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| <b>SUBJECT:</b>      | <b>DEFAMATION ACT 2013</b>   |
| <b>REPORT BY:</b>    | <b>DIRECTOR OF RESOURCES</b>   |
| <b>LEAD OFFICER:</b> | <b>CAROLYN WHEATER – ASSISTANT DIRECTOR (LEGAL AND CORPORATE SUPPORT SERVICES)</b> |

## **1. Purpose of Report**

1.1 The Ethics and Engagement Committee has previously requested and received guidance in relation to councillors' use of 'qualified privilege' to defend claims of defamation. Following the enactment of the Defamation Act 2013, the law surrounding defamation has shifted considerably and is therefore summarised below.

## **2. Background to the Defamation Act 2013**

2.1 Members received a report on 11 March 2013 offering guidance on the nature of the qualified privilege afforded to councillors in defending claims of libel or slander. As set out in the original report, the passing of the Defamation Act 2013, which received Royal Assent on 25 April 2013, has made a number of changes to the broader law around defamation.

2.2 The Act came into force on 1 January 2014 and applies solely to events taking place after that date. Any events occurring prior to 1 January 2014 and forming the basis of a complaint would be considered under the old law, for which guidance has been issued to members previously.

## **3. Defences to Defamation Claims under the New Law**

3.1 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. However, the Act places new limits upon the rights of individuals to raise such a case. Specifically, a statement will now only be defamatory if it causes serious harm to a claimant's reputation. For-profit companies are further limited by a requirement that any statement must have caused the body serious financial loss if it is to be considered defamatory.

3.2 The Act further provides that an action may only be brought by a citizen resident in a non-European country if the court is satisfied that England and Wales is the most appropriate jurisdiction for the complaint. This provision was made as a safeguard against 'libel tourism', which saw international claimants apparently seeking to take advantage of the UK's strict defamation laws by bringing cases which could have been heard more appropriately in other countries.

3.3 The Act makes a number of changes to the overall limits of qualified privilege by extending the specified circumstances to which it can apply. However, these changes primarily relate to areas outside local government, including the reporting

of science, governmental matters, and press conferences on a matter of public interest. As such, the updated briefing note attached as **Appendix A** is largely unchanged.

3.4 In addition to qualified privilege, any defences open to an ordinary person could also be used by a councillor or local authority to defend against a defamation claim. The Act sets in place three defences of particular relevance:

- Truth. If a statement is substantially true it can be successfully defended. If multiple claims are made, some of which prove not to be true, the defence can still be successful provided that those which are not substantially true do not cause serious harm to the claimant's reputation.
- Honest opinion: A defence can be made against a claim of defamation if:
  - The statement is one of opinion that was held by the person making it
  - The statement indicates the basis of the opinion
  - An honest person could have held the opinion based upon a fact in existence at the relevant time.
- Publication on a matter of public interest: if a statement is on a matter of public interest and the defendant has a reasonable belief that publication was on a matter of public interest, this can be a defence to a defamation claim. This provision appears to be principally provided for journalists, who are unable to rely upon qualified privilege.

3.5 As a new piece of legislation, there are a number of areas which have yet to be tested in the courts. In particular, the extent to which pre-existing case law will be applicable to new cases is still to be determined. However, the Act clearly limits the ability of claimants to bring successful claims for defamation. While the principal beneficiaries of this change are journalists, members should note the new defences outlined above, which would also be applicable to councillors.

3.6 However, the continuing potential seriousness of defamation claims should not be downplayed. Councillors should continue to have an awareness of the impact their words can have upon third parties' reputations. Ensuring the accuracy and truth of a statement remains important in both avoiding litigation and in securing public trust.

## 4. Organisational Impacts

### 4.1 Finance

There are no financial implications from this report.

### 4.2 Legal Implications

There are no legal implications arising directly from this report.

## 5. Recommendation

5.1 That members offer comments on the briefing note provided.

5.2 That the briefing notes provided on the use of social media and defamation be circulated to all councillors.