

## **DRAFT: Guidance on Blogging, Social Networking and use of Media**

### **Introduction**

Everyone has a right under the Human Rights Act 1998 to freedom of expression.<sup>1</sup> This right includes the right to hold opinions and to receive and impart information and ideas without interference by any public authority. However this right also carries with it duties and responsibilities in the interests of the protection of the reputation or rights of others. This Guidance is designed to advise Members of when to be aware of certain legal issues when making public statements.

It is important to note that the Code of Conduct will only apply when a Councillor is acting in his or her official capacity as Member of the authority. Official capacity is defined as conducting the business of the authority, or claiming to act, or giving the impression that he or she is acting as a Councillor. The parts of the Code of Conduct which may apply are listed in Paragraph 9.8; disrespect, bullying/intimidation and disclosure of confidential information.

### **Practical Advice**

If you use online media to promote your work as a Councillor, or through Council media pages or websites, you will generally be regarded as conducting the business of the authority. If a complaint is made against you, the decision as to whether you are acting in your official capacity will depend upon the particular facts of each case, and the circumstances surrounding use of a blog or social media.

If you do so as an individual, you are not, on the face of it, to be deemed to be acting as a Councillor. However, if you refer to Council business, or officers, you will not escape the Code of Conduct merely by saying you were acting as an individual. Here are some examples.

**Councillor S:** Cllr. S had a private Facebook page which he used to discuss current news topics, as part of promoting himself as a politician. However, he repeatedly made persistent and offensive remarks about a Council officer, referring to that officer in relation to Council business. His insistence that he did so in his private capacity was rejected, and a complaint against him for bullying and harassment was upheld.

**Councillor SH :** This member was a journalist who published a small journal. He neither claimed nor gave the impression of acting as a representative of the council. The magazine was 'published for fun', and a member of the public would be in no doubt that the journal was not a matter that was the business of the council. The Standards Committee counter argued that Cllr SH used the magazine to conduct public discourse on the council and party issues, and that his activities on the council, the magazine and the party were seamlessly connected.

However, the First-tier Tribunal disagreed. It said the decision in *Livingstone* (*Livingstone v APE* (2006) EWHC 2533) referring to 'activities which are apparently within the performance of a member's functions' should be narrowly construed. The

---

<sup>1</sup> For more on this see: *R(Calver) v Adjudication Panel for Wales* (2003)

appeals tribunal rejected the finding of the standards committee and concluded there had been no breach of the Code.

### **Other issues to consider**

There are also considerations apart from the Code that should be taken into account when using online media. The following is a brief guide to some of the legal pitfalls which might occur when establishing personal blogs. Almost all of these can be avoided if your online content is objective, balanced, informative and accurate. In the main, you have the same legal duties online as anyone else, but failures to comply with the law may have more serious consequences for you.

**Libel:** If you publish an untrue statement about a person which is damaging to their reputation they may take a libel action against you. This will also apply if you allow someone else to publish something libellous on your website if you know about it and do not take prompt action to remove it. A successful libel claim will result in an award of damages against you.

**Bias and Predetermination:** If you are involved in determining planning or licensing applications, you should avoid publishing anything on your blog that might suggest you have definitively made up your mind about a matter that you will be involved in determining.

**Copyright:** Placing images or text on your site from a copyrighted source (e.g. extracts from publications, photos etc) without permission is likely to breach copyright. Avoid publishing anything you are unsure about or alternatively seek permission in advance. Breach of copyright may result in an award of damages against you.

**Data protection:** Avoid publishing the personal data of individuals unless you have their express written permission.

### **Conclusion**

Blogging and social networking are excellent ways to engage a wider audience. In order to blog successfully, you should ensure that you comply with the Code and any other legal requirements. It is also important to note that, the ethical use of online social media is not limited to what is covered in the Code. While you may not be investigated or censured for using online media in certain ways, your conduct might still be viewed as less than exemplary and attract adverse publicity for your office and authority.