

Standards Committee

22 March 2018



Social Media Guidance

Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

Purpose of the Report

1. To discuss draft Social Media Guidance and approve for consultation.

Background

2. Members will recall that in December they agreed to pursue a proposal to develop social media guidance, and asked the Monitoring Officer to bring a draft of that guidance to this meeting.
3. Draft Guidance is attached at **Appendix 2**.
4. CDALC are aware of the proposals to develop guidance and have expressed a wish to have the opportunity to input into its development. Similarly other County Councillors or stakeholders may wish to be involved so it is proposed to issue the draft Guidance for consultation.
5. It is proposed to consult:
 - a. County Councillors;
 - b. CDALC; and
 - c. The current Independent Persons.
6. It is proposed to issue the Guidance for consultation for a period of six weeks, which should give sufficient time for adequate consideration by consultees, and would enable the Committee to consider the outcome of the consultation at its next meeting in June 2018.
7. It is proposed that the Guidance will have the status of guidance issued by the Standards Committee, pursuant to the Committee's constitutional function of promoting and maintaining high standards of conduct by Members and Co-Opted Members of the Council and Parish and Town Council Members.

8. If that is agreed by the Committee, the Guidance would not constitute formal policy adopted by the Council but the Committee could have regard to the guidance when determining complaints against Councillors.
9. If the Committee instead consider that the Guidance ought to have the status of policy then it would need to go through full Council in order to be binding upon Members as part of the Code of Conduct. It is proposed that this question will also be asked as part of the consultation exercise.

Recommendation

10. Members are asked to comment on the draft Guidance with a view to agreeing a version of it for consultation as set out in the report. The consultation will last for six weeks and will invite views both on the content of the draft Guidance and the status it ought to have.

Contact: Laura Renaudon, Governance Solicitor Tel: 03000 269886

Appendix 1: Implications

Finance - None

Staffing - None

Risk - None

Equality and Diversity / Public Sector Equality Duty - None

Accommodation - None

Crime and Disorder - None

Human Rights - None

Consultation - None

Procurement - None

Disability Issues - None

Legal Implications - The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. It is anticipated that specific guidance on the use of social media by Members will help achieve compliance with this duty as well as potentially reducing the number of related complaints received about Councillors.

Appendix 2: Draft Social Media Guidance

Social Media Guidance for Councillors

1. Three of the important Nolan Principles applying to those in public life are “Openness”, “Accountability” and “Leadership”. That means Councillors should be as open as possible about the actions and decisions they take, submit to an appropriate level of public scrutiny, and lead by example. Social media can be a vital tool for public debate and its use by Councillors is encouraged.
2. There are however some pitfalls to be aware of, and this local Guidance is produced to help Councillors avoid these. This Guidance does not tell Councillors what social media is, or which blogs or networks might be used effectively. It assumes that Councillors are aware of those. It deals with the pitfalls that specifically apply to the role of local Councillors.

A LEGAL CONSIDERATIONS

3. Like anyone else publishing material, Councillors will need to be aware of the laws that apply to published material. Some of the main ones are these:
 -) **Defamation:** if you publish an untrue statement about a person that is damaging to their reputation you may be liable to pay damages;
 -) **Copyright:** publishing information that is not yours, without permission, may also result in an award of damages against you;
 -) **Harassment:** it is an offence to repeatedly pursue a campaign against a person that is likely to cause alarm, harassment or distress;
 -) **Data protection:** do not publish personal data of other people, including photographs, without their express permission to do so;
 -) **Incitement:** it is an offence to incite any criminal act;
 -) **Discrimination and ‘protected characteristics’:** it is an offence to discriminate against anyone based on protected characteristics (as defined in the Equality Act 2010);
 -) **Malicious and obscene communications:** it is an offence to send malicious or obscene communications

4. Additional considerations apply to Councillors.

Bias and pre-determination

5. Statements of opinion made by a Councillor online may give the appearance of that Councillor's mind being made up about certain matters. Members sitting on regulatory committees such as planning or licensing should avoid publishing anything that suggests they do not have an open mind about anything they are likely to be involved in determining. Otherwise the Council's decision is open to challenge and could be invalidated, and the 'disrepute' provisions of the Code could be engaged.

Equality and discrimination

6. The Council is a public authority required to comply with the Equalities Act 2010. As noted above it is an offence to discriminate against anyone based on their protected characteristics. The Council must also have 'due regard' to the Public Sector Equality Duty (which consists of eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations) and that applies to Councillors when appearing to act in their official capacity.

Electioneering

7. Council resources, including any the use of social media on Council mobile devices or IT equipment, should not be used for political/campaign purposes. Particular care should also be taken when using social media during the pre-election period. The Electoral Commission has further guidance including on the requirements to provide a return of expenditure on election advertising which includes web advertising.

Human Rights

8. Article 8 of the European Convention provides that public authorities should not interfere with the right of individuals to a private and family life without lawful authority to do so, and where it is necessary, proportionate, and in pursuit of one of the aims set out in Article 8(2). (These are national security, public safety, economic well-being, health or morals, prevention of crime or disorder, or

protecting others' rights). Observing the use of social media by other people (even on 'open' profiles) can engage Article 8 and so Councillors should avoid 'sleuthing' activities that might amount to unlawful surveillance.

B CODE OF CONDUCT

9. The Code applies to Councillors who are or appear to be acting in an official capacity. As Members are aware, the Code does not apply to purely private matters. How Councillors present their profile online will be important (eg whether or not expressly as a Councillor) but not necessarily conclusive.
10. One way for Councillors to deal with the issue is to have two separate accounts, one for private matters and the other for council activities. However, care would still need to be taken to avoid giving the impression of acting as a Councillor when using the private account. For example a discussion about Council decision-making, even on a 'private' profile, could lead to the conclusion that the Code is engaged. Private profiles that carry a party political slogan may be more likely to result in the Code being engaged even if council activity is not expressly mentioned.
11. The particular sections of the (County Council's) Code most likely to give rise to complaints are the requirements to treat others with respect; not to bring the office of Councillor or the Council into disrepute; and prohibiting the disclosure of confidential information.
12. You should also consider your position carefully as to whether your online 'followers' or 'friends' are "close associates", for the purpose of declaring interests and participation in meetings where their well-being or financial position would be affected.

C 'NETIQUETTE'

13. Councillors should have a clear commenting policy. They will need to monitor and, where appropriate, censor or remove the contributions made by others to their sites. Allowing defamatory or offensive statements to remain on a site can become the Councillor's own legal problem as the 'publisher' of the material, and could also give rise to Code issues where allowing comments to remain could be seen as condoning or endorsing them.
14. Similarly, 'liking', 'sharing' or 're-tweeting' posts could be seen as an endorsement of them and legally this can be a separate instance of publication, by the Councillor, to which all the legal and Code considerations would apply.
15. Beyond that it is generally best to allow disagreement rather than to seek to censor it. However there is no need to respond to everything and unhelpful online arguments should be avoided. Be professional, respectful and polite, even (or especially) when corresponding with those who do not return the courtesy.
16. Promptly admit to mistakes.
17. Avoid using social media when you are tired, angry, upset or your judgment may be impaired.
18. Think carefully about who to 'follow' or 'befriend' online. Online 'friendships' with council officers should be avoided as they may compromise the appearance of impartial advice. It is inadvisable to 'follow' anyone without a good reason – some constituents may find it uncomfortable (and see the Human Rights comments above). Many Councillors wait to be 'followed' before returning the compliment.

D USE OF SOCIAL MEDIA DURING COMMITTEE MEETINGS

19. Using social media during the progress of committee meetings is generally best avoided. This is particularly the case for regulatory committees such as planning or licensing. The local Planning Code requires Councillors to alert officers to any lobbying material they have received, which would be difficult if it arrives on Twitter and is read by the Councillor during the course of a meeting.
20. It is also important for Councillors not to give the impression that insufficient attention is being given to the discussion at the meeting. That could lead to the relevant decision coming under challenge if Councillors are perceived to have made a decision without having properly listened to the debate. It could also result in Code complaints of a failure to treat others with respect or of bringing the Council into disrepute.

FURTHER READING

1. "Connected Councillors: A guide to using social media to support local leadership", IDeA, March 2010 and other guidance available on the Local Government Association website (www.local.gov.uk).
2. LGA's Knowledge Hub may contain useful information (<https://knowledgehub.local.gov.uk/>)
3. Sign on to Twitter at <https://twitter.com/> and Facebook at <https://en-gb.facebook.com>