

## Topic guide

Issued on 7 February 2019 | Updated 25 November 2019

# Use of social media and offensive communications

## Background

This guidance focuses on our approach to allegations about the nature of communications including those made via emails, texts and on social media networks. We treat seriously communications that are offensive, derogatory or inappropriate whether in nature, tone or content.

Such communications may be sent or posted in a work context (within a firm, or externally to clients or third parties). But equally regulatory action can be taken if the sender is identifiable as someone we regulate (even if acting in a personal capacity) and the communication would tend to damage public confidence.

This will be due to the nature of the communication. It is not necessary for there to be evidence that individuals, or classes of individuals, have viewed or been affected by the communication.

Our position on offensive communications has been made clear in our [warning notice](https://upgrade.sra.org.uk/solicitors/guidance/offensive-communications/) [https://upgrade.sra.org.uk/solicitors/guidance/offensive-communications/].

Further, regulated individuals are expected to act at all times with honesty and integrity. This includes in communications that are, or are intended to be, private, and whether or not the sender is identifiable as a regulated person.

It is not our role to sanction fair comment or opinions, even if strongly put and others disagree. Nor will we determine whether comments are defamatory; that is for the Court and a finding of defamation would not, of itself, necessarily result in disciplinary action. We will consider any aggravating factors, as set out below.

Passing on offensive communications, without the individual making it clear they disagree, may be taken as an endorsement of that communication and result in us acting.

Where a communication is made through a regulated person's email or social media account, we will start from a presumption that they are the author. Strong evidence will be needed to refute that.

If they are not the author of communications, and it has been made in their name, we may still act against them. This would be if they have not been appropriately vigilant in auditing those communications and safeguarding access to their accounts.

## **Indicative sanctions guidelines**

In considering what action we need to take, if any, we will consider any mitigating and aggravating factors, including those set out below

### **Mitigating features**

The communication was made spontaneously and without thought or reflection

The communication caused no actual harm, distress or offence

It was an isolated incident out of character

The person offered a prompt apology, retraction and expression of remorse and has corrected or removed the communication

The behaviour relates solely to a failure to refute or censure someone else's communication

The person was responding to inappropriate, offensive or threatening behaviour

### **Aggravating features**

The communication was discriminatory

The communication used abusive or threatening language or images, or was likely and/or intended to shock, harass or victimise others

The communication caused significant harm, distress or offence to clients, third parties or the public or targeted a vulnerable or unrepresented person

There is a pattern of frequent or a large number of concerning communications

The communication demonstrates a lack of independence or objectivity in carrying out role, or undermines the rule of law or legal systems

The person failed to heed a challenge or warning about the nature, tone or content of communication and has failed to correct or remove the communication

The communication discloses confidential information, or relates to client matters

The presence of mitigating features will indicate a less serious sanction. Strong mitigating features combined with a lack of aggravating features, is likely to result in closure of the complaint - accompanied by a request to remove or retract the communication (where appropriate) and advice to the regulated individual or a warning about their future conduct.

We will impose serious sanctions where the communication involves aggravating features. These types of communications will generally be referred to the Solicitors Disciplinary Tribunal:

- they demonstrate dishonesty, discrimination, harassment or abuse, are targeted at or take advantage of vulnerable individuals, or
- they demonstrate a lack of integrity or independence or undermine the rule of law.