

STANDARDS COMMITTEE

28 JUNE 2017

REPORT OF THE MONITORING OFFICER

A.2 REVIEW OF SOCIAL MEDIA GUIDELINES FOR MEMBERS

(Report prepared by Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

For the Standards Committee to review the Council's Social Media Guidelines and give specific advice to be issued for elected Members.

EXECUTIVE SUMMARY

The Council has produced Social Media Guidelines, which were last updated in March 2016; these are attached as Appendix A.

Social Media is being used more and more by Councillors. Given the clear benefits of Social Media and recognising it has become part of everyday life for some Councillors engaging with residents who may not be reached through more traditional means, the Standards Committee decided as part of its annual work programme and following on from a previous investigation, to review the Council's Social Media Policy to ensure the guidelines are clear to assist understanding of potential pitfalls of using Social Media.

Draft Guidelines for Members, which set out some simple rules, are attached as Appendix B and include a reminder that inappropriate use of Social Media could amount to a breach of the Members' Code of Conduct.

RECOMMENDATION

It is recommended that:

- 1. Subject to any proposed amendments requested by the Standards Committee, that the draft Guidelines for Members when using Social Media, as set out in Appendix B be approved and adopted; and**
- 2. The approved Guidelines be circulated to all Members and annexed to the Corporate Social Media Guidelines to ensure it provides advice to both Councillors and Officers.**

BACKGROUND INFORMATION, CODE OF CONDUCT & LEGAL CONSIDERATIONS

Many Councillors are interacting with others, including the people they represent, online through Social Media. This is regarded as a modern and, more increasingly, normal method of communication.

Social Media is the term for online tools, websites and interactive media that enable users

to interact with each other by sharing information, opinions, knowledge and interests. For the purposes of the guidance, the term 'Social Media' covers sites and applications including, but not restricted to, Facebook, Twitter, Flickr, LinkedIn, blogs and any emerging sites which develop after the creation of this report as Social Media is developing quickly. These principles may equally apply to any other electronic communication addressed to a wider audience, e.g. multi addressee emails and texts.

As a District Councillor you are in a position where you are able to request information from officers that might not otherwise be publically available and you will also be included on information sent out to all Members. This may be privileged information that is provided to you to ensure you are aware of local issues and to enable you to fulfil your role as a District Councillor. You must consider how you use this information since it may be that it is private or privileged. You should check before posting this information on social media.

Anything posted on social media becomes a publication; effectively a broadcast has been made, and it is in the public domain. With Social Media platforms increasing in popularity it is important for Councillors to be able to use modern technology to represent their residents without falling foul of the law or compromising the Members' Code of Conduct.

MEMBERS' CODE OF CONDUCT:

The Code of Conduct applies to Councillors whenever they —

- (a) conduct council business, or are present at a meeting, of the Authority; or
- (b) act, claim to act or give the impression they are acting in the role of Member to which they were elected or appointed; or
- (c) act, claim to act or give the impression they are acting as a representative of the Authority (including representation on outside bodies).

Also the Code applies if a Councillor conducts themselves in a manner which could reasonably be regarded as bringing their office or that of the Council into disrepute.

It is important to understand that Councillors can have 'blurred identities'. This means they may have a Social Media account and comment both as a Councillor and as an individual. For example a Facebook account and post a comment about a great night out (personal) and another time explained the District Council's position on pothole repairs (Councillor). It may be clear in the individual Councillor's mind they are posting in a private capacity or as a Councillor, but it could be less clear to others.

Such blurred identities might have serious implications where a Councillor's views are taken by others as those of the Council, rather than a personal opinion. It's worth Councillors considering making Social Media accounts/profiles clear on the capacity in which they are commenting, and be more confident on what can and cannot be said.

Councillors are expected to communicate and comment politically, but in the same way members are required to act in Council meetings or within their communities.

Members should:

- **show respect for others** – do not use social media to be rude or disrespectful
- **not disclose confidential information about people or the council**
- **not bully or intimidate others**
- **not try to secure a benefit or advantage for themselves or others**
- **abide by the laws of equality**

It is not permissible to use Council resources for personal or political purposes and during the run up to elections, additional guidance will be issued.

LEGAL CONSIDERATIONS

Whilst there is no additional legal or ethical burden around using Social Media, the usual rules still apply and need to be thought about in this context. In the main, Councillors have the same legal duties online as anyone else, but failure to comply with the law may have more serious consequences. There are additional duties around using websites for electoral campaigning and extra care needs to be taken when writing on Council business, for example Planning or Licensing matters.

- **Libel**

If an untrue statement is published about a person, which is damaging to their reputation they may take a libel action against the Councillor (not the Council). This will also apply if the Councillor allows someone else to publish something libellous on their Social Media, if the Councillor knew about it and didn't take prompt action to remove it. A successful libel claim will result in an award of damages, even if only repeating statements made by others.

- **Copyright**

Placing images or text on Social Media from a copyrighted source (for example extracts from publications or photos) without permission is likely to breach copyright. Councillors should avoid publishing anything they are unsure about, or seek permission in advance. Breach of copyright may result in an award of damages.

- **Data Protection**

Avoid publishing the personal or sensitive data of individuals unless express written permission has been obtained in advance.

- **Equality**

Care must be taken in publishing anything that could breach Councillors' duties and responsibilities to have due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion.

- **Obscene material**

It goes without saying that Councillors should avoid publishing anything on Social Media that people would consider obscene. Publication of obscene material is a criminal offence.

FREEDOM OF EXPRESSION

It is important for the Committee to understand the principles of the right to freedom of expression and its restrictions. Article 10 provides:

- “(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....*
- (2) 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...the protection of the reputation or rights of others ...”*

It is also important to note the words of Collins J in ***Livingstone v The Adjudication Panel for England [2006] EWHC 2533 (Admin)*** [at para.39]:

“The burden is on [the Adjudication Panel for England] to justify interference with freedom of speech. However offensive and undeserving of protection the appellant’s outburst may have appeared to some, it is important that any individual knows that he can say what he likes, provided it is not unlawful, unless there are clear and satisfactory reasons within the terms of Article 10(2) to render him liable to sanctions”.

The right to freedom of expression is a crucially important right in a democratic society and it is clear that it may only be interfered with where there are convincing and compelling reasons within the terms of Article 10(2) justifying that interference. Comments made on Social Media related to matters within legitimate concerns as a Councillor (political or quasi-political comment) would benefit from a high level of protection under Article 10.

The question as to whether information is fair and balanced should be, in the first instance, the stuff of political debate and journalistic analysis. A clear distinction exists between “rough and tumble” politicking, which is aimed squarely at the competence of political opponents and making statements which would fall foul of the legal consideration set out above. In a democratic system the actions or omissions of any governing body must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion.

In ***Heesom v Public Service Ombudsman for Wales***, Mr Justice Hickinbottom considered a Councillor’s right to free speech in some detail. His considerations drew attention to a number of earlier cases in which the following propositions could be derived:

- While freedom of expression is important for everyone, it is especially so for an elected representative of the people. They represent their electorate, draw attention to their preoccupations and defend their interests.
- The enhanced protection applies to all levels of politics, including local.
- Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that

context, is tolerated.

- Whilst, in a political context, Article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.
- The protection goes to “political expression”; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.
- Past cases draw a distinction between facts on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible of proof, comments in the political context amounting to value judgments are tolerated even if untrue, so long as they have some – any – factual basis. What amounts to a value judgment as opposed to fact will be generously construed in favour of the former; and, even where something expressed is not a value judgment but a statement of fact (e.g. that a council has not consulted on a project), that will be tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it, “reasonableness” here taking account of the political context in which the thing was said
- As Article 10(2) expressly recognises, the right to freedom of speech brings with it duties and responsibilities however, any restriction must respond a “pressing social need”.

There have been other cases in which the courts have given consideration to freedom of expression, the public interest in such a freedom, and on the other side of the balance, the public interest in proper standards of conduct by elected members. The Article 10 balancing process is highly fact sensitive and while decisions will provide valuable guidance on the general approach, the courts have stressed that it is important to keep in mind the particular facts in any one case. What is essential is who comments are directed to, who is involved in the debate and if the recipient is not part of the political environment, the impact of the comments on them. In addition, it is possible to justify interference with the right to freedom of expression if the intention or impact results in civil or criminal activity, such as defamation, inciting public disorder, or breach of equality duties.

APPENDICES

- Appendix A – Tendring District Council Social Media Guidelines – updated March 2016
- Appendix B – Draft GUIDELINES FOR MEMBERS WHEN USING SOCIAL MEDIA