

REPORT FOR: STANDARDS COMMITTEE

Date of Meeting: 16 June 2011

Subject: Social Media Protocol

Responsible Officer: Hugh Peart, Director of Legal and
Governance Services

Exempt: No

Enclosures: Appendix 1:
Draft Social Media Protocol

Section 1 – Summary and Recommendations

Recommendation:

That the committee recommends to Council the attached draft social media protocol to be included in the Constitution.

Section 2 – Report

1. A recent standards hearing subcommittee recommended that the Standards Committee should consider adopting a protocol on use of social media. At the Standards Committee meeting on 26 April Members were presented with the Standards for England's guide on blogging. Members were asked to consider whether a protocol on social media use would be useful for the Council. It was agreed that a Protocol on social media be developed and presented to the Committee for its approval. It was further agreed that the Protocol should cover various forms of social media such as Facebook and Twitter.
2. Members also noted, at the 26 April meeting, that it would be helpful to have case studies to refer to in the consideration of complaints made against Members. An appendix has been added to the draft Protocol which provides the Standard for England's application of cases related to social media.
3. Additionally, the attached Protocol has been submitted for the committee's approval prior to any upcoming training session on social media due to be held on 30 June.
4. Officers have used the Standards for England guide as a basis for the Harrow Social Media Protocol which will form part of the Constitution once approved.
5. Attached to this Report at Appendix 1 is the draft Social Media Protocol.
6. Members are requested to agree the attached Social Media Protocol.

Risk Management Implications

Failing to stay informed about developments in the standards framework may impact on the ability of the Standards Committee to perform its role to a high standard.

Relevant Objectives of the Standards Committee

This report contributes towards the objective of 'Internal Control', as being aware of standards cases that are reported nationally will help the Committee to ensure that it deals with ethical governance issues in accordance with the law and in line with best practice.

Corporate Priorities

This Report is relevant to the corporate priority of united and involved communities: a council that listens and leads.

Financial Implications

There are no financial implications associated with this report.

Section 3 - Statutory Officer Clearance

Name: Steve Tingle	<input checked="" type="checkbox"/>	on behalf of the* Chief Financial Officer
Date: 8 June 2011		
Name: Matthew Adams	<input checked="" type="checkbox"/>	on behalf of the* Monitoring Officer
Date: 8 June 2011		

Section 4 - Contact Details and Background Papers

Contact:

Jessica Farmer, Head of Legal Services – Legal Services, 0208 420 9889
 Vishal Seegoolam, Acting Senior Professional – Democratic Services, 020 8424 1883

Background Papers: None

If appropriate, does the report include the following considerations?

1.	Consultation	NO
2.	Corporate Priorities	YES

M. SOCIAL MEDIA PROTOCOL

What is a social media?

Social media is a collective term used to describe easy ways to create and publish on line. When people talk about social media, they often make reference to some well-known tools or products such as blogging, Facebook, Twitter and MySpace.

How does the Code of Conduct apply to social media sites?

When considering the application of the Code to social media, it is essential to consider whether the Code will apply to your social media site and which paragraphs you should be aware of in order to ensure ethical use of social media sites.

For the Code to apply to your use of social media paragraph 2 of the Code needs to be satisfied. Paragraph 2 makes it clear that the Code only applies when you are acting in your official capacity. Official capacity is defined as conducting the business of the authority or acting, claiming to act or giving the impression that you are acting as a councillor. The decision as to whether you are acting in your official capacity will depend on the particular facts of each case and the circumstances surrounding your social media site. There are a number of issues that will be taken into account when assessing this. These include:

How well known or high profile you are as a member. The more high profile you are, the more likely it is that you will be seen as acting in your official capacity when you blog or use a social mediaing site. Anonymous use of social media can also lead to a breach of the code were it can be proved that a member uploaded the site content and that they were acting in their capacity as a member.

The privacy settings on your blog or social media site. If you have a private, personal blog, ensure that you have appropriate privacy settings so that you decide who can read your posts. If you have a political blog this may well be open to all readers. If constituents are able to see your posts, they may assume that you are acting in your official capacity as their representative.

The profile on your social media site. You should set out clearly in your profile if this is a political or personal social media site. Identifying this will enable readers to better understand if you are seeking to act in your official capacity or not. Nevertheless it may be possible in a personal social media site to give the impression that you are acting as a member even though you have stated otherwise. Also, you cannot discuss council business on a personal social media site and/or make gratuitously offensive remarks about others who are linked to the council and then claim to be doing so in a private capacity.

When using social media sites you should bear in mind the following paragraphs of the Code will apply to your online behaviour just as they would to any other form of communication.

Paragraph 3(1) - Treating others with respect: The aim of the Code is not to stifle political opinions and arguments. As such, political comments and comments about ideas are less likely to be seen as disrespectful and result in a breach of the Code. However, personal jibes or remarks aimed at an individual may well be seen as disrespectful and could lead to a breach of the Code and possible sanctions.

Paragraph 3(2) (d) – Disclosing confidential information: Before releasing any information on your blog or social media site, check if it is confidential and if you have the right to release it.

Paragraph 5 – Disrepute: Because of your role, your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an impact on your office or authority. Dishonest or deceitful behaviour in your role as a member may bring your office or the authority into disrepute.

Paragraph 6 (b) (i), 6(b) (ii) and 6(c) – Use of resources: You must not use local authority resources “improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.” Also you must ensure that these resources are not used improperly “for political purposes” - including party political purposes. See the Johnson case below.

You should also consider other online activities where the Code may apply:

Forum posts. If you go on to a forum and identify yourself as a member then it is likely that the Code will apply when you post entries. If you put content on the site which you could only have obtained as a member it is possible to argue that you have given the impression that you were acting as a member even if you did not identify yourself as such when you made the posting.

Comments made by others. It is also important to regularly check your own blog or social media site to ensure there are no defamatory or obscene comments posted by others. If this does happen you should remove the posts as soon as you become aware of them. You should also take steps to discourage users from posting such comments in the future.

“Friends” on social media sites. You should be aware that anyone you include as a friend on social media sites could be regarded as a “person with whom you have a close association” within the meaning of paragraph 8 of the code – personal interests. Simply including someone on a site as a friend does not establish a close association but it is one factor that would be taken into account in deciding whether such an association exists.

Human rights considerations

In considering whether your use of social media has breached the Code, Article 10 of the European Convention on Human Rights (the right to freedom of expression) must also be taken into account. You are less likely to breach the Code where you are making genuine political statements. This means that you are less likely to breach the Code if your comments are about another member’s political position or are a genuine expression of political differences with someone. The courts have established that this is because of the fundamental importance of freedom of political expression in a democratic society. However, any political expression should avoid being just an expression of personal anger or abuse towards someone since insults and abuse do not normally qualify for the protection of Article 10. If you make rude comments about a member of the public or an officer of an authority it is more likely that you will be found to have breached 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 in 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.

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 already made up your mind about a matter you may be involved in determining. Otherwise, the decision runs the risk of being invalidated.

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 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.

Obscene material

It goes without saying that you should avoid publishing anything in your blog that people would consider obscene. Publication of obscene material is a criminal offence.

Conclusion

Blogging and social media sites 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. You should also consider the Ten General Principles of Public Life. 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.

APPENDIX 1 – Application of cases

Examples which illustrate how the First Tier Tribunal and standards committees have viewed cases involving social media can be found in the following cases:

Councillor Mullaney APE 0400 and High Court judgment

Birmingham City Council

In this decision factors relevant to the conclusion that conduct was within “official capacity” included the following

- The subject member trespassed onto an individual’s property and shot a video that he subsequently posted on You Tube. The aim of the video was to galvanise the planning department into taking action concerning the building.
- The YouTube video concerned identified the subject member at the outset.
- The subject member identified himself several times as a member.
- The video was subsequently published on the subject member’s website - the homepage of which identified him as a member.
- References were made in the video to the jurisdiction of the subject member’s council.
- The subject member failed to remove or edit the video when requested.
- The tribunal decision on breach was upheld by the High Court and the case was sent back to the Appeals Tribunal to consider if the sanction they applied was appropriate.
- The sanction applied was a one month suspension.

Councillor McTigue APE 0421

Middlesbrough Council

The Appeals Tribunal accepted that

- Even if it became clear from the forum (an on-line forum hosted by the local newspaper) that an individual who was posting on the forum was a member, the Code would not automatically be engaged.
- The question was whether in the postings on the forum the member was deemed to be, or gave the impression that he or she was “acting in the role of member”.
- This was fact-sensitive and would very much depend on the content of the postings.
- The subject member had used a pseudonym and stated that she was on the forum as a resident who just happened to be a member. Taking the contents of the postings as a whole the member did give the impression that she was acting in the role of member and representing the council. In a series of posts the subject member discussed council business, outlined what had happened at council meetings and referred to herself as a councillor.
- Sanction applied was a two month suspension.

Mayor Johnson

Greater London Authority Standards Committee Decision

- The Mayor of London linked in his tweet to the front page of the Sun, which on that day had announced its decision to endorse the Conservative party.

- The standards committee found that he had breached paragraph 6(b) (ii) of the authority's Code because he tweeted using his mayoral twitter feed (thus using GLA resources) and was considered to be seeking to affect party political support.
- Sanction applied was for the monitoring officer to speak to the Mayor about his responsibilities under the code.

Councillor Sharratt APE 0458

South Ribble Borough Council

- The member was a journalist who published a small journal.
- The member 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, the panel said, that the journal was not a matter that was the business of the council.
- The Standards Committee accepted the argument that Cllr Sharratt 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 the case of Livingstone referring to 'activities which are apparently within the performance of a member's functions' should be narrowly construed.
- The appeals tribunal rejected the finding of the standards committee and concluded there had been no breach of the Code.
- No breach.

Councillor Barnbrook APE 470/471

London Borough of Barking and Dagenham

- The member appealed the decision of the standards committee of the London Borough of Barking and Dagenham.
- The member published a video on a website concerning statements about knife crime that were inaccurate.
- The key question considered by the tribunal was whether the member was acting in his official capacity when making the video.
- There was no evidence to support the position that the member was conducting the 'business of the Council' and the parties did not put forward any arguments to this effect
- The Tribunal was drawn to the conclusion that the making of the video was not proximate enough to the role of member so as to bring him into the ambit of acting in his capacity as a member. The Tribunal considered the following factors in reaching its conclusion:
 - The member was making a video on behalf of the BNP with its primary purpose being party political;
 - He was not identified as a member for the London Borough of Barking & Dagenham;
 - He was not taking forward an issue relevant primarily to the London Borough of Barking & Dagenham;
 - He was not taking forward an issue on behalf of an individual constituent; and,

- The video dealt with a range of issues and the Appellant did not concentrate upon issues within the London Borough of Barking & Dagenham.

- No breach.

(source: Standards for England)