

Thanet District Council

Draft/V2

Blogging Guidance and Protocol

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Version 1 - Standards Committee - *8 September 2009*
Version 2 - Group Leaders - *14 September 2009*

Draft/ **Blogging Guidance and Protocol**

1. Introduction

- 1.1 “Blogging” may conveniently be defined as the act of authoring, publishing editing or contributing media content to an interactive website or ‘weblog’. In that sense blogging differs from the more traditional forms of print media in its accessibility, immediacy and interactive capabilities. Consequently, blogging can be an effective communication tool that supports ward councillors in their community leadership role enabling them to express their views on the policies and programmes of the Council or to address the day to day issues affecting their ward or to canvas or mobilise support for a particular policy option or for party political advantage.
- 1.2 However, blogging is not a risk free activity for councillors for a number of reasons. Firstly, as with any other form of communication media blogging will be subject to the laws of defamation, thus placing the blogger who either intentionally or inadvertently publishes defamatory content on a weblog or who fails to edit or remove defamatory postings by third parties, at risk of being the subject of a libel claim and the prospect of having to pay substantial damages. Secondly, if it can be said that by the style or content of a weblog a councillor is acting, claiming to act or giving the impression that he or she is acting as a councillor, then the Members Code of Conduct will be engaged and will govern that weblog. Thirdly, if at some future date the Council takes the decision to facilitate and host one or more councillor weblogs, then, in addition to complying with the requirements of the Members Code of Conduct, further publication restrictions will be imposed by the Code of Practice on Local Authority Publicity, principally a publicity restriction in the immediate lead up to a national or local government election as well as restrictions on the use of hosted weblogs for party political purposes.

2. Blogging & Defamation

- 2.1 Defamation is defined as the **publication** (communication) to **another person** of an oral or written **statement** which:
- exposes a person to hatred, ridicule or contempt; or
 - causes a person be shunned or avoided; or
 - has the effect of **lowering a persons reputation** in the estimation of right-thinking members of the public generally; or
 - injures a person in his/her **office**, profession or trade; or
 - imputes criminal conduct or criminal associations*
 - imputes unchastity in a woman*
 - imputes mental illness or disease*
- * if these would expose a person to hatred, ridicule or contempt or cause them to be shunned or avoided

- 2.2 Blogging as a form of publication will be subject to the laws of defamation and any person reading a blog in England and Wales who considers that content posted about them site is defamatory in nature will have the right to bring an action in defamation against the publisher of the statement – and this will remain the case even if the location of the server holding and storing the allegedly defamatory material is outside England & Wales. If an English Court finds on the balance of probabilities that such blog content was indeed defamatory in nature the remedy is an award of damages – and these may be substantial. It is therefore important that members are aware that the Council will not provide financial assistance to a member who is sued in defamation, nor will the Council indemnify any member who has been ordered to pay damages to a third party - even if the defamatory material that gave rise to such liability was published when the member was acting in an official capacity.
- 2.3 Members who publish a weblog may also be liable for defamatory material posted by third parties. This will be the case when a members retains full publishing control over third party content i.e. it cannot appear on the weblog without the members prior approval - because in such circumstances it is clear that it is the member, not the third party who is the publisher of the defamatory material. Moreover, members who allow third parties to post content to their weblog without prior editorial approval will still risk defamation liability unless regular monitoring of third party content takes place and defamatory material is promptly removed. Consequently, it is strongly advisable that members do not permit anonymous bloggers to post material directly on their weblog without exercising prior editorial control as the cloak of anonymity is frequently used to post defamatory material. Moreover, unlike defamatory statements or documents made or published at a meeting of the Council, Cabinet or a Committee, the defence of qualified privilege will never apply to defamatory material published on a weblog.
- 2.4 In addition, although the Council as a corporate body may not itself sue third parties in defamation, it may be sued in defamation by third parties. As the Council acts through the agency of members and officers, a member blogging in a defamatory manner while acting in an official capacity could impose liability on the Council. Members should be aware that if the Council was ordered to pay damages to a third party due the defamatory publications of a member it would be entitled to indemnify the loss to the public purse out of the assets of the member. Indeed, in nearly every case the Councils fiduciary duty to the taxpayer would require it to enforce such right of indemnity.
- 2.5 Members are therefore urged to maintain weblogs published as a member of Thanet District Council in a responsible manner by using moderate and respectful language, avoiding personal attacks on individuals, exercising proper editorial control of third party content and prohibiting the posting of anonymous blogs without prior editorial sanction.
- 2.6 Given the complexities of the law of defamation members are referred to the discrete guidance attached as an **Appendix**. However, members will be expected to obtain their own legal advice in the event that defamation proceedings are instituted against them.

Relationship to the Code of Conduct

- 2.7 The publication of defamatory material, particularly defamatory statements that are untrue or can't be proved, may also constitute a failure to comply with the Members Code of Conduct. Paragraph 3 (1) of the Code requires members to treat others with **respect**. Paragraph 3(2)(d) requires a member not to do anything which compromises or is likely to **compromise the impartiality** of an officer. Paragraph 5 provides that a member must not conduct himself in a manner which could reasonably be regarded as bringing his office or the Council into **disrepute**. Paragraph 6 (a) states that a member must not use his position as a member improperly to confer on or secure for himself or any other person, an **advantage or disadvantage**. It should also be noted that even if an action in defamation cannot succeed due to the availability of a recognised defence, (see the Appendix below), this will not affect the application of the Code of Conduct. For example, a member who could not be sued in defamation for a defamatory remark about another member because the remark is true and he can prove it to be true, could still be found to have breached the Members Code of Conduct by failing to treat the other member with respect and/or bringing his office or the Council into disrepute.
- 2.8 Failure to comply the Code may result in a complaint to the Standard Committee, investigation by the Monitoring Officer and referral to the Adjudication Panel for England or the Standard Hearings Sub-Committee for a hearing. In one case, the Adjudication Panel disqualified a member from holding public office for three years as a result of a course of conduct that included the making of untrue defamatory statements about other members and an officer. In relation to this, the Adjudication Panel found that the member had brought his office into disrepute and had compromised the officers' impartiality in breach of Paragraphs 3(2) (d) and 5 of the Code.

3. Blogging and the Members Code of Conduct

- 3.1 If a member publishes a weblog under his or her title as a TDC councillor or posts contributions to third party weblogs about Council business, its is likely that the member would be considered to be acting, claiming to act or giving the impression that he or she is acting as a member of the Council. The Code of Conduct makes it clear that in such circumstances members are acting in an official capacity. Consequently, the Members Code of Conduct will be engaged and will govern the content of that weblog.
- 3.2 As a dynamic form of interactive electronic media, inappropriate blogging could conceivably result in the Standards Committee receiving written complaints alleging breaches of one or more of the following provision of the Code of Conduct:-
- Paragraph 3(1) - you must treat others with respect;
 - Paragraph 3(2)(b) - you must not bully any person;
 - Paragraph 3(2)(d) - you must not do anything which compromises or is likely to compromise the impartiality of those who work for or on behalf of the Council;
 - Paragraph 4 - not to disclose information given to you in confidence;

- Paragraph 5 - not to conduct yourself in a manner that could reasonably be regarded as bringing your office or the Council into disrepute;
- Paragraph 6 (b) - (only if the Council host a member weblog) - you must use the resources of the Council in accordance with its reasonable requirements and ensure that such resources are not used for political/party political purposes; and
- Paragraph 6(c) - (only if the Council host a members weblog) - you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

3.3 Any member found by a Standards Hearings Sub-Committee to have failed to comply with the requirements of the Members Code of Conduct may be subject to a range of sanctions up to suspension from office for a period not exceeding six months. If a hearing before the Adjudication Panel for England establishes a breach of the Code of Conduct, the subject member may also be suspended for office for a period not exceeding 12 months or in the most serious cases be disqualified from holding office for up to five years.

4. Blogging and the Publicity Code

4.1 Local Government is subject to a mandatory Code of Practice on Publicity issued by the Secretary of State pursuant to Section 4(1) of the Local Government Act 1986 and a full copy of the current Publicity Code is set out in the Constitution. As noted above, if at some future date the Council takes the decision to facilitate and host one or more councillor weblogs, a number of publication restrictions will be imposed by the terms of the Publicity Code, principally

- (i) publicity restrictions in the immediate lead up to national or local government elections (i.e. from the date of notice of an election to the close of polling stations on election day - the so called 'election purdah' period)
- (ii) a restriction on the publication of any material designed to influence local opinion on whether or not to sign a petition requesting a referendum for an elected mayor and
- (iii) a restriction on the use of Council publicity (including hosted weblogs) for party political purposes or activity.

4.2 Relationship to the Code of Conduct

Moreover, any breach of the Publicity Code would fall to be dealt with as a potential breach of the Members Code of Conduct - Paragraph 6(c) of the Code provides that members must have regard to the applicable Local Authority Code of Publicity made under the Local Government Act 1986 and Paragraph 6(b) provides that when members are using the resources of the Council they must ensure that such resources are not used improperly for political purposes (including party political purposes).

5. Protocol on Member Complaints About Blogging

Introduction

- 5.1 In any democratic situation there is always a potential for conflict, opposition and lack of consensus. Indeed, some would say that that is the very essence of democracy. However, in their conduct all members are expected to conform to the General Principles Governing Public Life which underpin the Members Code of Conduct including principles of leadership, honesty, integrity and respect for others. Consequently, members are entitled to their good name and reputation and by treating others with respect, have a legitimate expectation that in their dealings with other members they will be treated with respect. Therefore, 'member on member' complaints alleging personal or personalised attacks by other members on their character or integrity, whether posted on blog sites or reported in the media not only engage the Members Code of Conduct with its attendant expense (circa £4,000 per investigated complaint) and very public disciplinary machinery, but also have the capacity to damage public trust and confidence in members generally and in the Council corporately. Clearly this has the capacity to undermine and negate the very significant advances made by the Council in recent years under both Conservative and Labour Administrations. Moreover, if officers, particularly senior officer operating at the political interface, are drawn into such complaints, this has the potential to compromise the impartiality of the officer and damage the essential trust and confidence that characterises the member/officer relationship. This has serious implications for both members and officers because the Members Code of Conduct requires members never to compromise the impartiality of an officer and senior officer are legally and contractually required to maintain political impartiality at all times. It is therefore no exaggeration to say that if political discourse strays from the political into the personal and if such conduct is allowed to proliferate, the reputation of the Council and all members is brought into disrepute.
- 5.2 Therefore, in order to counteract this danger and enable the administration, opposition and officers to maintain their focus on serving the public interest and improving Thanet, the following protocol will be adopted by the party groups and utilised when a member of a party group consider that he or she has been subject to a personal attack by the member of another party group. It is also recognised that if this protocol is not followed in any particular case or if a members remains dissatisfied, they retain the right to make a formal complaint to the Standards Committee.

The Protocol

- 5.3 The Group Leaders or their chosen representative (say, the Whip) will have overall responsibility for ensuring that the protocol is observed within their groups.
- 5.4 Whilst the very nature of politics is essentially built around administrations and oppositions and by implication disagreement on a number of issues, in the best run Councils, any attacks that occur are based purely on political issues and not personal ones. In order to replicate the best run Councils, Thanet District Council political and non-political party groups agree to sign up to a protocol that limits attacks on the other party to one of politics and policies, and clearly refrains from personal attacks on the member, their families, businesses or associates.

- 5.5 In the event of allegations of a criminal nature, these should, first of all, be referred to the Chief Executive who, in consultation with the member making the allegation, may refer the matter to the police, where appropriate. The Chief Executive will consult with the Monitoring Officer on this issue.
- 5.6 Following on from this, officers of the Council should be immune from personal attacks by politicians. If any member has any complaint against an officer, the established channel for this is through the statutory Head of Paid Service, (the Chief Executive) and in the case of the Chief Executive through the Leader of the Council, who will be obliged to inform the Monitoring Officer. The definition of the word “attacks” identified above includes verbal and written (including electronic media such as e-mails, texts, blogs, twitter, facebook etc.) methods of communication. Members should not get involved in anonymous attacks based on information gleaned as a result of their position on the Council, or be involved in assisting others in so doing.
- 5.7 It is accepted that blogging is a legitimate form of communication and responsible blogging has the capacity to enhance civic leadership and promote democratic engagement. However, blogging can be used to malign individuals including members particularly those weblogs who permit or tolerate anonymous postings. Consequently members who host weblogs should be aware of their legal and moral responsibilities. In particular, any member involved in malicious blogging will run the risk of breaching the Members Code of Conduct and bringing their office and the Council into disrepute, but may also face civil and possibly criminal action. The Council may also be exposed to similar action if it is considered that the member acted as a Councillor in making the allegation, either by using information available to him or her, formally or informally, as a Councillor, or by not checking the facts first. In addition, a member who host a weblog has editorial control and therefore is not absolved from responsibility for defamatory or offensive content posted by a third party. Where this inadvertently happens the host member should remove the offending blog within 24 hours of being requested to by the appropriate Group Leader or Whip.

Tolerance

- 5.8 Any protocol relies upon a degree of tolerance and it can be expected that there will be occasions when a party group or an individual member is considered to have contravened the spirit or letter of the protocol. Consequently, the tolerance built into this protocol is an attempt to regulate occasions where this may have happened. Party groups must be prepared for individuals, either deliberately or accidentally to stray from this agreement, (and should not engage in tit for tat attacks), and must accept that where this is seen to be happening, informal discussions should take place between the Group Leaders and Chief Executive, in an attempt to prevent it escalating and snowballing. In addition, in the six months leading up to Council Elections the Party Groups must accept that the normal rough and tumble of campaigns will exist and that due allowance should be made for this. Nevertheless, this protocol should not be abandoned and personal attacks on individuals should be actively discouraged. At all times it is incumbent upon members to check the facts of any issue they might wish to publicise, prior to publication.

Procedure

- 5.9 Any complaint must be made through the Group Leader of the member making the complaint. After due consideration and discussion, the Group Leader may pass the complaint to his/her opposing Group Leader, who will pass it onto the Group Whip.
- 5.10 The receiving Group Whip will then deal with this internally within the alleged offending group, and should then report back to his/her Group Leader who will inform the other Group Leader within 28 days. It is hoped that this will resolve the situation, but in a case where there is still a significant difference, the matter should be referred to a meeting between the Chief Executive and the respective Group Leaders, in an attempt to finally resolve any outstanding issues.

Right to Complain to Standards Committee

- 5.11 It is hoped that the Procedure set about above will resolve the vast majority of 'member on member' complaints. However, in the event that a complaining member remains dissatisfied, they retain the right to submit a written complaint to the Chairman of the Standards Committee alleging a breach of the Members Code of Conduct. Such a complaint will be dealt with in accordance with the Councils adopted procedures for dealing with such complaints.

APPENDIX - GUIDANCE NOTE ON DEFAMATION

1. Speaking at Meetings and in Public – Defamation and Qualified Privilege

Except for the limited circumstances in which the press and public are excluded from meetings, the Council conducts its business in public. It is therefore important that members appreciate that statements made in Council, the Cabinet and Committee meetings are subject to the laws of defamation.

This guidance note aims to explain:

- What is defamation;
- The consequences of publishing a defamatory statement;
- The defence of Qualified Privilege (and other defences);
- Defamation of the Council
- Relationship to the Code of Conduct
- How liability can be avoided

2. What is Defamation?

A person is entitled to his/her reputation and good name, particularly if they hold public or professional office and their position and reputation depends on a high degree of public trust and confidence. Accordingly, communication to a third party of a matter which is (i) untrue and (ii) likely to disparage substantially a person's reputation is, on the face of it, defamation.

Defamation is defined as the **publication** (communication) to another person of an oral or written statement which:

- Exposes a person to hatred, ridicule or contempt; or
- Causes a person be shunned or avoided; or
- Has the effect of **lowering a persons reputation** in the estimation of right-thinking members of the public generally; or
- Injures a person in his/her **office**, profession or trade; or
- Imputes criminal conduct or criminal associations*
- Imputes unchastity in a woman*
- Imputes mental illness or disease*

* if these would expose a person to hatred, ridicule or contempt or cause them to be shunned or avoided.

3. Distinction between Libel and Slander

The law of defamation covers libel and slander. A defamatory spoken word or gesture will usually amount to a slander whereas a libel may be contained in a written or printed statement, or in a painting, talking film, caricature, advertisement or any disparaging object. Reading out a defamatory document in Council, the Cabinet or a Committee meeting would not be slander, but the publication of a libel. The dictation a defamatory letter to a secretary would be slander put the publication of the letter would be libel. A defamatory statement broadcast on radio, television or the theatre is treated as the publication of a libel and not slander.

The only significance of the distinction is that libel is in more permanent form and is always actionable without proof of "special damage" whereas a slander is transient and will only be actionable without proof of special damage if it:-

- Imputes guilt of a criminal offence punishable by imprisonment;
- Imputes unchastity in a woman
- Imputes a disease that would cause a person to be shunned or avoided
- Injures a person in his **office**, profession or trade;

4. Consequences of making a Defamatory Statement

Defamation is unique in civil law in that it may be tried by a Jury who not only determine whether an action is proved but usually also determine the level of **damages** awarded. A judge will only assess the level of damages in cases of innocent defamation. The Court may also grant an injunction to prevent publication of a defamatory statement.

Although there are damages award guidelines, the Courts will only interfere in jury awards that are obviously excessive. Moreover, in addition to paying damages if defamation is proven, the defamer, as the losing party, will also have to meet his or her own legal costs and pay the winners legal costs. As there is no public funding for defamation actions and legal costs frequently exceed the award of damages, it is apparent that defamation actions are hazardous, especially for litigants in person.

Mitigation

Even if a defamatory statement has been made and proved, the level of damages awarded may be reduced if any of the following can be shown:

- **Lack of deliberate malice**
- **Provocation** - i.e. if the defamatory statement is made as a direct response to provocative statements made by the person alleging defamation.
- **Mere repetition** - it is considered less malicious to repeat rather than originate a defamatory statement

- **Apology**- if the defamator can show that he made or offered an apology before the commencement of the action or as soon afterwards as he had an opportunity of so doing.
- **“Offer of Amends”** has been made – see below. If this is not pleaded as a defence it can still be relied upon in mitigation.

5. Defences to an Action for Defamation

It is a complete defence to an action for defamation to show that it was made on a **privileged occasion**. Privilege may be **absolute** or **qualified**:

a) **Absolute Privilege** – attaches to Parliamentary and Judicial proceedings and reports. This will include the proceedings of an Adjudication Panel and the reports of an Ethical Standards Officer when dealing with alleged Code of Conduct breaches by Members. Similarly, communications between the local Ombudsman and the Council are absolutely privileged. However, absolute privilege does **not** attach to Council, Cabinet or Committee meetings, even when functions are exercised which attract an obligation to act quasi judicially (e.g. in planning and licensing matters), nor will it attach to the reports of the Monitoring Officer under the Local Determination Framework, or to the Standards Committee when it meets to consider those reports.

b) **Qualified Privilege** – exists where:

- The person who makes a communication has an **interest or duty** (whether legal, social or moral) **to make it** to the person to whom it is made; and
- The person to whom it is made has a **corresponding interest or duty** to receive it; and
- The person who makes the communication is **not motivated by malice**.

Qualified Privilege will therefore generally attach to statements made in Council, the Cabinet or in Committee, whether contained in an Officer report or spoken by a Member or Officer. Consequently, it will be a complete defence to prove that the author of the report or the speaker had a duty or interest to make the statement, that there was a corresponding duty or interest on the part of the recipient (fellow Members) to receive it and that the author or speaker was not motivated by malice.

Normally, so long as a person believes in the truth of what is said malice cannot normally be inferred. However malice may be inferred if it can be shown that an author or speaker was motivated by a purpose **other than his or her interest or duty** to make the statement.

Examples of improper purposes or motives will include giving vent to personal spite or ill will. Therefore, violent, intemperate and what the courts have described as “exotic” language (whether spoken or contained in a report) can give rise to a presumption of malice and destroy privilege, leaving the author or speaker at risk of an action in defamation

Reciprocity Needed

The requirement that in addition to an interest or duty to make the statement, there must also be a corresponding interest or duty to receive it, has the effect of greatly limiting the extent of publication of the statement, if the defence of qualified privilege is to be relied upon. In other words, the wider the publication, the less likely it is that the defence of qualified privilege will be available because it is unlikely that a large group of people will all have an interest or duty to receive a statement. This is important because the public at large are entitled to attend meetings of the Council, Cabinet or a Committee to listen to the debate on an open report.

The limitation that wide publication can place on the availability of the defence of Qualified Privilege was illustrated in the case of *De Buse -v- McCarthy* (1942). Here, the Town Clerk of the Borough of Stepney sent out a notice convening a meeting of the Council to consider a report from a Committee regarding the loss of petrol from one of the Council's Depots. Included in the notice was a complete copy of the report of the Committee setting out its defamatory conclusions as to who was responsible for the loss of petrol. In accordance with established practice a complete copy of the notice was sent to the public libraries in the Borough. In an action for defamation by the person named in the report against the Town Clerk for publication of a libel, the Town Clerk raised the defence of Qualified Privilege. He maintained that he was under a duty to circulate the report to members, that Members had an interest or duty to receive it and that he was not motivated by malice. All true, but the Court held that the extent of publication of the report destroyed the privilege otherwise attaching to it. Ratepayers had been able to read the report in the public library and there was no interest or duty on their part to receive a report which was only a preliminary stage in an investigation.

Consequently, open reports should not contain defamatory statements and exempt reports containing defamatory statements should only be circulated on a "need to know basis", i.e. to the Members of the Cabinet or Committee receiving the report, if privilege is to be maintained. For example, it would be difficult to argue that the every Member of the Council had an interest or duty in receiving an exempt report to the Licensing Panel that contained defamatory statements as to why an applicant for a taxi licence was not a fit and proper person to hold a licence.

c) Other points on Qualified Privilege are:

- The disclosure of defamatory material concerning past events to new members of a Council will not be privileged unless it is reasonably necessary to enable them to perform their duties;
- Under the Public Bodies (Admission to Meetings) Act 1960 and the Local Government Act 1972 the press and public must on request be allowed access to, or in certain circumstances be supplied with, the agenda, reports and background papers relating to matters to be considered by the Council or a Committee of the Council. These Acts provide that where such matters are made available to the

- press or to the public, they are privileged unless publication is proved to have been made with malice. However, further publication by the press and/or public will not be privileged unless it satisfies the usual conditions for Qualified Privilege to attach.

- Press and public access to the agenda reports and background papers of the Executive is governed by the Local Government Act 2000 and the Local Authorities (Executive Arrangements)(Access to Information) (England) Regulations 2000. Regulation 22 places the Cabinet or a Committee of the Cabinet in the same position as the Council or a Committee of the Council - that is to say that agendas and reports that must be disclosed to the press and public are privileged unless publication is proved to have been made with malice.

d) Other Defences :

- (i) **Justification** - i.e. the defamatory statement is true and if so, provides a complete defence. Qualified Privilege is a better defence because the defence of justification requires the Defendant to prove that the defamatory statement was indeed true. Consequently, a Member who destroys Qualified Privilege by malicious defamatory statements risks being put to proof on those statements and paying substantial damages if they can't be proved.

- (ii) **'Fair Comment'** - This defence is intended to allow any person (but in particular the Press) to express their views honestly and fearlessly on matters of public interest even through that may involve "strong" criticism of the conduct of persons in the public arena or who hold public office. In this connection, the administration of local affairs by the Council is a matter of public interest.

- (iii) **Unintentional Defamation** - Section 1 of the Defamation Act 1996 provides a defence to a person who is responsible for a defamatory publication, if:
 - He was not the author, editor, or publisher (meaning commercial publisher),
 - He took reasonable care in relation to the publication; and
 - He did not know or had no reason to believe that what he did caused or contributed to the publication.

This defence will protect Internet Service Providers and Web Hosting companies from defamation actions due the publication of defamatory material in e.g. internet chat rooms or on third party web sites hosted by them. However, in the case of Godfrey -v- Demon Internet (1999) the court decided that Demon Internet had not taken reasonable care in relation to the publication because they failed to remove the defamatory material from the net for two weeks after its existence had been brought to their attention. Consequently the defence was not open to them

- (iv) **“Offer of Amends”**- Sections 2 to 4 of the Defamation Act 1996 also provides a defence in cases of unintentional defamation if the Defendant can show that he offered and published a suitable correction and apology and offered to pay suitable compensation and costs

6. Defamatory Statements against the Council

It used to be the law that the Council had a “governing reputation” which it was entitled to protect. In the case of Bognor Regis Urban District Council -v- Campion (1972), the UDC successfully brought an action against a ratepayer who had published a leaflet defamatory of the Council. However, the House of Lords decided in the case of Derbyshire County Council -v- Times Newspapers Limited (1991) that the Bognor Regis case was wrongly decided and that it was in the public interest for the press and public to be free to comment upon local authorities without fear of defamation proceedings. Even if the Council cannot sue in defamation, defamatory statements about an individual Member will still be actionable by the Member concerned.

7. Defamatory Statements by/against Members

It is important to stress that even if a member makes a defamatory statement in his official capacity (e.g. reading from a report at a Committee Meeting) or is the subject of defamatory statements that relate to his office as a councillor, the Council still lacks the power to assist or indemnify him in defamation proceedings. Therefore, in order that Members can fulfil the duties of office and speak openly on matters of public interest without fear of defamation actions, a few simple guidelines should be followed. These are set out in the Paragraph 9 below.

8. Relationship to the Code of Conduct

The making of a defamatory statement, particularly one that is untrue or can't be proved, may also constitute a failure to comply with the Members Code of Conduct. Paragraph 3(1) of the Code requires members to treat others with **respect**. Paragraph 3(2)(d) requires a member not to do anything which compromises or is likely to **compromise the impartiality** of an officer. Paragraph 5 provides that a member must not conduct himself in a manner which could reasonably be regarded as bringing his office or the Council into **disrepute**. Paragraph 6 (a) states that a member must not use his position as a member improperly to confer on or secure for himself or any other person, an advantage or **disadvantage**.

Failure to comply the Code may result in a complaint to the Standard Committee, investigation by the Monitoring Officer and referral to the Adjudication Panel for England or the Standard Committee for a hearing. In one case, the Adjudication Panel disqualified a member from holding public office for three years as a result of a course of conduct that included the making of untrue defamatory statements about other members and an officer. In relation to this, the Adjudication Panel found that the member had brought his office into disrepute and had compromised the officers' impartiality in breach of Paragraphs 3(2)(d) and 5 of the Code.

9. Outside Bodies

The Council or the Cabinet annually appoint members to a wide range of outside bodies. In most cases, Qualified Privilege will attach to the meetings and proceedings of the body. Nevertheless, as the Council will not assist or indemnify any member in relation to a defamation action arising out of or in connection with the members participation in an outside body, members are advised to also follow the guidance in the Appendix in their dealings with the body.

9. Avoiding Defamation Actions

Ask yourself the following questions before speaking at full Council, the Cabinet or in a Committee meeting (or on the board or management committee of an outside body to which you have been appointed by the Council) on any matter which could be construed as defamatory. If the answer to any question is 'no' – do not speak unless you are absolutely sure of your facts. This will ensure that even if the defence of Qualified Privilege is lost or is not available, the defences of justification or fair comment will be available.

- Do I have an interest or duty to make the statement?
- Is there a corresponding interest or duty on the part of other Members to receive it?
- Is there an interest or duty on the part of the Press and public to receive it?*
- Do I reasonably believe in the truth of what I am about to say?
- Am I motivated to make the statement only by my interest or duty to make it?

REMEMBER - BEFORE SPEAKING:

- Check your facts
- Examine your motives
- Remain courteous and use moderate language - even under provocation
- Take your own legal advice if in any doubt

****Note:** If you do not believe that there is an interest or duty on the part of the Press and public to hear a statement, it will be possible to propose a motion to exclude the press and public pursuant to Section 100A of the Local Government Act 1972. The proposed statement would have to fall within the definition of "exempt information" as set out in Schedule 12A to the Act.

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September 2009