

Health and Care Professions Tribunal Service

PRACTICE NOTE

Freedom of expression

This Practice Note has been issued for the guidance of Panels and to assist those appearing before them.

Introduction

1. The purpose of this practice note is to provide guidance on how panels should approach a decision that involves a registrant's freedom of expression and freedom of thought, conscience and religion¹, to ensure a consistent, evidence based and fair approach to their decision making. This practice note should be read with the practice note on [professional boundaries](#), which provides support to panels considering matters involving professional boundaries, and our [guidance on social media](#).

What is freedom of expression and freedom of thought, conscience and religion

2. Freedom of expression is the right to express and receive opinions, ideas and information in any medium. Expression and exchanges of views can take place in action, words and pictures but also increasingly take place online, including through social media platforms, websites and search engines.
3. The right to freedom of thought, conscience and religion includes the freedom to express religious, political and philosophical beliefs. For a belief to be protected it must be serious, concern important aspects of human life or behaviour, be sincerely held, and be worthy of respect² in a democratic society. It is unlawful to discriminate against someone because of their religion or belief or because of a lack of belief³ as this is a therefore "protected characteristic". Examples of beliefs that courts or tribunals have found to be protected on the

¹ Article 10 and 9 of the European Convention on Human Rights (ECHR)

² In the case of *Maya Forstater v CGD Europe UKEAT/0105/20/JOJ*, applying the the fifth criterion in *Grainger plc v Nicholson* [2010] ICR 360, the Employment Appeal Tribunal found that only if the belief involves a very grave violation of the rights of others, tantamount to the destruction of those rights (such as totalitarianism or Nazism), would it be one that was not worthy of respect in a democratic society and thereby liable to be excluded from the protection of rights under Articles 9 and 10 by virtue of Article 17.

³ Under the Equality Act 2010 in England, Scotland and Wales and the Fair Employment and Treatment (Northern Ireland) Order 1998 in Northern Ireland and a genuinely held belief or lack of belief is also protected by Article 9.

facts of the case include religious beliefs, beliefs closely linked to or based on those beliefs, lack of religion, and non-religious beliefs including atheism, agnosticism, ethical veganism, pacifism, and gender-critical beliefs. The Human Rights Act 1998 requires all public bodies to comply with the rights set out in the European Convention on Human Rights (ECHR). It also set out that UK law must be applied by UK courts and public authorities in way which is compatible with the rights conferred by the ECHR and its case law as it is possible to do so⁴.

4. This includes Article 10, which protects freedom of expression and Article 9 which protects freedom of thought, conscience and religion. Article 10 is not an unrestricted right and is subject to legal limits. *“Everyone has the right to freedom of expression”*⁵ but also recognises that this freedom may be subject to restrictions for a variety of reasons, including to protect the reputation or rights of others:

*“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*⁶

5. Under Article 9 everyone is free to hold a broad range of views, beliefs and thoughts, and to follow a religious faith. The right to manifest those beliefs may be limited only in specified circumstances.

*“Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”*⁷

6. There is a distinction between protected beliefs under Article 9 and ideas and opinions covered by Article 10 although these rights may overlap in practice.⁸ These freedoms are also subject to a range of restrictions prescribed in UK law, including the:

⁴ s.3, Human Rights Act 1998 (HRA) : interpretation of legislation

⁵ Article 10(1)

⁶ Article 10 (2)

⁷ Article 9(2)

⁸ In certain cases, Article 9 may also overlap with Articles 8 (right to private and family life), 11 (freedom of assembly), 12 (right to marry) and 14 (non-discrimination). In particular, Article 14 specifically recognises religion as one of the grounds on which discrimination is prohibited while ‘any other status’ within Article 14 covers non-religious beliefs too.

- a. Public Order Act 1986, which contains offences for stirring up hatred on the grounds of race, religion or sexual discrimination.
 - b. Malicious Communications Act 1988 and the Communications Act 2003, which criminalises “indecent or grossly offensive” messages and threats.
 - c. Terrorism Act 2006, which criminalises the publication and dissemination of material that could be seen as encouraging acts of terrorism.
7. Online Safety Act 2023 which criminalises a series of new communications offences including the sending photographs or film of genitals (cyber-flashing).
8. Further information about freedom of expression and freedom of thought, conscience and religion can be found at the Equality and Human Rights Commission (EHRC) website.

Our role as a regulator

9. Our Standards of Conduct, Performance and Ethics (the Standards) and this practice note recognise a registrant’s right to freedom of expression as well as the right to freedom of thought, conscience and religion⁹. We also recognise social media, networking websites and on-line communications as ways in which registrants may express their opinions, beliefs and share information raise particular issues.
10. However, we also recognise that there may be some circumstances where a registrant’s actions could impact on their fitness to practise.
11. When expressing their views registrants must meet the Standards at all times. This includes a professional duty to:
- a. use all forms of communication appropriately and responsibly, including social media and networking websites (*Standard 2.10*)
 - b. make sure that their conduct justifies the public’s trust and confidence in them and their profession (*Standard 9.1*)
 - c. treat information about service users as confidential (*Standard 5.1*)
 - d. keep their relationships with service users and carers professional (*Standard 1.9*)
 - e. make reasonable checks to ensure information shared is accurate, true, does not mislead the public and is in line with the duty to promote public health when sharing information on media sharing networks and social networking sites (*Standard 2.11*)
 - f. use media sharing networks and social networking sites responsibly, maintaining professional boundaries at all times and protecting service user/carer privacy. (*Standard 2.12*)

⁹ Article 10 and 9 of the European Convention on Human Rights (ECHR)

12. Breaches of professional duties may put others at risk of harm, as well as undermining the public's trust and confidence in registrants and the professions.
13. Social media is one way in which registrants express their opinions, beliefs and share information and in order to comply with our [guidance on social media](#) and our Standards registrants should:
 - a. Challenge discrimination¹⁰;
 - b. Maintain appropriate professional boundaries¹¹;
 - c. Communicate appropriately¹²;
 - d. Respect confidentiality¹³;
 - e. Be honest and trustworthy¹⁴.

How do these freedoms apply to professional regulation?

14. We recognise that regulation of the professions needs to strike the right balance between the public interest in maintaining public confidence in the professions and the rights of the individual registrant, under the Human Rights Act 1998 and equalities legislation.
15. Articles 9 and / or 10 may be engaged where reported conduct involves the registrant exercising their right to express themselves, for example, by expressing their views on social media, at a protest, in correspondence and / or in their conduct in professional life. Freedom of expression includes:

*"... not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative ... Freedom only to speak inoffensively is not worth having ..."*¹⁵

The right to manifest one's beliefs and freedom of expression are qualified rights, which means regulatory action may be justified in circumstances where a registrant's conduct, arising from the manifestation of a protected belief or the views and opinions expressed is potentially in breach of the Standards and such action can be justified. It is incumbent on HCPC as a regulator to consider concerns as and when they are raised in order to determine whether or not there has been a breach of the Standards.

16. This applies to a registrant's conduct in their professional and non-professional life¹⁶.

¹⁰ Standards 1.5 and 1.6

¹¹ Standards 1.8, 1.9, 1.10, 1.11 and 1.12

¹² Standards 2.10, 2.11 and 2.12

¹³ Standard 5.1

¹⁴ Standard 9.1.9.2 and 9.3

¹⁵ Sedley LJ in *Redmond-Bate v Director of Public Prosecutions* (1999) 7 BHRC 375, [20]

¹⁶ This approach has long been recognised by the courts – see for example *R (on the application of Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin); *Khan v Bar Standards Board* [2018] EWHC 2184 (Admin); *Ryan Beckwith v Solicitors Regulation Authority* [2020] EWHC 3231 (Admin); *AB v Bar Standards Board* [2020] EWHC 3285 (Admin) and is reflected in Standard 1.8.

17. We also recognise that our regulation of such conduct may engage a registrant's rights under Article 8 ECHR (the right to respect for private and family life, home and correspondence). Other qualified rights may also be engaged in particular cases, such as Article 11 (the right to freedom of assembly and association).

18. The HCPC must be satisfied that the interference with an ECHR right is 'proportionate', in other words that it is appropriate and no more than necessary to address the issue concerned. Even if far removed from a registrant's professional practice their conduct may have the potential to damage public confidence in and the perception of the profession.

19. In *Ngole v University of Sheffield [2017] EWHC 2699*, the Court said this:

"Professional discipline, rightly, sits relatively lightly on its members outside the workplace, but it is never entirely absent where conduct in public is concerned. There, it always requires attention to the perceptions of others, especially those most directly interested in the performance of professional functions."

20. Professional standards require a measure of personal responsibility to be taken for conformity to the ethos of the profession, and for awareness that personal conduct in public - whether or not in a work-related environment - can have an impact on the perception of the profession. There is an overriding obligation to do nothing which might affect the trust that the public has in the profession.

21. As such, the HCPC has a legitimate right to consider a concern relating to a registrant's expression of their opinions and beliefs. This is to ensure registrants are able and trusted to perform their role, as well as having regard to how that conduct may have been perceived, considering if there has been a risk to the public confidence and trust in the profession.

22. However, the HCPC must not take matters too far. Certain acts might damage the registrant's reputation but not necessarily their reputation as a provider of professional services or the profession's reputation. In *Beckwith v SRA [2020] EWHC 3231*. The Court commented that there is a distinction;

"between conduct that does or may tend to undermine public trust in the [profession] and conduct that would be generally regarded as wrong, inappropriate or even for the person concerned, disgraceful. Whether that line between personal opprobrium on the one hand and harm to the standing of the person as a provider of [professional] services or harm to the profession per se on the other hand has been crossed, will be a matter of assessment [by the Committee] from case to case."

23. Where that line lies and whether it has been crossed depends on whether what a registrant has said or done raises fundamental concerns about their practice or professionalism. Restriction on a registrant's Article 9 and/ or Article 10 rights

must not be arbitrarily applied and panels should consider the contextual and fact specific position in each case

Questions for Panels to consider

24. There are a series of questions that the UK courts have decided should form the structure to be considered when applying Article 10¹⁷ so that any interference with this right is justified and lawful. The questions are:

- a. Is what the defendant [registrant] did in exercise of one of the rights in Article 10?
- b. If so, is there an interference by a public authority with that right? A decision that there is a case to answer in respect of an allegation of impairment, a decision that conduct amounts to misconduct impairing fitness to practise, and / or a decision to impose a sanction following a finding of impairment are all likely to amount to an interference.
- c. If there is an interference, is it 'prescribed by law'¹⁸?
- d. If so, is the interference in pursuit of a legitimate aim as set out in Article 10 (2)?
- e. If so, is the interference 'necessary in a democratic society' to achieve that legitimate aim? This question will in turn require consideration some further questions in order to assess whether an interference is proportionate:
 - i. is the aim sufficiently important to justify interference with a fundamental right?
 - ii. is there a rational connection between the means chosen and the aim in view?
 - iii. **are there less restrictive alternative means available to achieve that aim?** If so this approach should be pursued
 - iv. is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

¹⁷ Most recently in *Adil v GMC* [2023] EWHC Civ 1261 quoting *DPP v Ziegler* [2020] QB 235 and approved and applied by the Supreme Court ('the Ziegler test')¹⁷

¹⁸ The following are two of the requirements flowing from the expression 'prescribed by law'; "the law must be adequately accessible: the citizen must be able to have an indication that it is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able to – if need be with appropriate advice- to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail" *The Sunday Times v United* [1979] 4 WLUK 163

25. In *Adil v GMC*¹⁹, the registrant argued that it would be an unlawful interference with freedom of expression to sanction a doctor for views on matters of medical, scientific or political significance. He argued that a doctor should always be able to express their views save where they are seriously offensive to others, particularly groups with protected characteristics. The Court of Appeal did not agree and noted the submission “*obscures the need to focus on the particular views expressed by [Mr A] in this case*”. The Court emphasised that “*all depends upon the facts of each individual case*”, also stating that:

“The legitimate aims in article 10.2 which are potentially engaged are the interests of public safety and protection of health.... Sanctioning doctors for comments likely to undermine public health and cause harm to the public so as to deter such behaviour also directly engages the aim of protection of public health and safety”

26. As the Court of Appeal has flagged in *Adil*, panels need to ensure that they conduct a thorough analysis of the conduct and consider the series of questions set out above in cases where Article 10 is invoked. There should be consideration of the extent of the restriction, and the justification for it.

27. When considering whether free expression should be limited, courts will question whether doing so could have a ‘chilling effect’ on free speech, the value of the particular form of expression and the medium used.

28. In *Professional Standards Authority for Health and Social Care v General Pharmaceutical Council (Ali)* [2024] EWHC 577 (Admin), the High Court stated that

“To that end, legal frameworks, whether in the criminal or in the regulatory sphere, must be interpreted and applied so as to avoid the “chilling” of legitimate political speech, which attracts the highest level of protection under Article 10 ECHR, as given effect in this jurisdiction by the HRA”

Our general approach

29. Panels should respect the right to freedom of expression and will only make a finding of misconduct and that a registrant’s fitness to practise is impaired when it is necessary and proportionate to our aims as a health and care regulator.

30. Panels need to consider whether what a registrant has said or done raises fundamental concerns about their practice or professionalism, guided by the Standards and our guidance on social media. When making decisions, panels must be careful to recognise that they may have personal views on a subject, and ensure that notwithstanding those views, they consider the matter neutrally. Panels should also recognise that people raising concerns about what has been said or done may have conflicting views to those expressed, but this does not

¹⁹ [2023] EWHC Civ 126

it and of itself render the views expressed unacceptable. Panels will need to carefully review all the relevant circumstances of each case including:

- a. what has been expressed;
- b. where and to whom the comments were made;
- c. whether there is a link to practice or status as a registrant and, if so, what this is (for example, its likely to be relevant to consider if the behaviour happened in work, outside of work related to a professional topic or work unrelated to a professional topic);
- d. if views expressed amount to a protected belief ;
- e. if viewed expressed amount to discrimination, harassment, bullying or victimisation of others;
- f. the way in which views or beliefs have been expressed.

Where there is a link to professional practice

31. Registrants can express and manifest their views, opinions and beliefs at work but not in a way which;
 - a. constitutes discrimination, harassment, bullying or victimisation of others;
 - b. means that they are not delivering the fundamentals of care effectively, or are not listening to people and responding to their preferences and concern; or
 - c. contravenes the requirement of the Standards.
32. Registrants have the right to practise in accordance with a protected belief, provided it is within the law and does not deny people who use services access to appropriate care or otherwise contravene the Standards.
33. Registrants can express their views and opinions and ask challenging questions about their work , subject to what has been expressed and where and to whom the comments were made. This can strengthen our regulated professions.
34. When a registrant promotes a position on a professional matter, especially where they rely on their registered status to do this, they should keep in mind the relevant provisions of the Standards. Panels should not take action just because they have expressed a controversial opinion on an issue relating to professional practice, registrants should be aware of how their behaviour can affect and influence the behaviour of others, as well as undermine public confidence in their profession. They should consider if they may need to qualify what they say, for example by pointing out that it is just their opinion or setting out the limitations of their experience in an area.

Where behaviour is unrelated to a Registrant's registered status or practice

35. Registrants are free to express themselves and their protected beliefs outside work. It is not usually the panel's role to monitor what registrants say or do which is outside, or unrelated to, professional practice. Panels should not take action simply because something a registrant has said or done has shocked, disturbed or caused offence to someone. They should only do so where it is necessary and proportionate to do so, for example the way a registrant expressed themselves results in a criminal conviction or could mean they pose a risk of harm to the public or undermine confidence in the profession.
36. Regulatory action should not be taken purely because a registrant has attended a lawful protest or is taking lawful industrial action. For example, a registrant might attend a lawful protest opposing the use of oil without questions arising as to their fitness to practise. Registrants enjoy a right to protest and manifest their personal beliefs. However, if a registrant engaged in criminal activity at the protest this may mean their fitness to practise could be impaired.
37. For example, a registrant might campaign for curbs to immigration or discuss their religious belief (protected in law) in an emotive way²⁰. However, were they to use racist, homophobic, sexist or other discriminatory language, or suggest that they would discriminate against others as a result of these views, in a professional context, their fitness to practise could be impaired.
38. Registrants who share content from others or links to such content might reasonably appear to be supporting the views or language found there. When sharing, they should consider the Standards and whether it would be appropriate to say they disagree with the content or explain their purpose for sharing it. If they do not this may mean their fitness to practise could be impaired.

²⁰ *Ngole v University of Sheffield* [2017] EWHC 2699