



Report of Chief Officer (Human Resources)

Standards Committee

Date: 19th August 2009

Subject: Procedure for Exempting Politically Restricted Posts

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 Purpose of this Report

- 1.1 Under the Local Government and Public Involvement in Health Act 2007, Local Standards Committees can grant and specify exemptions for Politically Restricted Posts (PRPs).
- 1.2 PRPs have been in place in local government since 1990, however, this is a new function for Standards Committees; transferring responsibility from an Independent Adjudicator, appointed by the Secretary of State.
- 1.3 This report provides a brief background to PRPs and proposes a procedure for use by the Standards Committee for considering exemptions.

2.0 Background Information

- 2.1 In 1990 PRPs were introduced as part of the Local Government and Housing Act in 1989. The significance of a post being politically restricted is that:
- (a) the post holder must not announce an intention to be a candidate for election to the House of Commons, the European Parliament, the Welsh Assembly or the Scottish Parliament, or a local authority;
 - (b) where an officer announces that he wishes to resign his post because he intends to be a candidate for election in the House of Commons, his appointment shall terminate¹;
 - (c) the post holder must not act as an election agent or sub-agent;

¹ Postholders announcing an intention to resign a politically restricted post to stand as a candidate for the Welsh Assembly or Scottish Parliament should take advice from the Chief Officer (Human Resources) as to whether this action will cause their employment to terminate.

- (d) the post holder shall not be an officer of a political party, or a committee or sub-committee member of a party, if this involves him in general management of, or acting on behalf of, the party or branch;
- (e) the post holder shall not canvass on behalf of a political party, or on behalf of a candidate for election;

Post holders, other than political assistants, are also prevented from:

- (f) speaking to the public with the apparent intention of affecting support for a political party;
- (g) publishing or causing to be published written or artistic work if intended to affect public support for a political party as opposed to, for example, displaying a poster on private property.

2.2 A political assistant must not speak to the public in a way likely to create the impression that he is speaking as an authorised representative of a political party, and must not publish any written or artistic work likely to create the impression that it is authorised by a political party.

2.3 Specifically, in 1990, officers were informed if their post was restricted and informed of their right to appeal this. Records from 19 years ago suggest 20 postholders were granted exceptions; the majority being Educational Psychologists.

2.4 As part of this process officers who wished to be exempted made a written case to an Independent Adjudicator appointed on behalf of the Secretary of State. The Council was also asked to give an opinion about these posts and the degree to which they were involved in advising members or taking decisions on behalf of the authority.

2.5 Since 1994 the maintenance of the PRP list has not been widely questioned. Informal enquiries are occasionally made to HR teams about PRPs and these tend to be staff new to local government seeking clarification.

3.0 Main Issues

What defines a Politically Restricted Post?

3.1 A summary of the definition of Politically Restricted Posts, according to regulations, is given below. Different post categories have different rights to apply for exemption.

Post type	Overview	Exemption from list ?
Category A <i>Senior manager posts automatically subject to restriction</i>	Head of Paid Service and Directors, Chief Officers and their Deputies – including Officers who are not designated Deputies but, in respect of all or most of their duties of their post, are required to report directly to, or are directly accountable to, a Service Director Officers having specified delegated authority to carry out certain functions of the Local Authority e.g. Monitoring Officer (who in Leeds is the Assistant Chief Executive (Corporate Governance)).	No right to seek exemption
Category B <i>Posts</i>	Full time posts equal to or above spinal column point 44 or equivalent – currently £35,852 per	Right exists

<i>subject to restriction based on remuneration level</i>	<p>annum Part time posts (which would be equal to or higher than £35,852 per annum if FT) Where an Officers grade range includes spinal column point 44, the regulations only come into effect once point 44 is reached.</p> <p>These posts are automatically added to the list of politically restricted posts unless an exemption has been granted.</p>	to seek exemption
Category C Posts <i>subject to restriction because of duties related criteria</i>	<p>Posts that are remunerated below spinal column point 44, but are considered politically sensitive, that is:</p> <p>Posts that give advice on a regular basis to the authority, to any committee or sub committee, or to any joint committee on which the authority are represented or Posts that speak on behalf of the authority on a regular basis to journalists or broadcasters</p> <p>These posts are only added to the list of politically restricted posts when they are identified by the Director.</p>	Right exists to seek exemption

- 3.2 Officers in categories B and C may seek exemption only on grounds that they do not regularly advise the Authority, any Committee, Sub Committee or Joint Committee and do not speak regularly on the Authority's behalf to journalists or broadcasters. There is no time limit on appeals and a further application for exemption can be made if duties change.
- 3.3 Any person can also complain if they believe that a post has wrongly been omitted from the list of Politically Restricted Posts.
- 3.4 Teachers, Headteachers and Lecturers are all exempt from political restrictions, and will not be regarded as holding Politically Restricted Posts whatever their role or remuneration level.
- 3.5 Finally, in terms of employment law, a consequence of the legislation means any violations of the restrictions are a breach of contract.

The current situation in Leeds

- 3.6 The Council's HR and payroll system provides the core information to maintain and demonstrate our PRP list is up to date. Staff are informed on appointment if they are subject to PRP requirements and this is detailed in contracts. If staff who are on the list were identified as taking part in any political activity, as defined under the Regulations, this would be reported to the Monitoring Officer.

Implications for the Standards Committee

- 3.7 Under Section 202 of the Local Government and Public Involvement in Health Act 2007 the responsibility for adjudication on politically restricted posts transferred

from the independent adjudicator to the Standards Committee with effect from April 2008. In summary:

The Standards Committee shall:

- consider any application for exemption from political restriction which is made to the Committee; and
- on application of any person or otherwise, give directions to the relevant authority requiring it to include a post in the list of politically restricted posts.

3.8 Applications can only be made for posts on the list, or being proposed to go onto the list held by the authority. The regulations also reaffirm the role of the Local Authority as follows:

The Local Authority shall:

- Give its Standards Committee all the information that it may reasonably require to make decisions;
- Comply with any direction from the Standards Committee; and
- Notify the postholder about the decision taken by the Standards Committee.

3.9 The Department of Communities and Local Government (DCLG) indicated that it would provide further guidance for Standards Committees on the new responsibility. This however has not been forthcoming.

3.10 A request to exempt a post has now been received.

3.11 To support the Standards Committee in fulfilling its responsibility to consider exemptions a draft procedure is attached as Appendix 1.

3.12 This is based on an assessment of some of the procedures adopted in other Authorities and also the Greater London Authority. It also reflects the need for a Certificate of Opinion to be given by the authority as to the responsibilities of a post. Finally the procedure has been drafted to allow a number of different types of potential applications i.e.

- (a) Applications for exiting post holders who want restrictions removed;
- (b) Applications from Directors who want posts removed, where there is no current postholder;
- (c) Applications from any person, including members of the public who wish posts to be added to the list.

4.0 Recommendations

4.1 Standards Committee are recommended to adopt the procedure given in Appendix 1.

Background Documents

Local Government and Public Involvement in Health Act 2007
Local Government and Housing Act 1989