

# **CASTLE RISING PARISH COUNCIL COMMUNICATIONS POLICY**

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## **Castle Rising Parish Council Communications Policy**

### **Written Communication**

#### **Parish Council Correspondence**

The point of contact for the Parish council is the Clerk, and all correspondence for the Parish Council should be addressed to the Clerk.

If external correspondence is received by an individual Councillor, it should be immediately forwarded to the Clerk before any response is made.

The Clerk should deal with all correspondence.

No individual Councillor should be the sole custodian of any correspondence or information in the name of the Parish Council or working group. In particular, Councillors do not have a right to obtain confidential information/documentation unless they can demonstrate a 'need to know'.

All official correspondence should be sent by the Clerk in the name of the council.

Where correspondence from the Clerk to a Councillor is copied to another person, the addressee should be made aware that a copy is being forwarded to that other person (e.g. copy to XX).

#### **Agenda Items for the Parish Council**

Agendas should be clear and concise. Agenda items They should contain sufficient information to enable Councillors to make an informed decision, and for the public to understand what matters are being considered and what decisions are to be taken at a meeting.

Items for information should be kept to a minimum on an agenda.

Where the Clerk or a Councillor wishes fellow Councillors to receive matters for "information only", this information should be circulated via the Clerk.

#### **Minutes of Meetings**

Minutes of Parish Council meetings are the primary means of communicating decisions, policy and plans made by the Parish Council to its electors. It is important therefore that minutes are written in a plain, simple to understand style, but with sufficient information to enable a reader who was not present at the meeting to understand the key points and rationale behind any decisions taken.

Councillors are encouraged to speak freely, frankly and honestly on any matter they believe affects the interests of residents, and reporting of such comments in the minutes should be fair and accurate. All comments made honestly and the reporting of such comments in the minutes attract qualified privilege and are thus immune from prosecution for defamation. Legal advice from the National Association of Local Councils (NALC) on defamation is at Appendix One.

Minutes should be matched to agenda items. The salient discussion points should be noted together with any decision made and, if appropriate, who is responsible for the action required, and the timescale in which this action is expected to be completed.

### **Communications with the Press and Public**

The Clerk will discuss all press reports, or comments to the media, with the appropriate Lead Councillor or Chair. If the Chair is absent the report or comments will be discussed with the Vice-Chair.

Press reports from the Council, its committees or working parties should be from the Clerk or via the reporter's own attendance at a meeting.

Unless a Councillor has been specifically authorised by the council to speak to the media on a particular issue, Councillors who are asked for comment by the press, or a response to Social Media, should ensure that it is clear that it is a personal view and reported or credited as such.

Unless a Councillor is absolutely certain that he/she is reporting the view of the council, they must make it clear to members of the public that they are expressing a personal view.

If Councillors receive a complaint from a member of the public, this should be dealt with under the Council's adopted complaints procedure.

### **Councillor Correspondence to external parties**

The Clerk should send most of the correspondence from the Council to other bodies, and will make clear that it has been written in the Clerk's official capacity and authorised by the Parish Council unless it is a matter that requires the Clerk to correspond as the Proper Officer.

Councillors who wish to pursue an initiative on an unofficial/individual basis should first inform the Clerk and then:

- a. ensure they do not give the impression that the initiative has the support of, or represents, Parish Council policy; and
- b. take care not to raise public expectation; and
- c. avoid any media coverage that may reflect in the Parish council; and
- d. make it clear that they are acting in an unofficial/personal capacity.

As a general rule, other than in a personal capacity, individual Councillors should not approach another statutory, voluntary or commercial organisation to seek information which might be related to any Parish Council function.

Where such information is required, an approach should be approved by the Parish Council and the Clerk so informed.

A copy of all outgoing correspondence relating to the council or a Councillor's role within it, should be sent to the Clerk, and it be noted on the correspondence, e.g. "copy to the Clerk" so that the recipient is aware that the Clerk has been advised.

## **Email and WhatsApp**

### **The Working Window for Internal Electronic Communication**

Parish Councillors are volunteers, and are not employed 24/7. Therefore, in normal circumstances, all communication, whether by email, WhatsApp or other media, should be restricted to office hours (Mon-Fri 0800-1700) and should not be sent to arrive over a weekend or bank holiday except in emergency.

#### **Email**

Email is probably the most commonly used type of communication, but also the most mis-used. Whilst email is fast and convenient, it can lead to expectations of instant responses and can bypass effective Parish Council communication by limiting transparency and openness. An effective email protocol is therefore essential and the following limitations are to be observed by all Councillors:

- A response to an email should be made within three working days. An instant response is not expected.
- All emails, whether sent or received must be copied to the Clerk.

#### **WhatsApp**

The use of WhatsApp is becoming increasingly common as it provides an encrypted messaging service between discrete groups of people, and is a very useful tool for instant communication.

However, there are a number of downsides to WhatsApp communications for a Parish Council. In particular, whilst WhatsApp is simple to set up between discrete groups, and is undoubtedly convenient for chat, the encrypted nature of WhatsApp means that it is not transparent or open, so WhatsApp should not be used for discrete decision-making that affects Parish Council policy or action.

A further downside is that mobile phones are normally kept 'always on' and it is too easy to use WhatsApp to elicit an immediate response when an instant response is not required or necessary, or outside office hours when it is not appropriate unless it is an emergency.

#### **Preferred Mode of Internal Communication**

Email should be the primary means of internal communication to ensure transparency and openness, and should be the only means of internal communication on any policy matter.

## **Social Media**

Castle Rising Parish Council currently has no social media presence, and this policy guidance will be issued in due course when a social media presence is established.

## **APPENDIX ONE - DEFAMATION**



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1. A defamatory statement is one “which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business” (Halsbury’s Laws of England).

2. A defamatory statement made in writing or in some other permanent form (such as in an image, or on the radio, television or a website) is called libel. A defamatory statement made orally or in some other transient form (such as a gesture) is called slander.

3. The law of defamation is governed by common law and statute such as the Defamation Act 1996 (“the 1996 Act”) and the Defamation Act 2013 (“the 2013 Act”). One of the objects of 2013 Act, which came into force on 1 January 2014, is to discourage trivial defamation claims.

### **Actionable defamation**

4. A person can only sue for defamation if the statement is communicated (in legal terms “published”) to a third party. Thus, if a letter containing a defamatory statement about a councillor is sent only to that councillor, it is not actionable.

5. A statement is not defamatory unless it has caused or is likely to cause serious harm to the third party’s reputation. In relation to a trading organisation this must be a financial loss (s.1 of the 2013 Act).

### **Who can bring an action for defamation?**

6. Any living person can bring an action for defamation. Individual councillors or council staff can sue for defamation. A company can also bring a defamation action.

7. Public and local authorities (including local councils) cannot be defamed and cannot therefore sue. The House of Lords held that it is in the highest interest of the public to allow a council to be subject to scrutiny and criticism, and it would be contrary to such interest for local authorities to have any common law right to bring an action for defamation (Derbyshire C.C. v The Times Newspapers Ltd [1993] 1 AER1011).

8. A person can be sued if he or she participates in the making of a defamatory statement. S.10 of the 2013 Act confines legal action to the author, editor or publisher (defined by s.1 of the 1996 Act) of the defamatory statement unless it is not reasonably practicable to bring an action against them.

9. Employees or agents of an author, editor or publisher may also be sued if they are responsible for the content of the statement or the decision to publish it (s1(4) of the 1996 Act).

10. A public or local authority (including a local council) can be sued for defamation. It may also be liable for any act by an agent or employee if done within the scope of his or her authority or employment. A local council may be liable for a defamatory statement in the following cases:

a) it directly authorises the making of a defamatory statement (e.g. in the words of a resolution)

b) it authorises a councillor or instructs an employee to write a letter containing a defamatory statement

c) a councillor or an employee is given general authority to express the council's views on a matter (e.g. in a newspaper) and does so in defamatory terms.

## **Defences**

11. The main defences to defamation are set out below:

### **Truth**

12. S.2 of the 2013 Act creates the defence of "truth". A defendant must prove that the statement is substantially true.

### **Privilege**

13. There are two defences of privilege, absolute privilege and qualified privilege. The defences are relevant when there is a public interest in ensuring the ability of parties to speak freely without fear of legal action. Privilege can provide a defence for statements that may be false or damaging.

14. In the following circumstances only, absolute privilege provides a complete defence to an action for defamation:

a) proceedings in Parliament (Article 9 of the Bill of Rights 1688)

b) contemporaneous fair and accurate reports in any publication of court proceedings (s.14 of the 1996 Act)

c) authorised reports of court or parliamentary proceedings e.g. official law reports, Hansard (s.2 of the Parliamentary Papers Act 1840)

d) investigations by the Local Government Ombudsman (s.32 of the Local Government Act 1974)

e) statements made in the course of judicial proceedings (common law). Absolute privilege cannot be used as a defence for defamatory statements made in council meetings.

15. Qualified privilege is a defence for a person who has an interest or a legal, social or moral duty to make the statement to the person to whom it is made, and the latter has a corresponding interest or duty to receive it. Qualified privilege will normally attach to statements (both written and oral) made by local councillors or council staff in the course of their official duties, and for the purposes of council business, provided that the statements are made in good faith and without any improper motive such as malice. Malice cannot be inferred from the fact that a person's belief is unreasonable, prejudiced or unfair, provided he or she believes in its truth and is not reckless.

16. A leading case on the defence of qualified privilege (which arose out of remarks made by an alderman of Bolton Corporation at a council meeting) is *Horrocks v Lowe* [1974] 1 AER 662 (Court of Appeal) Lord Diplock's judgment contained the following helpful passage: "My Lords, what is said by members of a local council at meetings of the council or of any of its committees is spoken on a privileged occasion. The reason for the privilege is that those who represent the local government electors should be able to speak freely and frankly, boldly and bluntly, on any matter when they believe affects the interests or welfare of the inhabitants. They may be swayed by strong political prejudice, they may be obstinate and pig-headed, stupid and obtuse; but they were chosen by the electors to speak their minds on matters of local concern and so long as they do so honestly, they run no risk of liability for defamation of those who are the subjects of their criticism". The judgment can also be applied to written communications sent by a local council in the course of official business.

17. Paragraph 11 of schedule 1 of the 1996 Act, means that fair and accurate reports of proceedings at a public meeting of a local authority (which includes local councils) have qualified privilege. Accordingly, it is not possible to succeed in a defamation action unless it can be proved that the statement was made with improper motive such as malice.

### **Publication on matters of public interest**

18. S.4 of the 2013 Act creates a defence if:

a) the defamatory statement was, or formed part of, a statement on a matter of public interest and

b) the statement maker reasonably believed that publishing the statement was in the public interest.

The defence applies to a statement of both opinion and fact.

## **Honest opinion**

19. S.3 of the 2013 Act creates the defence of “honest opinion” for a defamatory statement. As its name suggests, the defence cannot be used for statements of fact. The defendant must establish that the statement indicated the basis of his or her honest opinion and that an honest person could hold the opinion in the circumstances. The defence is available to anyone, whether or not he or she has a duty or interest to communicate the statement to another person (see “qualified privilege” above). The defence of honest opinion is primarily of use to journalists and others who report on the proceedings of public bodies (including local councils).

## **Offer of amends for unintentional defamation**

20. S.2 of the 1996 Act provides an opportunity for a person to defend a defamatory statement. If a defamation action has been issued, the offer of amends must be made prior to service of the defence. The person who has published a defamatory statement must offer

- (i) a suitable correction to the statement complained of and a suitable apology to the aggrieved person
- (ii) to publish a corrected statement and apology and offer to pay the aggrieved person’s costs and damages. An offer to make amends may be in relation to the whole statement or a specific defamatory meaning (“a qualified offer”).

21. It is always possible that an offer of amends may be made and accepted without the statutory formalities. Innocent dissemination/operators of websites and secondary publishers

22. S.1 of the 1996 Act provides a defence that is available to defendants who are not the author, editor or commercial publisher (e.g. printers, distributors, on-line service providers and live broadcasters). The defendant must have taken reasonable care in relation to the publication of a defamatory statement. and must not have known or had reason to believe that he or she caused or contributed to the publication of a defamatory statement. S.1 is a defence that is available to internet service providers.

23. Website operators also have a defence under s.5 of the 2013 Act if they did not post the defamatory statement on the website; and the aggrieved person gave the website operator formal notice of complaint; and the website operator responded to the notice in accordance with the procedure set out in the Defamation (Operators of Website) Regulations 2013. The defence will not succeed if the aggrieved person cannot identify who posted the defamatory statement on the website. Guidance on the statutory procedure is available from the Ministry of Justice via the following link:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/269138/defamation-guidance.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269138/defamation-guidance.pdf)

## **Implications for local councils**

24. Councils must ensure that they do not participate in the publication of defamatory material. If in doubt, they should consult NALC before taking any action. The same care should be exercised before publishing statements made by others, e.g. reading out letters

from parishioners at council meetings, reproducing complaints, etc, verbatim in the minutes of a meeting or permitting third parties to post material on their websites.

### **Implications for councillors and council staff**

25. There is a difference between statements made by councillors or staff in a public or in a private capacity. A defamatory statement made in a private capacity does not attract all of the defences specified above, e.g. qualified privilege.

### **Insurance**

26. Article 6(3) of the Local Authorities (Indemnities for Members and Officers) Order 2004 (SI.3082), enables a council to provide indemnities to its councillors and staff to allow them to defend a defamation action. An indemnity cannot be provided to bring a defamation action by a councillor or member of staff. If a council decides to provide such indemnities, it will need to arrange appropriate insurance cover before the event. More guidance is available in Legal Briefing L03-05 and L05-10 (Wales)

### **Court proceedings**

27. If court action is threatened, the parties to the claim must comply with “Preaction Protocol for Media and Communications Claims” published by the Ministry of Justice. The protocol is intended to encourage the exchange of information between parties at an early stage of legal proceedings and to provide a clear framework for resolving the claim. The protocol forms part of the Civil Procedure Rules and can be accessed via the Ministry of Justice using the following link:

[www.justice.gov.uk/courts/procedure/civil/protocol/prot\\_def](http://www.justice.gov.uk/courts/procedure/civil/protocol/prot_def)

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