

# 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 First Tier Tribunal (Local Government Standards in England) would expect an Ethical Standards 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 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 networking 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 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 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 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 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.

[Click here for a link to the case.](#)

### **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.

[Click here for a link to the case](#)

### **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.

[Click here for a link to the case.](#)

### **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 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.

[Click here for a link to the case.](#)

### **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.

[Click here for a link to the case.](#)

## **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. 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:

- Blogging quick guide
- Official capacity quick guide
- [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.