

## **Monitoring Officer Guidance Note:**

# **Speaking at Meetings and in Public – Defamation and Qualified Privilege**

## **Guidance Note**

### **1. Speaking at Meetings and in Public - Defamation and Qualified Privilege**

The Council conducts most of its meetings in public and as these are intended to be recorded, this guidance is issued to assist and remind Members of the key points when speaking at meetings. Members will appreciate that statements made at meetings of the Council, the Cabinet (Executive) and all other Committee meetings are subject to the laws of defamation.

### **2. What is Defamation?**

A person is entitled to his/her reputation and good name. This is particularly if they hold public or professional office and their position and reputation depends on a large degree of public trust and confidence. Communication of a matter which is untrue and likely to criticise substantially a person's reputation is, on the face of it, defamation.

Legally, defamation is defined as the **publication** to another person of an oral or written statement which:-

- exposes a person to hatred, ridicule or contempt; or
- causes him/her to be shunned or avoided; or
- has the effect of lowering his/her reputation in the estimation of right-thinking members of the public generally; or
- injures him/her in their **office**, profession or trade.

### **3. Distinction between Libel and Slander**

A defamatory spoken word or gesture will usually amount to a slander (verbal communication).

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 a Council or Committee meeting would be the publication of a libel. A defamatory statement broadcast on radio, television or the theatre is treated as the publication of a libel.

#### 4. Consequences of a Defamatory Statement

Defamation may be tried by a Jury. The Jury can award general, actual or aggravated damages.

The level of damages 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 a defamatory statement.
- **Apology** - If the person accused of defamation can show that he/she made or offered an apology before the commencement of the action or as soon afterwards as he had an opportunity of so doing.

#### 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. With regards to all Council meetings only qualified privilege applies.

(a) **Qualified Privilege** - Qualified Privilege will frequently attach to statements made in Council and Committee whether contained in a report or spoken. It 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.**

So long as a person believes in the truth of what is said malice cannot normally be inferred. Malice may be inferred however, if it can be shown that he/she was motivated by a purpose **other than his/her interest or duty** to make the statement.

Examples of improper purposes or motives may include giving vent to personal spite or ill-will.

**Other Defences include:-**

(b) **Justification** - i.e. the defamatory statement is true and if so provides a complete defence.

(c) **'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 though 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.

(d) **Unintentional Defamation** - In cases of unintentional and non-negligent defamations, a defendant may avoid liability to pay damages if he is willing to publish a reasonable correction and apology and to pay the plaintiff's costs and expenses reasonably incurred as a consequence of the publication in question (e.g. costs of consulting a solicitor, obtaining Counsel's opinion etc.)

## 6. Summary and Check-List

Ask yourself the following questions before speaking in a Council or Committee meeting in a manner 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 the defence of Qualified Privilege is not lost, or if it is lost or not available that 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 - even under provocation.
- Take your own legal advice if in any doubt.

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