

Know what is acceptable

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A “Digital Revolution”?

- Legal framework and current approach
- Balance between public interest and privacy
- Practical tips

Legal Framework

- **Criminal - Malicious Communications Act 1988**
- **Civil - Defamation Act 2013**

Malicious Communications Act

- Sending something which is in whole, or in part, of an indecent or grossly offensive nature
- **IF** purpose, or one of purposes, in sending it is that it should cause distress or anxiety to the recipient or to any other person to whom it is intended the contents should be communicated

Defamation Act 2013

- Libel - publications in permanent form including internet, tv and radio
- Slander - spoken word, conduct and other non-permanent expression
- New act applies from January 1st 2014
- Codifies defences of “justification” (statement is substantially true) and “fair comment” (honest opinion) and publication on matter of public interest.
- A statement is not defamatory unless its publication has caused, or is likely to cause, **serious harm** to the reputation of the claimant. Defamation does not regulate bad manners.

Operators of websites

- Defamatory statements posted on your website – who is responsible?
- It is a defence to show it was not the operator who posted the statement
- That defence is defeated if it was not possible for claimant to identify person who posted statement **and**
- Claimant gave notice of complaint to operator and operator **failed to respond** i.e action is required within a reasonable timescale

Public interest v privacy

- Freedom of speech balanced against privacy, courtesy, respect and the right not to be offended or insulted
- Clerk and councillors will be seen to represent the authority
- Increasing number of employment cases cite social media
- Rapid increase in cases of online libel and cyberbullying

Practical tips

- Post positive – only say what you would say in person (or be happy to defend in court)
- Reflect before sending
- Take arguments offline and talk!
- Do not post comments late at night or early in the morning
- Keep it objective and professional
- A disclaimer does not save you from potential legal action

Practical Tips (2)

- Policy for online reputation management – protect the “brand” and give staff and councillors guidelines
- Make it clear racism, sexism or any form of abuse is unacceptable
- Impose clear penalties for breaching minimum standards – take post down, close down account completely
- Mediate between those who find it all baffling and those who love the technology

Any Questions?