the culture wars has come at a cost for many. One of the most polarised arguments is that between trans activists who believe that individuals should be able to self-identify and be recognised in their chosen gender, and so-called gender-critical feminists who argue that people cannot change their biological sex.

Tension around this subject contributed to the resignation of Victoria McCloud, Britain's only transgender judge, as [exclusively reported last week in The Times](#). Since 2010, McCloud, 54, has been a master, or civil law judge, in the Queen's, and now the King's, Bench Division of the High Court.

In a leaked resignation letter McCloud said: "I have reached the conclusion that in 2024 the national situation and present

judicial framework is no longer such that it is possible in a dignified way to be both ‘trans’ and a salaried, fairly prominent judge in the UK.”

McCloud blamed the rise of the gender-critical movement, which had resulted in the judge becoming “a target”.

The judiciary thanked McCloud for her service. Several lawyers praised McCloud’s judicial skills on Twitter/X and lamented the loss to the bench. One said: “Not only the loss of a fantastic judge, but a significant blow to judicial diversity.” Another wrote: “This is a huge loss to the judiciary, and our justice system is poorer for it.”

Others suggested that McCloud was the author of her own misfortune by posting comments on LinkedIn that dived into the debate around gender identity in a manner that was inappropriate for a sitting judge.

Guidance to judges that was updated last year states that they “should not use their judicial title on social media” and should refrain from political activity or commenting on “matters of controversy”.

Sarah Phillimore, a family law barrister and prominent gender-critical advocate, formally complained to the Judicial Investigations Office in 2022 over McCloud’s comments on social media. The complaint was rejected on the basis that the judge was expressing personal views.

Phillimore tells *The Times* that McCloud’s behaviour in “nakedly” conveying a political belief is “unacceptable for a serving judge” and is “a recusal waiting to happen”.

In 2021 Maya Forstater won an appeal against an employment tribunal ruling after she was sacked for saying that people cannot change their biological sex. She went on to found the campaign group Sex Matters.

Forstater criticised McCloud on Twitter/X for attending an event organised by the campaign group Stonewall and what she believes are wrong statements about equality law on the issues of sex and gender that McCloud made on social media. She also suggested that McCloud should not have heard part of a case brought by a woman who was challenging her dismissal from the Liberal Democrats in a claim that touched on gender identity.

Forstater accuses McCloud of failing to accept “that it’s not compatible being a judge if you want to comment on contentious political debates”. Responding, McCloud tells The Times: “As a general point, just as I would lay down my life for the rule of law, I would do so for the right to free speech, including theirs.”

She says that it is especially important “that where a judge needs to speak up, she is able to do so just as can they”, particularly in the face of “gender-critical extremism” from others. She adds that she does not put Phillimore or Forstater in that bracket.

“Unless steps are taken to deal with some of the threats and language directed at judges and politicians, which go beyond free speech, our democracy is at stake,” McCloud says.

The judge’s resignation announcement comes amid rising concerns about social media activity after the controversy surrounding a district judge who liked a comment by a barrister on LinkedIn that described Israel as a “terrorist”. The judge, Tan Ikram, has said that he liked the comment by mistake.

Lord Sumption, a former Supreme Court judge, supports the general principle that serving judges should not publicly express views on controversial issues, stating that “contributing to exchanges on social media is usually unwise”.

Sumption says that judges “are expected to leave their prejudices at the court door”. He adds that “they are not expected to discard their own experience of life but they should not allow it to displace the evidence or the law”.

Adam Wagner, an outspoken human rights barrister, says that judges “are not machines” but have religious, racial, sexual and other identities and issues that are deeply personal to them and affect their ability to go about their lives and jobs.

“You would not expect a black or an Asian judge to be prevented from commenting on the impact that their race has on the way that they are going about their job and their ability to do their job,” Wagner says, adding that McCloud, as the country’s only transgender judge, is in a “unique and complex situation”.

The freedom of expression of judges — as with everyone else — is protected by human rights law. However, Lewis Graham, a law fellow at Wadham College, Oxford, says that it is easy to justify limiting them. He notes that the Human Rights Act 1998 “permits limitations done for the purpose of maintaining the authority and impartiality of the judiciary”. He adds that judicial freedom of speech in the UK is guided by convention rather than strict rules.

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Britain’s only trans judge quits over risk of ‘politicising the judiciary’

February 22 2024, 1.55pm

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Dr Victoria McCloud · 3rd+



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*** Victoria McCloud warns that democracy is at stake unless steps are taken to deal with some of the threats aimed at politicians and judges ***

#delighted that The Times of London tonight exclusively carried my views on free speech in a divided world. I will have more to say when free to do so.

Cudos to independent journalist [Catherine Baksi](#).

The newspaper said this:

McCloud tells The Times: "As a general point, just as I would lay down my life for the rule of law, I would do so for the right to free speech, including theirs."

She says that it is especially important "that where a judge needs to speak up, she is able to do so just as can they"

I stand by that and will always do.

All judges here would say the same.

As a judge in the public eye, many disagree with my decisions.

Long may they be free to do so. To make constitutionally important decisions is a great privilege, and it is to accept a greater degree of attention, even if the attention comes from exotic quarters.

But when attention turns to abuse, a line is crossed.

The Times has done an exemplary job of illustrating the complex social reality which modern judges have to navigate. Adam Wagner has it spot on.

AND my cat laughs along with me, and greets my old colleague from years ago, Sarah Phillimore of **St John's Chambers** and **Maya Forstater, of Sex Matters** which is most important.

<https://lnkd.in/eDbXFi5h>

Catherine Baksi

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Dr Victoria McCloud · 3rd+

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Dear friends and colleagues,

Following my (long in the planning) decision to move towards a portfolio career with effect from 12 April, combining judicial sitting in retirement (after a vacation!) with remunerated consultancy work, Dispute Resolution, and Tech development in the legal field, I have various irons in the fire (watch this space) by way of earning a living on civvy street but thought I would at this stage make use of LinkedIn's system for flagging my interest if people wish to get in touch with relevant proposals.

Best wishes and I repeat my thanks to the many kind well-wishers who are still contacting me, I hope to be able to reply personally to everyone in due course but its been extraordinarily touching to hear from so many friends and colleagues whose lives have intersected with mine down the years.

(LinkedIn does not offer 'dispute resolution', 'extremism', 'war crimes and crimes against humanity' or 'legal tech' as interests in its dropdown so please read them into the text below).

Victoria



Dr Victoria is open to work

Looking for Consultant, Legal Consultant, Academic and Mediator roles

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Dr Victoria McCloud · 3rd+

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...

Fighting hostile **#disinformation** online.

"Navigating the New Era of Information: Challenges and Strategies for 2024"

#Delighted to say that at the end of March I will be at a closed roundtable event at a location in the UK, in collaboration with key tech and other players in the area of misinformation, disinformation and extremist propaganda, including the **Tony Blair Institute for Global Change**, **MITIFY+** and undisclosed others.

I've been 'banging on' recently here on LinkedIn about how extremism online - whether any of the common 'isms', like **#racism**, or more devious things like **#deepfakes**, **#gendercritical extremism**, **#falsenarratives** or plain old **#conspiracy theory** is a threat to democracy, in this globally vital election year.

This is a part of what I and others positively intend to do about it. It starts here.

The meeting draws together together key players from from across industry, academia, civil society organisations, with government experts to look at innovative solutions to build and execute a strategy to ensure resilience against a backdrop of disinformation.

#future #tech #neurodiversity

#Extremism #misinformation #propaganda #democracy #AI

Global Network on Extremism & Technology (GNET) David Horrigan Kaly (Kalyani) Kaul KC Tony Guise Abbas Mithani KC (Hon), LL.D (Hon), Hon FCI Arb, LL.M Amir Ali OBE Clare Y. Tim Callaway Ebony Alleyne Gatehouse Chambers Enterprise Chambers W Legal Limited Georgina Halford-Hall Michael Kain Mai Chen Livia Holden Denise E. Backhouse Brie Stevens-Hoare KC Ollie Persey Stuart Fegan Shailesh Solanki Kalpesh Solanki Joshua Silver Coram Chambers Greg Williams Christine S. PJ Kirby Rahim Shamji DDRS Catherine Baksi Barnie Choudhury Monidipa Fouzder Tim Clement-Jones David Rosen mike butler Maria Federica Moscati Marina Wheeler KC Gavin

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   24

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Dr Victoria McCloud · 3rd+

5d (edited) ...

Academic | Semi-retired Master | Speaker | Extremism, Tech, ...

Yes indeed. As someone in the process of arranging close personal protection just for my leaving drinks from my job as a judge, thanks to **online Gender Critical Extremism calling for action towards me**, and one person at large known to want to kill me, maintaining mental health needs work, support and constant nurture, like looking after a plant, feeding and watering it. **#endgenderextremism**

Like | Reply



Dr Victoria McCloud · 3rd+

Academic | Semi-retired Master | Speaker | Extremism, Tec...
3d · Edited · 🌐

#freedom

I've been posing recently on the twin themes of free speech on the one hand and abuse, racial extremism and ultranationalism on the other, and especially where those intersect with Gender Critical Extremism, and I cited the latest research a day or two ago, from [Global Network on Extremism & Technology \(GNET\)](#) about that.

I am pleased to see news of this award to Professor Choudhury for his fearless work.

But more than that Barnie, you used the K word. Kindness. A part of that notion is that having the freedom to offend, vilify, insult is not the same as having an obligation to do so. Kindness is so lacking in public discourse today and without it we gradually lose our humanity.

[Kaly \(Kalyani \) Kaul KC Amir Ali OBE Abbas Mithani KC \(Hon\), LL.D \(Hon\), Hon FCI Arb, LL.M Gavin Sibthorpe Stuart Fegan Dr Danielle Stefanski David Rosen Maria Federica Moscati Coram Chambers Dr. Bianca Jackson Shailesh Solanki Kalpesh Solanki MITIFY+ Barnie Choudhury](#)



Barnie Choudhury · 3rd+

Editor at large & columnist at Eastern Eye newspa...
3d · 🌐

+ Follow

Immigrants and migration - the political fallout

I'm not political. In fact anyone who knows me will let you ...see more





Dr Victoria McCloud · 3rd+

3d (edited) ...

Academic | Semi-retired Master | Speaker | Extremism, Tech, ...

Dear Fae, you don't know me, but I recently announced semi retirement as a judge in the UK courts, the first ever trans judge here, where I had worked for 18 years and before that as an advocate, to much the same sort of **Gender Critical Extremism** and ultra nationalist abuse. And at my retirement drinks I, like you, will be having personal protection. A day does not pass without hateful online posts about what evils I am supposed to be perpetrating. Some of that focuses on the fact I've been treated inclusively by womens' events. Thank you for your strength. **#endgenderextremism**



Dr Victoria McCloud · 3rd+

3d (edited) ...

Academic | Semi-retired Master | Speaker | Extremism, Tech, ...

Donella thank you so much. **Hate must not win, whether it is the gender critical extremism now growing in the UK under the obscene pretence of what used to be an uncontroversial protected belief, now colonised and mutilated by activists,** or the typical gendered hate in emails or social media which is the sadly routine experience of women in positions visible to the public including me. **I can at least now be more vocal** and perhaps the judiciary will learn and start to develop systems for protecting judges who are from minorities, especially if they raise concerns internally. I hope we can do better in the next 100 years.

Kaly (Kalyani) Kaul KC Abbas Mithani KC (Hon), LL.D (Hon), Hon FCI Arb, LL.M Clare Y. Barnie Choudhury Catherine Baksi Gavin Sibthorpe Stuart Fegan Oscar Davies Ollie Persey Good Law Project Asif Siddiquee Judicial Office Coram Chambers Gordon Exall Monidipa Fouzder Nancy Kelley Ruth Hunt Garden Court Chambers Dana Denis-Smith

Like ·    11 | Reply

Judicial office holders who are in any doubt as to the propriety of accepting any gift or hospitality should seek advice from their relevant leadership judge.¹⁶

Judicial titles

Salaried judges

Salaried judges may refer to their status in a non-judicial capacity but, in doing so, should exercise caution, paying close attention to the guiding principles set out in part 2 above.

Fee-paid judges

Fee-paid judges should only use their title whilst acting in a judicial capacity. It is permissible to refer to judicial office as part of a CV. However, fee-paid judges should not use their title as an advertisement for professional services or for the furtherance of trade, business or political interests. They should also avoid reference to their title in media interviews, unless it is directly relevant to the content. They should have regard to the principles set out in the *Media Guidance for the Judiciary* which is available on the judicial intranet.¹⁷

Magistrates

The initials JP may be used on private and business letterheads etc in the same way as academic or professional qualifications. But they should not be used for the furtherance of trade, professional, business or political interests.¹⁸

Political activities

Any judicial office holder who is known to hold strong views on topics relevant to a case, by reason of public statements or other expression of opinion, should consider whether it would be appropriate to hear the case irrespective of whether the matter is raised by the parties. The risk will arise if a judicial office holder has taken part publicly in a controversial or political discussion.

Salaried judges (courts and tribunals)

There is a statutory prohibition on salaried judges undertaking any kind of political activity or having ties with a political party.¹⁹ This prohibition includes holding political office. It is also set out in judges' terms and conditions.

¹⁶ See footnote 2.

¹⁷ <https://intranet.judiciary.uk/wp-content/uploads/2022/07/Media-Guide-June-2022-updated-Oct-22.pdf>

¹⁸ Further guidance is available in *Useful Information for Magistrates* and the Guidance on use of the suffix JP. <https://intranet.judiciary.uk/wp-content/uploads/2020/09/MAGISTRATE-INFO-FINAL.v2-Amended-with-LCJ-and-LC-sigs.pdf>

¹⁹ See Schedule 1 to the House of Commons Disqualification Act of 1975 and to the Northern Ireland Assembly Disqualification Act of 1975. See also s137 of the Constitutional Reform Act 2005. The Conditions of Appointment and Terms of Service for all salaried judges state that: "A judge must expect to

Judges should avoid any appearance of political ties – e.g. by attending political gatherings, political fundraising events, contribution to political parties or speaking within political forums.

In addition, judges should not participate in public demonstrations which would associate them with a political viewpoint or cause, diminish their authority as a judicial office holder or cast doubt on their independence and create a perception of bias.

Where a close member of a judge's family is politically active, the judge needs to bear in mind the possibility that, in some proceedings, that political activity might raise concerns about the judge's own impartiality and detachment from the political process and should act accordingly. A judge's family should be regarded as including the following:

- **Spouses/civil partners** – this extends to any person with whom the judge has a continuing relationship, whether or not one in which the two parties live together as spouses or civil partners.
- **Close relatives** – i.e. the judge's father, mother, son, daughter, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law or step-child; or persons who have any of those relationships with a partner. This includes relatives by adoption.

Fee-paid judges (legal)

Whilst there is no general²⁰ prohibition on political activity in statute or terms and conditions, fee-paid judicial office holders are expected to refrain from any political activity which would conflict with their judicial office or be seen to compromise their impartiality having regard, for example, to the approach of the Court of Appeal in the case of *Locabail (UK) Ltd. v Bayfield Properties Ltd.* [2000] QB 451.

Fee-paid non-legal members and magistrates

Although there is no prohibition on political activity, non-legal members and magistrates who are involved in political activity should guard against any perception that their involvement is in their judicial capacity.

The *Lord Chancellor and Secretary of State's Directions to Advisory Committees on Justices of the Peace*²¹ set out the restrictions on where magistrates elected to certain political offices may sit.

Coroners

Coroners are also expected to refrain from political activity which would conflict with their judicial office. They are required to vacate office immediately if they become a councillor for

forgo any kind of political activity ... A judge is also expected to submit his/her resignation to the Lord Chancellor in the event of nomination or adoption as a prospective candidate for election to Parliament, or to the Scottish Parliament, the Welsh Assembly, the Northern Ireland Assembly or the European Parliament."

²⁰ Certain fee-paid office holders are, however, prohibited, either by statute or their terms and conditions, from membership of Parliament, or to the Scottish Parliament, the Welsh Assembly or the Northern Ireland Assembly.

²¹ *The Lord Chancellor and Secretary of State's Directions for Advisory Committees on Justices of the Peace* <https://www.judiciary.uk/guidance-and-resources/advisory-committees-justices-peace/>

a local authority within the relevant coroner area (Coroners and Justice Act 2009, Schedule 3, paragraph 11).

Retired judges

There is no prohibition on retired judges, providing they are no longer sitting, engaging in political activity and wider public debate. However, they should take care to avoid any activity which may tarnish the reputation of the judiciary and the perception of its independence.

Public debate and the media

This section should be read in conjunction with: the *Guide to Judges on Appearances before Select Committees*, the *Guidance to the Judiciary on Engagement with the Executive*, the *Social Media Guidance for the Judiciary* and the *Media Guidance for the Judiciary* (all of which are available on the judicial intranet) and the preceding paragraphs.²² All judicial office holders should be aware that, by long standing convention, they should not comment publicly on:

- the merits, meaning or likely effect of government policy or proposals, including proposed legislation;
- the merits of public appointments; or
- the merits of individual cases.

The conventions operate variously to promote the dignity of the judicial office, the finality of judgements and, crucially, the independence of the judiciary from the other branches of government. These principles are described more fully in the *Guidance to the Judiciary on Appearances before Select Committees*, but are applicable across all contexts. The guide also describes the very limited circumstances in which exceptions might apply.

In general, for good reason, judicial office holders do not talk to the media. Judicial office holders cannot talk about the cases they or colleagues hear, and it is important to maintain the separation of powers and independence and not comment on matters of controversy or those that are for Parliament or Government. There are exceptions when cautious engagement is possible. In addition to the Lord Chief Justice and Senior President of Tribunals' responsibility for representing the views of the judiciary, some leadership judges²³ will have reason to comment on their particular areas of responsibility. A number of judges have received training so that an informed judicial perspective can be given on topics when appropriate and beneficial to do so. This is always done with the benefit of professional support and advice from the Judicial Office Press Office.

²² *Guidance to Judges on Appearances before Select Committees* https://intranet.judiciary.gov.uk/wp-content/uploads/2014/10/select_committee_guidance.pdf
Guidance to the Judiciary on Engagement with the Executive <https://intranet.judiciary.gov.uk/wp-content/uploads/2016/07/guidance-to-the-judiciary-on-engagement-with-the-executive.pdf>
Social Media Guidance for the Judiciary <https://intranet.judiciary.uk/2021/05/11/launch-of-new-social-media-guidance-for-the-judiciary/>
Media Guidance for the Judiciary <https://intranet.judiciary.uk/wp-content/uploads/2022/07/Media-Guide-June-2022-updated-Oct-22.pdf>

²³ See footnote 2.

If judicial office holders receive a request for media or social media engagement (including podcasts), they are expected to seek immediate advice from colleagues, their leadership judge and from the professionals in the Judicial Office Press Office.

Guidance as to how to react when a member of the judiciary is factually misrepresented or where the judicial office holder is aware, particularly when sentencing in a criminal case, that remarks could be misinterpreted by reporters is contained in the *Media Guidance for the Judiciary*.²⁴

As the *Guidance to Judges on Appearances before Select Committees* makes clear, many aspects of the administration of justice and the functioning of the courts are the subject of necessary and legitimate public consideration, and appropriate judicial contribution to this debate can be desirable. It may contribute to public understanding and to public confidence in the judiciary. There is unlikely to be an objection to comment which deals directly with the operation of the courts, the independence of the judiciary or aspects of the administration of justice while, as a matter of desirable practice, judicial office holders are encouraged to refrain from commenting on any issue when the judiciary intend to issue a formal, institutional comment, but have not yet done so.

Judicial office holders should be aware, however, that participation in public debate on any topic may entail the risk of undermining public perception in the impartiality of the judiciary whether or not a judicial office holder's comments would lead to recusal from a particular case. This risk arises in part because judicial office holders will not have control over the terms of the debate or the interpretation given to their comments.

The risk of expressing views that will give rise to issues of bias or pre-judgment in future cases before the judicial office holder is a particular factor to be considered. This risk will seldom arise from what a judicial office holder has said in other cases but will arise if a judicial office holder has taken part publicly in a political or controversial discussion.

For these reasons, judicial office holders must always be circumspect before accepting any invitation, or taking any step, to engage in public debate. Consultation with their relevant leadership judge²⁵ before doing so will almost always be desirable.

Any judicial office holder who decides to participate in public debate should be careful to ensure that the occasion does not create a public perception of partiality towards a particular organisation (including a set of chambers or firm of solicitors), group or cause or to a lack of even handedness. Care should also be taken therefore, about the place at which and the occasion on which a judicial office holder speaks. Participation in public protests and demonstrations may well involve substantial risks of this kind and, further, be inconsistent with the dignity of judicial office.

The risk of different judicial office holders expressing conflicting views in debate must also be borne in mind: a public conflict between members of the judiciary, expressed out of court, may bring the judiciary into disrepute and diminish the authority of the court.

²⁴ <https://intranet.judiciary.uk/wp-content/uploads/2022/07/Media-Guide-June-2022-updated-Oct-22.pdf>

²⁵ See footnote 2.

There is, in principle, however, no objection to judicial office holders speaking on legal matters, which are unlikely to be controversial, at lectures, conferences or seminars organised by professional bodies, or by academic or other similar non-profit making organisations. Lectures and seminars which deal with matters of more general public interest may, however, raise wider issues of policy, sometimes not immediately apparent. Depending on the circumstances, it may be inappropriate for a judicial office holder to deliver a public lecture or participate in a conference or seminar run by a commercial organisation.

If writing an article or letter for publication, careful consideration should be given to whether it is appropriate to include reference to the writer's judicial position. In addition, care should be taken not to comment on a particular case or judicial decision or upon a politically sensitive issue. Reference should be made to the *Media Guidance for the Judiciary*.

Salaried judges

Salaried judges should not accept requests or seek to give interviews on any topic without first seeking advice from the relevant leadership judge. They should also refer to the *Media Guidance for the Judiciary as a matter of course*. If in doubt whether a request is covered by the principles relating to media contact or by those relating to academic or professional engagements, advice should be sought from the relevant leadership judge.

Fee-paid judges

Fee-paid judges can, where appropriate, participate in the media and engage in public debate. However, they must ensure that they do not publicly make statements that undermine their reputation of impartiality and neutrality.

Fee-paid judges must take great care to ensure that they do not reveal the fact that they sit in a judicial capacity, or that they are described as a judge, when speaking in public, save when they are speaking on strictly legal matters in politically uncontroversial forums. This is in order to prevent their personal views being construed as the views of the judiciary.

Magistrates and non-legal members

Magistrates and non-legal members may sometimes be asked to speak publicly about matters relating to other roles which they hold within their profession or local community. When this happens, they should ensure that they are not described by their judicial role and they should be careful not to give the impression that they are commenting in that capacity. They must also be mindful of the risk of accusations of bias.

Further guidance is set out in the *Useful Information for Magistrates* leaflet²⁶ which is available on the judicial intranet.

²⁶ <https://intranet.judiciary.uk/wp-content/uploads/2020/09/MAGISTRATE-INFO-FINAL.v2-Amended-with-LCJ-and-LC-sigs.pdf>

Social activities

Social activities need to be assessed in the light of judicial office holders' duty to maintain the dignity of the office and not to permit associations which may affect adversely their ability to discharge their duties.

Social networking, blogging and Twitter

Whilst the use of social networking is a matter of personal choice, judicial office holders' attention is drawn to the *Information and Security Guidance for the Judiciary* that the Judicial Technology Committee has issued on the security aspects of this medium.³⁰

Although there is no specific guidance on this matter, members of the judiciary are encouraged to bear in mind that the spread of information and use of technology means it is increasingly easy to undertake 'jigsaw' research which allows individuals to piece together information from various independent sources. Judicial office holders should try to ensure that information about their personal life and home address are not available online. A simple way to check is to type your name into an internet search engine such as Google. Care should also be taken both by the judicial office holder and their close family members and friends to avoid the judicial office holder's personal details from entering the public domain through social networking systems such as Facebook or Twitter.

Judicial office holders should also be wary of:

- Publishing more personal information than is necessary (particularly with a view to the risk of fraud).
- Posting information which could result in a risk to personal safety. For example, details of holiday plans and information about family.
- Automatic privacy settings. Often it is possible to raise privacy settings within social media forums.
- Lack of control over data once posted.
- Posting photographs of themselves in casual settings whether alone or with family members and/or friends.

Attention is also drawn to the *Social Media Guidance for the Judiciary* issued on behalf of the Judicial Executive Board on 11 May 2021. The guidance is also available on the judicial intranet.³¹

In short, the guidance states that:

- social media should not be used by individual members of the judiciary to communicate publicly about their judicial work, or matters related to the judiciary, unless this has been discussed and agreed with their leadership judge³² or the Judicial Office and complies with any conditions set by the leadership judge;
- judicial office holders should be alert to the risk that using social media may compromise their safety or that of their family and colleagues. They should be aware of the risk of

³⁰ <https://intranet.judiciary.uk/practical-matters/data-protection/data-protection-and-information-security-guidance-for-the-judiciary/>

³¹ <https://intranet.judiciary.uk/2021/05/11/launch-of-new-social-media-guidance-for-the-judiciary/>

³² See footnote 2.

undermining trust and confidence in the judiciary by expressing, or appearing to endorse, views which could cast doubt on their objectivity;

- judicial office holders who use social media will need to decide whether to use their own name or a pseudonym. The latter may be justifiable as a security measure, however, a pseudonym should not be used to disguise the source of content that would risk discrediting the judge or the judiciary if its source were known; and
- judicial office holders should not use their judicial title on social media and it is most unlikely to be appropriate to disclose the fact of their judicial role on any platform or account with unrestricted public access.

Failure to adhere to the guidance could ultimately result in disciplinary action.

Use of equipment

Judicial office holders should not use equipment, including IT equipment, provided by HMCTS for their official use, for other purposes which could bring them or the judiciary in general into disrepute. Detailed guidance upon the use of IT equipment, including the importance of not compromising its security is available on the judicial Intranet.³³

Personal relationships and perceived bias

This is a subject in relation to which the situations which may arise are so varied that great reliance must be placed on the judgment of judicial office holders, applying the law, their judicial instincts and conferring with a colleague where possible and appropriate. The judgment of the Court of Appeal in *Locabail (U.K) Ltd v Bayfield Properties Ltd* [2000] QB 451 provides authoritative guidance (see particularly paragraph 25).³⁴ Relevant relationships may exist with parties to litigation, legal advisers or representatives of parties, and witnesses.

Guidelines which are likely to be applicable despite the absence of hard and fast rules are:

- Judicial office holders should not sit on a case in which they have a close family relationship with a party or the spouse or domestic partner of a party.
- Friendship with, or personal animosity towards a party is also a compelling reason for disqualification. Friendship may be distinguished from acquaintanceship which may or may not be a sufficient reason for disqualification, depending on the nature and extent of such acquaintanceship.
- A current or recent business association with a party will usually mean that a judicial office holder should not sit on a case. A business association would not normally include that of insurer and insured, banker and customer or council taxpayer and council. Members of the judiciary should also disqualify themselves from a case in which their solicitor, accountant, doctor, dentist or other professional adviser is a party.
- Friendship or past professional association with counsel or solicitor acting for a party is not generally to be regarded as a sufficient reason for disqualification.

³³ <https://intranet.judiciary.uk/practical-matters/data-protection/data-protection-and-information-security-guidance-for-the-judiciary/>

³⁴ See also the guidance on impartiality in Part 1 above.

Social media guidance for the judiciary

Scope

This document covers the use by judicial office holders of all forms of social media, including blogging and the use of branded platforms such as Facebook, Twitter, Instagram, Tik-Tok and others. The guidance replaces all previous documents, such as the blogging guidance of 2012.

Policy

Social media platforms are an increasingly significant part of modern life. They have brought many benefits, but also carry risks, particularly for those who are subject to public scrutiny and from whom the public has a right to expect the highest standards of behaviour. Judicial office holders who use social media should keep in mind the core principles of the Guide to Judicial Conduct: judicial independence, impartiality and integrity.

The policy of the Lord Chief Justice and Senior President of Tribunals is that when the judiciary speaks publicly about its work, it will generally do so through its leadership judges or through channels organised or approved by them or by the Judicial Office (JO) Communications team.

Social media should not be used by individual members of the judiciary to communicate publicly about their judicial work, or matters related to the judiciary, unless this has been discussed and agreed with their leadership judge or the JO and complies with any conditions set by the leadership judge.

Judicial office holders may hold and use personal social media accounts, but should

- be alert to the risk that this may compromise their safety or that of their family and colleagues
- be aware of the risk of undermining trust and confidence in the judiciary by expressing, or appearing to endorse, views which could cast doubt on their objectivity

- take care to avoid or limit such risk
- be alert to not disclose confidential/sensitive information
- bear in mind that in a serious case inappropriate use of social media can be referred to the Judicial Conduct Investigations Office.

Guidance

This guidance is designed to help you. It has two main **purposes**:-

- (1) to help keep you safe; and
- (2) to help avoid anything that could undermine trust and confidence in you, or the judiciary as a whole

The guidance has five main **aspects**:

- (a) Risk categories.
- (b) Risk assessment.
- (c) Risk avoidance: principles
- (d) Risk avoidance: practice
- (e) Responding to threats or problems

(a) Risk categories

At the top of the list are security risks: mainly, the risk of physical harm to you or those close to you, or physical or other forms of harassment. These are risks posed by other people who know what you look like, and where to find you, and when; or by those who have your contact details, such as phone number, email address or social media account details.

The potential source of risk to trust and confidence in the judiciary is your conduct. The Bangalore Principles¹ are a convenient international statement of the qualities expected of a member of the judiciary. There are seven:

¹https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

independence, impartiality, integrity, propriety, equality, competence, diligence

A judge or magistrate should avoid conduct which could call into question their possession of any of these qualities. Careless social media engagement by a Judge or magistrate could do so. Put another way, “Use of social media by individual judges should maintain the moral authority, integrity, decorum and dignity of their judicial office.”²

(b) Risk assessment

This is the recommended starting point for everyone: to identify the risks posed by social media engagement in your individual case, and make an assessment of their extent.

The nature and degree to which social media engagement presents such risks to an individual judge or magistrate will vary. Some are more exposed than others to risks of assault, but anger and other heightened emotions are commonplace in many if not all jurisdictions. The great majority of judges will be exposed to some level of security risk. All are at risk of damaging their own standing and that of the judiciary as a whole by inappropriate social media engagement.

Factors affecting the degree of risk include:-

- The jurisdiction(s) in which the individual sits, the status and prominence of the role, whether the role is salaried or part-time, and issues raised by individual cases or litigants.
- The particular social media platform under consideration. Some platforms such as Facebook are predominantly social in character, permit written contributions that are short or long, but will often provide the reader with details about an individual’s appearance, home, family, friends, and leisure activities. Some, such as Instagram, are predominantly visual media, mostly involving single still images with relatively little verbal content. Others, such as Twitter, are fast-moving, predominantly written, and tend towards controversy. Some sports apps, such as

² Non-binding Guidelines on the Use of Social Media by Judges, United Nations Office on Drugs and Crime
https://www.unodc.org/res/ji/import/international_standards/social_media_guidelines/social_media_guidelines_final.pdf

Strava, provide relatively little personal information but can reveal a home address and the time and location of regular outings.

- **The extent to which your engagement is visible via a public or (where available) private account.**

(c) Risk avoidance: principles

The simplest way to avoid risk is to avoid engagement with social media. That is an option adopted by a number of judges and magistrates. Otherwise, there are three main ways of achieving the twin purposes above:-

- **Control** access to your personal details
- **Control your readership**
- **Control yourself**

The fourth method is to **Guide** friends, family and acquaintances

Your personal details

This refers to your name, address, appearance, and those of your close relatives, as well as information about your friendships, associations, and movements. All of these are typically shared on social media, and can be made accessible to all or to a selected few. It is possible to harvest data from a range of platforms and combine it to build up a more detailed picture than any one platform would allow.³ The more information of this kind you make accessible, and the wider the pool to whom it is accessible, the greater the risk that it may be collected and used by people you would not want to have it available to them.

The safest approach, therefore, is to **minimise** the **amount** of such information that you share and the **extent** to which you share it, on each platform you use.

³<https://intranet.judiciary.uk/wp-content/uploads/2019/02/Social-media-for-judges-BClarke.pdf>.

The precise method you use to minimise the amount of information available is a matter for personal judgment. But six points apply in all cases:-

- Your decision on the nature and extent of the information you disclose will be guided by the balance you strike between wanting to engage with others socially and the need to avoid the risks discussed in this document.
- You will need to decide whether to use your own name or a pseudonym. The latter may be justifiable as a security measure, to keep your personal details private and avoid giving disgruntled litigants a target to attack. A pseudonym should not be used to disguise the source of content that would risk discrediting you or the judiciary if its source was known.

You should not use your official title and it is most unlikely to be appropriate to disclose the fact of your judicial role on any platform or account with unrestricted public access. This is of course public domain information, but it does not follow that it is appropriate to refer to it on your private social media profile. Given the policies identified above, you should not be posting publicly as a Judge or a magistrate. Your role as a Judge or magistrate is very unlikely to be relevant to anything you post.

- You should assume that you will be identifiable as a judge or magistrate, whatever measures you take, and tailor your social media activity accordingly.
- You will need to familiarise yourself with the privacy settings of the social media platform in question, and to edit your own settings with care, making informed choices about what information you put on display, and taking advantage of facilities that enable you to control what others do with your information (such as tagging you in pictures).
- You will need to consider whether to delete historic content from you profile.

Your readership

Most social media accounts can be public or private. All give the user a measure of control over who sees their personal details and their content. You should

- ensure that you understand the options available and
- make an informed decision about who you want to see your personal details and content
- implement that decision

Your content

There is nothing wrong with, and much to be said for, a social media presence which is passive. If you do post content, the overriding considerations are

- reflection and
- self-discipline.

You will be able to identify high-risk topics. It is obvious, for example, that judges and magistrates should avoid participation in online debates about the judiciary, legal system or other topics of political controversy. Equally, current cases— whether or not you are personally involved – are not a suitable topic on which to post views or comments. You may conclude that it is unsafe to post about any work-related issues.

On some social media platforms, such as Twitter, there is a tendency for users to engage in rapidly composed and extreme forms of expression, which may be created and posted with little forethought. None of these are good qualities for a Judge or magistrate to display. You should

- always pause for thought before posting
- beware of posting late at night or early in the morning

Your engagements

Be aware that you can convey information about yourself and your views by following or friending or defriending people, by liking posts, or by posting angry or sad emojis in response.

Your friends and family

●Others can reveal information about you, for instance, by “tagging” you in photographs which could reveal your appearance and location. It is recommended that you consider disabling the facility to do this automatically, and think about what to say to friends, family, and acquaintances about such measures.

(d) Risk avoidance: practice

The proliferation of social media platforms and the changes that take place mean that this is not the place for detailed technical guidance. Such guidance is available in Judge Barry Clarke’s paper (see Further Reading below).

Responding to inaccuracy or unfairness

Resist any temptation to respond to inaccurate or unfair social media reports or comments on your work or that of colleagues. Not only is it inappropriate for any judge or magistrate to engage directly on such issues, doing so is likely to exacerbate the situation. Matters of inaccuracy or unfairness may be reported to the Communications Team, via the email address website.enquiries@judiciary.uk, who can assess whether action is appropriate.

Responding to abuse or threats

If you encounter a direct threat, abuse or another kind of problem arising from your social media engagement, advice and help is available from the HR Welfare and Casework team.

Podcast on Judges' Use of Social Media <https://intranet.judiciary.uk/2018/10/16/podcast-on-judges-use-of-social-media/> (Barry Clarke October 2018)

Judicial Conduct Guide <https://intranet.judiciary.uk/2020/09/15/judicial-conduct-guide-amended-version-september-2020/>

Update to social media guidance for magistrates (April 2020)
<https://intranet.judiciary.uk/2020/04/28/update-to-social-media-guidance-for-magistrates/>