BINDMANS LLP

Your ref:
Our ref: Barnet Council case
Date: 28 February 2011 Direct email: xxxxxxxxxxxxxxxxxxxx

FAO: Councillor Lynne Hillan, Leader of Barnet Council
CC: Secretary of State for Communities and Local Government
North London Business Park
Oakleigh Road South
London
N11 1NP

First by fax: 020 8359 4156
and email:
leader@barnet.gov.uk
cllr.l.hillan@barnet.gov.uk and
eric.pickles@communities.gsi.gov.uk

****URGENT - REPLY REQUESTED BY 3PM ON 1 MARCH 2011****

Dear Sirs

Our client: Ms Vicki Morris of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

1. Please note that we write on behalf of Ms Morris, a press and public affairs officer for Barnet Trade Union Council, in her personal capacity at this stage. We are instructed that you have previously been asked by members of the public for permission to film, blog and "tweet" at the Barnet Council meeting tomorrow, 1 March 2011. Any filming or online communication will be undertaken responsibly and in order to disseminate the fullest possible information about the meeting to those who are likely to be affected by decisions made by their elected representatives.

2. By any standards, this is one of the most significant public meetings the Council will have held in some years. The proposed cuts are likely to affect members of the community for many

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years to come. It is clearly in the public interest that they have access to information about the decision-making process and that it should be carried out with the utmost transparency. Transparency is a fundamental principle of good administration.

3. We understand from a Times Series article of 28 February 2011 that you, as leader of the Council, confirmed publicly to the newspaper that the Council will not permit filming, tweeting or blogging at the meeting. The article states that reporting requests only "from respectable media will be considered" and no filming will be permitted. It states that the Council Conservative group has not been consulted on the issue.

4. We have considered this matter carefully and reviewed relevant guidance, legislation and case law. It appears to us that there are no reasonable, lawful grounds for taking such a position. We have advised our client that a decision to refuse blogging, tweeting or filming may be amenable to challenge by way of judicial review for the reasons set out below, amongst others.

Legal Issues

5. As you will be aware, under the Human Rights Act 1998 every decision or action which the Council takes must comply with the European Convention of Human Rights ('ECHR'). Of particular relevance to this case is Article 10 ECHR, and potentially Article 14 (non-discrimination in the enjoyment of these rights and freedoms). Section 6 of the Act makes clear that compliance means not only not interfering with those rights but also taking positive steps to ensure that members of the public can effectively enjoy these rights.

6. Article 10.1 makes clear that this includes the right to impart and receive information. *"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and*

to receive and impart information and ideas without interference by public authority..." Although it is not an absolute right, interference with the right is only justified in tightly prescribed circumstances, in pursuance of a legitimate aim and where it is strictly necessary in a democratic society. We do not consider that any of these criteria are applicable in these circumstances.

7. As has been made clear in numerous decisions of the European and domestic Courts, the Convention is a 'living instrument' and should be interpreted accordingly. The Court would interpret Article 10 in light of modern methods of communicating and receiving information.

8. We consider that the Council's proposed differential treatment between "respectable [professional] media" and those who the Secretary of State for Communities and Local Government refers to as "citizen journalists" would amount to discriminatory treatment under Article 14 ECHR. Article 14 prohibits unjustified discrimination in the enjoyment of Convention rights such as Article 10 above "on any ground such as sex, race, [……..] *or other status*".

9. Further, as a matter of public law, the Council is bound to adhere to Government guidance unless there is a legitimate, lawful reason for departing from the guidance. You will no doubt be aware of the Department of Communities and Local Government guidance of 23 February 2011 directly on this subject. The Secretary of State noted that *"Councils should open up their public meetings to local news 'bloggers' and routinely allow online filming of public discussions as part of increasing their transparency.*.

To ensure all parts of the modern-day media are able to scrutinise Local Government, Mr Pickles believes councils should

also open up public meetings to the 'citizen journalist' as well as the mainstream media, especially as important budget decisions are being made."

Minister Bob Neill has also written to councils on 23 February urging greater openness and calling on them to adopt a modern approach so that community bloggers and online broadcasters get the same access to council meetings as traditional accredited media. The Council has not provided any legitimate, lawful and fair reason for departing from this guidance.

10. By way of background, you should also consider the following historical developments in this area of law and the legislative purpose behind the developments:

a. The Public Bodies (Admission to Meetings) Act 1960 opened up meetings to the public, allowing members of the public and press to attend meetings of certain public bodies including councils. Margaret Thatcher was the backbench MP who championed this as a Private Members Bill.

b. The Local Government Act of 1972 states that meetings may be recorded and filmed, and for those parts of council meetings that are open to the public, councils are prevented from ejecting members of the public unless they are guilty of disorderly conduct or other 'misbehaviour'.

c. The Local Government (Access to Information) Act 1985 provides for greater public access to local authority meetings reports and documents subject to specified confidentiality provisions; to give local authorities duties to publish certain information; and for related purposes.

11. We cannot see any legitimate or lawful constitutional reason for Barnet to prohibit responsible reporting by those outside the

mainstream media. If you disagree, we would be grateful if, in your response, you would kindly set out exactly which provisions you consider justify such a position. Please confirm whether the appropriate committee has been consulted in relation to the decision-making process.

Summary

12. Against this background, we consider that it would be unlawful to refuse permission to members of the public wishing to film, blog or tweet at the Council's meeting for legitimate public interest reasons, and in such a way which would not disrupt the meeting. Many other councils have made arrangements to permit such modern forms of media to ensure transparency in their decision-making and to ensure that the public's right to impart and receive information is adequately respected, especially in budgetary decisions of this magnitude. Indeed, you may also be aware that the Supreme Court has also made changes to its rules to permit simultaneous reporting such as tweeting whilst cases are ongoing.

13. We trust that in light of the reasons set out above, you will confirm in writing by 3pm on 1 March 2011 that you will not prohibit filming and online reporting of the Council's public meetings. We consider the short response time to be reasonable in light of the need for clarity on this issue before Tuesday's meeting, which will impact on the whole community for many years to come. We understand that various bloggers have written to you in advance in relation to this issue and had not received any reasoned written response before today's article in the Times online.

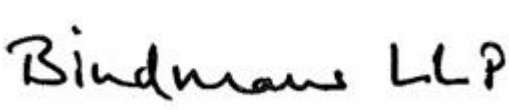
14. Should you not agree to this request, we have advised that such a decision would potentially be amenable to challenge by way of judicial review on the following grounds amongst others:

- Disproportionate interference with Article 10 (right to receive and impart information);
- Breach of 14 ECHR (non-discrimination in the enjoyment of Article 10 rights);
- Unlawful departure from Department for Communities and Local Government guidance;
- Frustration of legislative purpose;
- Unlawful fettering of discretion; and
- Unreasonableness.

By way of pre-action disclosure, we would be grateful if you could provide us with the minutes of any Council meetings held to discuss the Council's policy in relation to this issue. If there are none, kindly confirm that this is the case.

We hope that it will be possible to find a satisfactory resolution to this issue, which is crucial for transparent decision-making in a modern democratic society. We look forward to your reply by 3pm on Tuesday 1 March. Should you wish to discuss this matter, kindly contact Gwendolen Morgan, solicitor in the Public Law and Human Rights department, on 0207-833-5393 or by email at g.morgan@bindmans.com.

Yours faithfully



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