

**CYNGOR SIR POWYS COUNTY COUNCIL.**

**DEMOCRATIC SERVICES COMMITTEE**

**4<sup>th</sup> October, 2012**

**REPORT BY:**

**Scrutiny Services Manager**

**SUBJECT:**

**Blogging and Social Networking draft policy**

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**REPORT FOR:**

**Decision**

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**1. Background**

- 1.1 The attached Blogging and Social Networking draft policy agreed by the previous Member Development Working Group in April, 2011.
- 1.2 The draft was considered by the Communication Team/HR. They advised that the draft policy was accurate and sensible. It did not contradict anything in the social media guidelines which had been developed for staff. The draft was then forwarded to the Political Group Leaders for comments from the Groups and the former Powys Administration was content with draft.
- 1.3 To support the development of the guidelines a Member Development session was held in November 2011 which focused on how councils and members can use social media effectively and provided advice and guidance on good practice and potential pitfalls.

**2. Review of the draft guidance**

- 2.1 Due to the time lapse since the draft was first considered it is being brought back to the Democratic Services Committee for consideration.
- 2.2 Once this Committee has considered the draft and made comments it is suggested that it should be sent to the Political Groups for their views.

**3. Comments received from the Standards Committee**

- 3.1 The Standards Committee will consider the draft once Groups have had an opportunity to comment. However, the Standards Committee has considered an associated issue and asked the Democratic Services Committee to consider this.
- 3.2 The following is an extract from the minutes of the Standards Committee on 4th July 2012 for the attention of the Democratic Services Committee

**C1.1 Social Networking**

A draft Protocol on Social Networking was prepared sometime ago and feedback is awaited from the Political Groups. The new Democratic Services

Committee will take over responsibility for the development and adoption of this Protocol from the former Member Development Working Group. The Protocol would be brought back to the Standards Committee for comment but Members did query whether or not Councillors could use council facilities for personal or political blogs as the draft protocol appeared to be contradictory on this point. This was of particular issue during the immediate period prior to election.

**RESOLVED**

That the Democratic Services Committee be asked to ensure that the policy is clear on the position regarding the use of Council equipment/electronic media for social networking during the election purdah period.

**Reason for decision**

To ensure clarity within the Social Networking Protocol.

Recommendation	Reason For Recommendation
<p><b>Members are asked to consider</b></p> <ul style="list-style-type: none"> <li><b>i) the draft Blogging and Social Networking policy</b></li> <li><b>ii) the use of Council equipment/electronic media for social networking during the election purdah period, as requested by the Standards Committee and</b></li> <li><b>iii) forward the draft Blogging and Social Networking policy to Political Groups for comment.</b></li> </ul>	<p><b>To progress the development of the policy.</b></p>

<b>Person(s) To Action Decision:</b>	Wyn Richards, Carol Johnson		
<b>Date By When Decision To Be Actioned:</b>	12 October 2012		
<b>Relevant Policy (ies):</b>			
<b>Within Policy:</b>	<b>Y</b>	<b>Within Budget:</b>	<b>Y</b>
<b>Contact Officer Name:</b>	<b>Tel:</b>	<b>Fax:</b>	<b>Email:</b>
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# Blogging and Social Networking.

The following text has been taken from the Standards Board for England Guidance as published on their website as follows:

<http://www.standardsforengland.gov.uk/Guidance/TheCodeofConduct/CodeGuidance/Onlineguides/Quickcodeguides/BloggingQuickGuide/>

<http://www.standardsforengland.gov.uk/Guidance/TheCodeofConduct/CodeGuidance/Onlineguides/Guidance/TheCodeofConduct/CodeGuidance/Topicguides/Blogging/>

## Blogging Quick Guide

Blogging and social networking are effective methods for councillors to interact with constituents and support local democracy. Used effectively, they can engage those who would not normally have access to local councillors and politics.

The County Council supports the use of such media and encourage councillors to get online. You should think about what you say and how you say it, in just the same way as you would when making statements in person or in writing,

You will also need to think about whether you are seen to be, or give the impression that you are acting in your official capacity as a councillor. To make sure you comply with the Code of Conduct (the Code) and to ensure your use of online media is well received we suggest the following general hints.

### Do

- **remember, what you say is permanent and findable**
- set appropriate privacy settings for your blog or networking site – especially if you have a private, non-political blog
- keep an eye out for defamatory or obscene posts from others on your blog or page and remove them as soon as possible to avoid the perception that you condone such views
- be aware that the higher your profile as a councillor, the more likely it is you will be seen as acting in your official capacity when you blog or network
- ensure you use council facilities appropriately; if you use a council provided blog site or social networking area, any posts you make will be viewed as made in your official capacity
- be aware that by publishing information that you could not have accessed without your position as a councillor you will be seen as acting in your official capacity
- make political points, but be careful about being too specific or personal if referring to individuals. An attack on individuals may be seen as disrespectful, whereas general comments about another party or genuine political expression is less likely to be viewed as disrespect.

### Don't

- blog in haste.
- post comments that you would not be prepared to make in writing or face to face
- use council facilities for personal or political blogs.

## When the Code may apply

Bear in mind the Code when you blog or use social networking sites. You should pay particular attention to the following paragraphs of the Code:

- Disrespect
- Bullying
- Disclosure of confidential information
- Disrepute
- Misuse of authority resources

However, it is difficult to give definitive advice on the application of the Code as each blog and social networking page is different. The content of a blog or other social networking tool and the circumstances surrounding its creation will determine whether or not it might be covered by the Code.

Ethical use of online social media is not limited to what is covered in the Code. We encourage members to respect the **Ten General Principles of Public Life** as set out in The Conduct of Members (Principles) (Wales) Order 2001 and in Part 5, Section 1 of the Council's Constitution. While your conduct may not be a breach of the Code it may still be viewed as less than exemplary and attract adverse publicity for your office and authority.

## Blogging

### Introduction

Blogging is increasingly becoming an important and legitimate part of the operation of a democratic society. It is an efficient, cost-effective and enjoyable way to get in touch with constituents and discuss important issues with the community you represent.

This guide is aimed at members who are new to blogging and social networking as well as experienced bloggers and networkers. It may also be helpful for standards committee members and monitoring officers. It explains the positive role of blogging. It provides information on how the Code of Conduct (the Code) may apply to blogging and social networking and gives some examples of tribunal cases that have dealt with the issues.

### What is a blog?

A blog is a frequently updated individual website discussing subjects ranging from the personal to the political. It may focus on one narrow subject or a whole range of subjects.

### What is social networking?

Social networking is an online method of sharing information, photos and views with contacts and associates. Examples of social networking sites are Facebook, Twitter and MySpace.

# How do members use blogging and social networking?

There are a number of different ways you can use social networking or blogging. Social networking or blogging can be:

- sponsored by your authority e.g. a leader or members blog
- carried out as an individual
- carried out anonymously

It is important to note that when blogging the Code may apply. This will depend on the factors explored below.

## Using council provided media

If you use online media to promote your work as a member or through council websites you will be regarded as conducting the business of the authority. Communicating in this way is most likely to engage the Code.

## As an individual

The content of private, non-political blogs are less likely to engage the Code. It will again depend upon the particular facts whether or not the Code applies.

It is the content of a blog and the circumstances surrounding its creation that will determine whether or not its content falls under the Code. A disclaimer in a private blog which says that any comments are not made in an official capacity will not necessarily prevent breaches of the code being found. See Mullaney and Dorrian cases below.

## Anonymous blogging

Anonymous satirical websites raise other issues. The first point to consider is whether it can be proved that you uploaded the site content. Although this may be generally suspected, the Ombudsman would expect an investigating officer to be able to prove (on a balance of probabilities) that the content has been uploaded by a member. A standards committee would also expect similar proof from an investigating officer. If proof is established it is then necessary to show that you acted, claimed to act or gave the impression that you were acting as a member when you posted the offending comments.

# How does the Code of Conduct apply to blogging?

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

For the Code to apply to your blog 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. For further information on official capacity please see our quick guide to official capacity.

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 blog. There are a number of factors 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 networking site.
- **The privacy settings on your blog or social networking 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 blog or social networking site.** You should set out clearly in your profile if this is a political or personal blog. 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 blog 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 blog 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 blogging you should bear in mind the following paragraphs of the Code (Part 2 – General Provisions) will apply to your online behaviour just as they would to any other form of communication. (See Part 5, Section 1 of the Council's Constitution)

Part 2 – General Provisions of The Local Authorities (Model Code of Conduct) (Wales) Order 2008.

- **Paragraph 4(b) / 4(c) and 4(d) - 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 5(a) – Disclosing confidential information:** Before releasing any information on your blog or networking site, check if it is confidential and if you have the right to release it.
- **Paragraph 6(1)(a) – 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 7(a) and 7(b) (i) to (vi) – 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 networking 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 networking sites.** You should be aware that anyone you include as a friend on social networking sites could be regarded as a “person with whom you have a close association” within the meaning of paragraph 10 of Part 3 – Interests of the 2008 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 networking media have breached the Code, Article 10 of the European Convention on Human Rights (the right to freedom of expression) must also be taken into account. The First Tier Tribunal and court cases have made a number of decisions about this issue.

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.

## Examples of cases

Examples which illustrate how the First Tier Tribunal and standards committees in England have viewed cases involving social networking can be found in(1):

### **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 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 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.

## **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(2) 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 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. You should also consider the Ten General Principles of Public Life as set out in The Conduct of Members (Principles) (Wales) Order 2001 and in Part 5, Section 1 of the Council's Constitution. 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.

## **Helpful links:**

You can find further guidance and information on blogging and social networking as a member from the sources below:

- [www.civicsurf.org.uk](http://www.civicsurf.org.uk) a resource for blogging members
- [www.socialbysocial.com](http://www.socialbysocial.com) a primer for harnessing social media for social good
- IDeA's Connected Members: A guide to using social media

(1) These cases were heard during the period where the Adjudication Panel for England was in operation. The functions of the Adjudication Panel for England have now been transferred to the First-Tier Tribunal (Local Government Standards in England) and the Adjudication Panel for England has been abolished.

(2) This section is based on material produced by and with the permission of Victoria McNeill, Head of Legal at Norfolk County Council.

The Cardiff councillor was recommended to the committee by the Ombudsman for Wales following tweets about the Church of Scientology Photograph: Sarah Lee for the Guardian

A Cardiff councillor accused of misconduct following tweets calling the Church of Scientology 'stupid' has been given the all clear by fellow members.

Councillor John Dixon, the executive member for health, social care and wellbeing, was recommended to the standards and ethics committee earlier this year by the Public Services Ombudsmen for Wales, Peter Tyndall, following complaints about his tweet earlier this year.

The message posted on the social networking site Twitter read:

"I didn't know the Scientologists had a church on Tottenham Court Road. Just hurried past in case the stupid rubs off."

But members on the standards and ethics committee last night found no evidence of a breach of the councillors' code of conduct, ruling out the possibility of a hearing for the case. The committee concluded Dixon was not acting in his capacity as councillor at the time.

Speaking in the meeting, fellow executive member Delme Bowen said:

"If someone makes comments in a private capacity – which I often do – then the code does not apply. He thought he was making it in a private capacity.

"Failure to comply means rules have to be broken and I think since as citizens we have the right to make private comments there has been no evidence of failure to comply in my view."

Independent manager for standards and ethics Paul Stockton added:

"If you look at the tweets it's very very clear that the councillor is tweeting private statements. I would have thought buying rings is not something he would be doing with his councillor's hat on."

Dixon said he was "relieved" by the outcome.

## **The case for Dixon**

Despite sending the tweet under his username @CllrJohnDixon (now changed to @JohnLDixon) councillors felt a reasonable amount of privacy was expected for councillors. Dixon said he was tweeting in a personal capacity while shopping for an engagement ring for his wife-to-be – and only chose the username because his name JohnDixon was not available.

The media furore surrounding the tweet meant Dixon's followers trebled and a number of people on Twitter came to his defence – a Facebook site was set up in support. Councillors also stood by his side in the meeting yesterday.

Vice chairperson for the standards and ethics committee Anne Morgan was the first to speak in Dixon's favour. She said:

"I think there's no evidence. The only way to know if councillor John Dixon was saying in jest would be to ask him. We are really going down a dark road.

"It's fairly evident it was done in a light-hearted way. I really think that common sense has to rule here today. There's no need for this to be blown out of proportion."

Delme Bowen said:

"There are inconsistencies in the Ombudsman's report. It's clear councillor John Dixon sees the comments he made were made in a private capacity.

"As for the question of disrespect – when I read those [tweets] I want to know were they made in a serious way or a light-hearted way."

## **Committee agree on twitter 'grey area'**

But while Dixon was let off for his miscreant tweets, the committee agreed use of online media was a 'grey area' which needed greater clarity.

Paul Stockton said:

"I think it's an incredibly grey area. Even the Ombudsman is unable to say anything for definite. He only says it 'may' amount to the breach of conduct. I would expect the Ombudsman to say 'they did or they did not' but the language is very strange."

Members were also presented with a report outlining the procedure the committee should take if presented with a similar case in the future and approved the document.

Speaking after the meeting, Dixon said:

"Part of me would have liked a hearing to test the case the Ombudsman assembled, as I believe that there were flaws in the judgement that could have been clarified.

"But I'm relieved that it's over, and that the common sense that had been missing up until now has finally been applied."

An inaccurate tweet claiming a rival had been ejected from a polling station cost a Welsh councillor more than £53,000 today.

Judge Seys Llewellyn QC approved a settlement at Cardiff Civil Law Centre after Caerphilly county councillor Colin Elsbury acknowledged he had wrongly defamed town councillor Eddie Talbot.

In a rare defamation case outside London, the Plaid Cymru politician agreed to pay Mr Talbot £3,000 compensation and his legal expenses of more than £50,000 after making the false claim on his Twitter page on June 4, 2009.

The tweet said: "It's not in our nature to deride our opponents. However the independent Eddie Talbot had to be removed by the police from a polling station."

Nigel Jones of JMD Law, who represented hobby shop owner Mr Talbot, told the court that tweet did his client's reputation great damage because "the implication was that Mr Talbot was removed by police for criminal or disreputable conduct".

Draughtsman Mr Elsbury did not attend the short hearing as he was at the hospital bedside of his wife, a magistrates' court clerk.

Hugh Roffe apologised for any distress or damage to the complainant's reputation on behalf of Mr Elsbury who acknowledged on June 12 2009 in a tweet that he'd mis-identified the ousted man saying "Oops, it's a case of mistaken identity."

But after the case, Mr Talbot said he'd since seen the former town mayor many times at town council meetings when Mr Elsbury had failed to apologise or withdraw the remark.

Mr Talbot said: "It's been a time of great anxiety. I'm glad it's over but without 'no win, no fee' the cost could have ruined me.

"I just wanted to set the record straight."