

Briefing for members on legal implications of relaxing recording/broadcasting of Council Assembly meetings

Background

The general position with regard to meetings is that the Council is not required “to permit the taking of photographs of any proceedings or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later) or the making of any oral report on any proceedings as they take place” (Section 100A Local Government Act 1972).

In short, no form of photography, filming, recording or broadcasting of Council Assembly meetings can take place unless the Council gives permission. Such permission is given through the Mayor at the meeting.

If the Council decides to relax the recording/broadcasting of Council Assembly meetings to include, for example, webcasting consideration needs to be given to the following:

- The provisions of the Data Protection Act 1998.
- The Human Rights Act 1998.
- A number of procedural matters.
- Aspects of the law on defamation.
- Copyright for usage of any footage.

Data Protection Act 1998 ('DPA 1998')

Images of members of the public that may be captured by, for example, webcasting cameras are potentially 'personal information' and therefore subject to the requirements of the DPA 1998. Under the DPA 1998 personal information must be used fairly and, ordinarily, only for purposes for which the individual has given their consent.

Care must therefore be taken to ensure that there has been compliance with data protection requirements and that members of the public have given effective consent to their own appearance in any webcasts etc.

The Council could take the following steps to ensure such compliance:

- Using communications with members of the public who are likely to be filmed, for example deputations and questioners, to make them aware that the meeting is to be webcast/recorded.
- Putting notices on the order of business for Council Assembly meetings to make members of the public aware that the meeting is being webcast/recorded.
- Using appropriate signage to be displayed inside and outside the Council Chamber.
- Making the public aware of the webcast/recording during the informal session which it has been proposed takes place prior to the formal Council Assembly meetings.

In addition, the current practice whereby the Mayor makes a formal announcement at the start of the meeting should be continued.

By remaining in the Council Chamber members of the public will then be deemed to have given their consent (impliedly) for any images etc of themselves that may be taken to be used for broadcast and any other appropriate purposes e.g. training purposes within the Council.

Anyone wishing to make a deputation, present a petition or ask a public question who had concerns about broadcasting/webcasting could be directed to a designated officer on the Constitutional Team. However the expectation is that this would only happen in exceptional circumstances as members of the public making a deputation, presenting a petition or asking a question are likely to be seeking maximum publicity.

There may also be a requirement to address the responsibilities of members of the public who record or photograph Council Assembly proceedings towards other individuals who are in attendance. This would include coverage by media outlets and citizens journalists for example on twitter.

Human Rights Act 1998/European Convention on Human Rights

The recording and broadcasting of images of individuals might also engage Article 8 of the European Convention. That is, the Right to respect for private and family life. However, Council Assembly meetings are required by law to be held in public (section 100A Local Government Act 1972) and individuals will, if as proposed above, be made aware that a meeting is being webcast/recorded. Consequently, insofar as images of the public may be recorded, it is likely any interference with Article 8 Rights would have a lawful basis, and can be considered proportionate with regard to the rights and freedom of others to engage in the democratic process.

General procedural provisions

The Mayor would retain the discretion to request the termination or suspension of the recording/webcast, if in the opinion of the Mayor, continuing to record/webcast the meeting would prejudice the proceedings of the meeting.

The circumstances in which termination or suspension might occur could include:

- Public disturbance or suspension of the meeting.
- Exclusion of public and press being moved and supported.
- The Mayor, on advice, considering that continued recording/filming might infringe the rights of any individual.
- The Mayor, on advice, considering that a defamatory statement has been made.

No exempt or confidential agenda items would be recorded/webcast.

Defamation

It is important that members appreciate that statements made at Council Assembly meetings are subject to the law of defamation. Extending the reporting/recording of Council Assembly meetings will therefore bring any defamatory statement into the public domain more quickly and potentially to a much wider audience.

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

A defamatory spoken word or gesture will usually amount to a slander whereas 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 Assembly meeting would not be slander but the publication of a libel. A defamatory statement broadcast on radio, television the internet or a social networking site is treated as the publication of a libel and not slander.

There are a number of defences available to an action for defamation. The defence most commonly available to a defamatory statement made in local authority proceedings is known as privilege. It is a complete defence to an action for defamation to show that the statement was made on a privileged occasion. Privilege may be absolute or qualified, however absolute privilege does not attach to Council Assembly meetings. Qualified privilege 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.

Qualified Privilege will attach to statements made at Council Assembly whether contained in a report or spoken. It will be a complete defence to prove that the person had a duty or interest to make the statement, that there was a corresponding duty or interest on the part of the recipient to receive it and that he was 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 or she was motivated by a purpose other than their interest or duty to make the statement.

Under the Local Government Act 1972 the press and public must on request be allowed access to or in certain circumstances be supplied with the agenda and certain other documentation relating to matters to be considered by the Council or a Committee. The 1972 Act provides that where such matter is made available to the press or to the public, the agenda and other documents are privileged unless publication is proved to have been made with malice. However, further publication by the press and/or public will not be privileged unless it satisfies the usual conditions for Qualified Privilege to attach.

Other defences include:-

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

The existing checks which are in place to ensure that any potentially defamatory statement is removed from reports etc prior to publication of the agenda will need to be re-enforced. The Council will also need to ensure that it does not (or appear to) endorse any defamatory statement made by a member of the public at the meeting itself. As stated above it would be prudent for the Mayor, on advice, to terminate or suspend the recording/filming of a meeting where a defamatory statement is made. In addition consideration ought to be given to the Monitoring Officer having appropriate powers to remove, for example, webcasts or parts of webcasts from the Council's website where a breach of any legal provision is likely to arise.

A defamatory statement made by a member could also constitute a breach of the Code of Conduct and webcasts may be used as evidence in any subsequent investigation.

Copyright

If the Council wishes to enforce copyright it would need to publish appropriate terms and conditions for the use of footage of any webcasts including a statement that the footage is the copyright of the Council and that any download or upload of the footage is not permitted without the written permission of the Council and those featured in the same. Any terms and conditions of use would also need to contain a reminder that video sharing sites such as YouTube and Google Video, state under their terms and conditions that in order to upload videos onto their sites you must be the copyright owner and have the permission of all those involved.