

SUBJECT:	QUALIFIED PRIVILEGE
REPORT BY:	DIRECTOR OF RESOURCES
LEAD OFFICER:	CAROLYN WHEATER – ASSISTANT DIRECTOR (LEGAL AND CORPORATE SUPPORT SERVICES)

1. Purpose of Report

- 1.1 During the consideration of a proposed protocol on the use of social media by councillors, members requested supplementary guidance in relation to qualified privilege; this report is intended to provide that guidance.

2. Background to Defamation

- 2.1 Defamation is primarily a civil, rather than a criminal, wrong. This means that a legal individual, such as a company or a person, has the right to bring a case for defamation before a court. The law surrounding defamation is the target for frequent criticism regarding both its complexity and the expense in bringing or defending a claim.
- 2.2 Members should note the Defamation Bill is currently proceeding through Parliament and is likely to bring a number of significant changes, including to some of the situations covered by qualified privilege. Based on the current bill, one significant proposed change is the introduction of a defence of 'publication on matters of public interest', which will supplement the common law regarding qualified privilege, except with regard to the test normally applied in cases defended by the press.

3. Briefing on Qualified Privilege

- 3.1 In response to the request made by members at the previous meeting of the Committee, a briefing note on qualified privilege is attached as **Appendix A**. This is intended to supplement the protocol previously provided regarding social media.
- 3.2 Given the large measure of individual freedom and the broadness of the potential audience, there is clearly significant scope for defamation to arise from councillors' use of social media. However, a defence of qualified privilege arising from a duty or reciprocal interest would be considerably more difficult to establish if using social media than if making a statement in a local authority meeting.
- 3.3 It remains key for councillors to consider carefully the statements which they make both in public and private. While there is a clear value in councillors being

able to uphold the public interest through their freedom of expression, consideration must also be given to the impact upon third parties' reputations. While qualified privilege can be a valuable defence, ensuring the accuracy and truth of a statement is similarly important.

- 3.4 Members should also note the personal responsibility which they undertake when acting as a councillor. While this briefing is provided to offer councillors guidance on some of the general principles underpinning qualified privilege and defamation, councillors remain personally liable for any defamatory statements they make and should make decisions as to how they communicate accordingly.

4. Strategic Priorities

- 4.1 In order for councillors to undertake their role effectively, it is in the Council's and the public's interest that members should be able freely to express their views to the full extent of the law.

5. Finance Implications

- 5.1 There are no financial implications arising directly from this report.

6. Legal Implications

- 6.1 There are no legal implications arising directly from this report.

7. Recommendations

- 7.1 That members offer comments on the briefing note provided.
- 7.2 That the briefing notes provided on the use of social media and defamation be circulated to all councillors.