

Standards Committee : 12 January 2010
Title of report: Review of the Role and Function of Standards Committee

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	N/A
Is it in the Council's Forward Plan?	N/A
Is it eligible for "call in" by Scrutiny?	N/A
Cabinet member portfolio	Corporate

Electoral wards affected and ward councillors consulted: All

Public or private: Public

1. Purpose of Report

To inform standards committee of the current role and function of the committee, as set out in the Council's Constitution, and to suggest that the committee set up a working group to review the role and function.

2. Key Points

Section 54 of the Local Government Act 2000 sets out the functions of standards committees as follows:

(1) The general functions of a standards committee of a relevant authority are—

(a) promoting and maintaining high standards of conduct by the members and co-opted members of the authority, and

(b) assisting members and co-opted members of the authority to observe the authority's code of conduct.

(2) Without prejudice to its general functions, a standards committee of a relevant authority has the following specific functions—

- (a) advising the authority on the adoption or revision of a code of conduct,*
 - (b) monitoring the operation of the authority's code of conduct, and*
 - (c) advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority's code of conduct.*
- (3) A relevant authority may arrange for their standards committee to exercise such other functions as the authority consider appropriate.*

Section 3A of the Local Government and Housing Act 1989 sets out a further function for standards committees in relation to politically restricted posts, namely:

- (1) The standards committee of a local authority in England which is a relevant authority—*
- (a) must consider any application for exemption from political restriction which is made to the committee, in respect of any post under the relevant authority, by the holder for the time being of that post; and*
 - (b) may, on the application of any person or otherwise, give directions to the relevant authority requiring it to include a post in the list maintained by the authority under section 2(2).*

The implications for local authority employees in 'politically restricted posts' are that they are prevented from having any active political role either at work or in their private lives. Such employees will automatically be disqualified from standing for or holding elected office, and these restrictions are incorporated as terms in the employee's contract of employment.

Employees in politically restricted posts are also restricted from canvassing on behalf of a political party or a person who is or seeks to be a candidate or speaking to the public at large or publishing any written or artistic work that could give the impression that they are advocating support for a political party. This means that such employees are limited to merely being members of political parties, who are unable to actively participate in party matters. Each relevant local authority must keep a list of those posts which are politically restricted.

Posts which are politically restricted include

- specified posts such as the Head of the Paid Service, the statutory chief officers, (including the director of children's services and director

of adult social services), non-statutory chief officers, deputy chief officers, the monitoring officer, the chief finance officer, officers exercising delegated powers and assistants to political groups. These post-holders have no right of appeal for exemption to the standards committee.

- All posts where the remuneration level is or exceeds the 'spinal column point' 44 on the NJC for Local Government Services scales will be automatically included on the list of politically restricted posts. These post holders are allowed to appeal to the standards committee to be exempted from the list, on the grounds that they do not influence policy or speak on behalf of the authority to journalists or broadcasters.
- Holders of sensitive posts. A sensitive post is one which involves either giving advice on a regular basis to the authority itself, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented; or where the authority are operating executive arrangements, to the executive of the authority; to any committee of that executive; or to any member of that executive who is also a member of the authority or which involves speaking on behalf of the authority on a regular basis to journalists or broadcasters. These post holders can appeal to the standards committee to be exempted from the list, on the grounds that the authority has wrongly applied the criteria.

Teachers, headteachers and lecturers are all exempt from political restrictions. The European Court of Human Rights has ruled that the system of political restriction in the UK does not infringe convention rights.

Guidance on how standards committees should exercise their powers in relation to politically restricted posts is awaited from the Department of Communities and Local Government. Pending the issue of that advice the most relevant guidance available is that produced in 2002 by the Independent Adjudicator who previously performed these functions.

The current role and functions of the standards committee, as set out in the Council's Constitution, is set out in Annex 1 to this report, the Independent Adjudicator's Advice at Annex 2, and for information the terms of reference of the Council's Corporate Governance and Audit Committee are set out at Annex 3.

The two central issues which would arise on a review of the role and functions are firstly whether the current role and functions of the standards committee are appropriately defined, and secondly whether the standards committee is fulfilling the role and functions entrusted to it.

3. Implications for the Council

It is important for the Council that the Standards Committee is effective and a review would be helpful in identifying any improvements which could be made to the operation of the standards committee.

4. Consultees and their opinions

N/a

5. Officer recommendations and reasons

It is recommended that Standards Committee set up a working party of committee members to review the current role and functions of the standards committee and to report back to standards committee.

6. Cabinet portfolio holder recommendation

N/a

7. Next steps

See recommendation.

8. Contact officer and relevant papers

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Senior Legal Officer

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Background Papers:

The Kirklees Council Constitution at
<http://www.kirklees.gov.uk/you-kmc/constitution/consitutionmenu.shtml>

ANNEX 1

Current Role and Function of Standards Committee

The Standards Committee will have the following roles and functions:

(a) To promote and maintain high standards of conduct by members, including co-opted members;

(b) Establish sub-committees to consider, review, request an investigation into and determine any written allegation may to it under Section 57A of the Local Government Act 2007, that a member or co-opted member (or former member or former co-opted member) of that Authority has failed or may have failed to comply with the Authority's code of conduct.

- To make arrangements for publicity of the member complaints system in such manner as it considers appropriate to comply with statute, regulation and Standards Board for England guidance
- To agree, review periodically and make publicly available criteria against which complaints will be assessed
- To agree criteria by which the assessment sub-committee will consider requests for confidentiality
- To agree and publish a statement setting out how anonymous complaints will be dealt with

(c) To monitor and review, as appropriate, the members' code of conduct and to advise the council on any changes;

(d) To provide advice and guidance to members and co-opted members on issues relating to the members code of conduct and ethical standards and to arrange the provision of training on such matters;

(e) To consider and, if appropriate, grant dispensations to members and co-opted members from requirements relating to interests set out in the members' code of conduct; within the framework permissible by Regulations issued to give effect to the Local Government & Public Involvement in Health Act 2007;

(f) To deal with:-

- any report from a case tribunal or interim case tribunal established under Section 76 of the Local Government Act 2000; and
- any report from the Monitoring Officer on any matter which is referred to him by an ethical standards officer appointed under that Act

(g) The exercise of (a) to (f) above in relation to the parish and town councils wholly or mainly within Kirklees and the members of those councils;

(h) To comment on any matter raised by the council's auditors or the Local Government Ombudsman relating to the above and referred to it by the Chief Executive, the Monitoring Officer or an Overview and Scrutiny Committee;

(i) To recommend to the council, if appropriate, the adoption of protocols relating to members' conduct supplementary to the members code of conduct and to determine procedures for dealing with allegations of breaches of such protocols;

(j) To consider and take action on any reports referred to it by the Corporate Governance and Audit Committee relating to the monitoring of the performance of councillors.

ANNEX 2

Independent Adjudicator's circular letter to local authorities

Local Authority Chief Executives in
England
Chief Fire Officers in England
Police Authority Clerks in England

THE INDEPENDENT ADJUDICATOR
(Section 3. Local Government and Housing Act
1989)
C/O - Communities and Local Government
Zone 5/B3
Eland House
Bressenden Place
LONDON
SW1E 5DU

Enquiries: 020 7944 4262
Fax: 020 7944 4109
E-Mail: cathryn.evans@communities.gsi.gov.uk

Web site: www.communities.gov.uk

August 2002

Dear Chief Executive,

Local Government and Housing Act 1989: Circular Letter from the Independent Adjudicator

Introduction

1. I was appointed to the post of Independent Adjudicator for both England and Wales on 1 May 1998 and reappointed (for England only) on 1 April 2000. Since my appointment, a number of issues have arisen which I think it would be useful to address in this circular. I am also taking this opportunity (in paragraphs 2-8 below) to include a summary of my duties and the posts to which the restrictions in the Local Government and Housing Act 1989 (the 1989 Act) apply.

The Adjudicator's remit

2. As you will be aware, the 1989 Act imposes restrictions on political activities by local government staff. Section 3 provides for the appointment of a person (the Independent Adjudicator) to undertake certain prescribed duties relating to these restrictions. These duties are:

- to consider applications from local authority employees for exemption from political restriction in respect of their posts;

- where appropriate, to issue directions requiring a local authority to include a post in the list of politically restricted posts it maintains; and
- to give general advice, following consultation with appropriate parties, on the application of criteria for designation of a politically restricted post.

Posts to which political restrictions under section 2 of the 1989 Act apply

3. The purpose of Part I of the 1989 Act is to ensure that local authority employees who hold posts involving duties of a politically sensitive nature cannot, at the same time, become or remain a member of another principal local authority. This policy stems from the long established tradition that local government officers involved in advising elected members of their authority should be seen to observe a policy of political neutrality.

4. This policy is important for two main reasons: It is essential to the functioning of the democratic system that members of a local authority should be able to receive impartial advice from its officers, and that its officers should not be influenced by any political bias in the implementation of the authority's policies. It is also vital that members, and those who have elected them, should have complete confidence that their officers will give impartial advice and will act impartially in implementing the authority's policies.

5. In short, those in the business of giving advice to members meeting as the authority or of any committee appointed by it, or of publicly presenting and explaining council policy, are therefore deemed to be "persons holding a politically restricted post". This term is defined in section 2(1) of the 1989 Act and consists of three broad categories of local government officer:

(i) the head of the authority's paid service, the statutory and non-statutory chief officers, the deputy chief officers, the authority's monitoring officer, political assistants under section 9 of the 1989 Act, and any other person specified by the authority in a list maintained in accordance with relevant powers set out in section 2(1)(g) of the 1989 Act;

(ii) those whose annual rate of remuneration exceeds the level specified in Section 2(2)(a) of the 1989 Act ("the prescribed level", currently spinal column point 44 of the national scale) - **but see paragraph 6 below which explains that it is important to be clear that, ultimately, it is not a person's salary level which determines whether their post is politically restricted.**

(iii) those officers whose annual rate of remuneration is less than the prescribed level but whose duties consist in, or involve, one or other of the duties identified in Section 2 (3) of the 1989 Act, i.e.:

(a) giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented; and

(b) speaking on behalf of the authority on a regular basis to journalists or broadcasters.

6. In relation to categories (ii) and (iii) above, the ultimate test of whether an individual post is, in fact, politically sensitive, will depend on the nature of the duties the post regularly entails. Every officer falling within these two categories may be entitled to exemption from political restriction if, in summary, the nature of the duties of that post do not require the postholder to be politically neutral.

7. With effect from 11 July 2001, the Local Authorities (Executive and Alternative Arrangements)(Modification of Enactments and Other Provisions)(England) Order 2001 amended section 2(3) of the 1989 Act. Accordingly, political restrictions also apply to those local government staff whose posts entail giving advice on a regular basis to the executive of the authority, or a committee or member of the executive.

8. The Minister for Local Government has also confirmed [during the Committee stage of 8 June 2000 on the Local Government Bill, now the Local Government Act 2000,] that it is the Government's belief that the principle of political restricted posts should be upheld. However, the Government also recognises that following the European Court ruling, (Ahmed and Others v UK), a review is needed to ensure that those restrictions bite at the right level. The review is to be taken forward in consultation with the LGA, Employers Organisation and public sector unions.

The local authority "Certificate of Opinion"

9. One issue which has often delayed the application process is inaccurate wording in the local authority "certificate of opinion" which the legislation requires should accompany an application to the Independent Adjudicator. I have attached a model certificate to act as a guideline for local authorities. It is necessary for the certificate of opinion to state "whether or not, in their opinion, the duties of the post fall within subsection (3)" of the 1989 Act. It is clear from the wording of the Act that "their opinion" means the opinion of the local authority.

10. For local authorities which are operating executive arrangements under the Local Government Act 2000, the function of issuing a certificate of opinion is the responsibility of the authority's executive and can be exercised in accordance with the provisions of the 2000 Act, including by individual members of the executive and officers.

11. For local authorities which have not yet adopted a new constitution under the 2000 Act or which are operating alternative arrangements, it remains open to the local authority to delegate the function of issuing a certificate of opinion to an officer under section 101 of the Local Government Act 1972.

12. The signing of the certificate of opinion should be delegated to an appropriate officer. By virtue of section 234 of the 1972 Act, the certificate of opinion may be signed on behalf of the authority by the proper officer of the authority. In my view, the authority's Monitoring Officer would be a particularly appropriate officer to discharge this responsibility.

Giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority, to any joint committee on which the authority are represented, to the executive of the authority, or to a committee or member of the executive

13. In relation to applications for exemption, it is sometimes suggested that because a postholder gives advice to elected members on a regular basis, that officer's post is brought within the terms of section 2 (3). This is not so. The advice which is given must be provided to the authority itself (i.e. the full council); to a committee, sub-committee or joint committee; to the executive; or to a committee or member of the executive.

14. Secondly, the sub-section refers to giving advice on a "regular basis". As my predecessor pointed out in his Circular Letter No. 4 of 3 December 1990, something more than an occasional attendance to present a formal report to a committee is needed to establish that advice is given on a regular basis. In cases of doubt it is useful to have a list of:

(i) the number of times over, say, the previous twelve months, that the post-holder has provided a report to an individual member of the executive or either attended, or provided a report for, those groups or individuals listed in paragraph 14; and

(ii) a description of the contents of such a report including whether the report embodied advice or recommendations and whether the post holder was required to speak at the meeting.

Overview and Scrutiny Committees

15. Section 21 of the Local Government Act 2000 (the 2000 Act) stipulates that executive arrangements by a local authority must include provision for the appointment of one or more committees of the authority, referred to as overview and scrutiny committees. Regulation 6 of the Local Authorities (Alternative Arrangements) (England) Regulations 2001 requires any authority operating alternative arrangements to appoint one or more overview and scrutiny committees. It is worth making clear that overview and scrutiny committees (under executive or alternative arrangements) are "committees of the authority" and, therefore, that the giving of advice on a regular basis to overview and scrutiny committees and sub-committees comes within the scope of section 2(3)(a) of the 1989 Act.

Applications from those not yet in post

16. There has been a number of applications in the last year from people who have been offered a politically restricted post in a local authority but they either plan to be, or are already, a member of another local authority. I propose here to follow the example of my predecessor in considering applications from those who have been offered a job in a local authority as long as those applicants have had a formal job offer and can provide a certificate of opinion from the (employing) authority. I will not, however, entertain applications from those who are only considering applying for a post in a local authority but who have not received a job offer.

Officers who hold an exemption granted by the Independent Adjudicator transferring to employment with another local authority

17. Officers who have been granted exemption from political restrictions in respect of their post with their present employing authority who obtain employment in a politically restricted post with another local authority and who wish to continue their exemption must apply to me for a further exemption. The original exemption is not a passport which can be transferred to another authority or to another post. This is because the 1989 Act requires the application to be from a postholder in respect of a particular post and accompanied by a Certificate of Opinion relating to the duties of that post at the time of the application for exemption. As mentioned in paragraph 16, I will be willing to consider an application from officers who have been offered a politically restricted post with another authority before they commit themselves to a formal acceptance of the post.

Elections

18. If standing for election, it is in the interests of those applying for exemption from political restriction to make an application to their employing local authority for a certificate of opinion and then to submit their application for exemption to me in plenty of time before they intend to stand for election.

Lists of Politically Restricted Posts

19. I would also remind all local authorities of the requirement in Section 2 of the 1989 Act to maintain an up to date list of their politically restricted posts.

Change of address

20. It has come to my notice that a number of applications for exemption from political restriction are still being sent to an obsolete address for the former Department of the Environment, Transport and the Regions. The correct address to send applications is as follows:

Independent Adjudicator
C/O William Tando
Democracy & Local Governance

Communities and Local Government
Zone 5/G10 Eland House
Bressenden Place
London
SW1E 5DU

Tel: 020 7944 8765

Fax: 020 7944 4109

e-mail: william.tandoh@communities.gsi.gov.uk

ANNEX 3

TERMS OF REFERENCE OF CORPORATE GOVERNANCE AND AUDIT COMMITTEE

Terms of Reference

Delegated authority in respect of all powers and duties set out below and all other Council functions not required to be determined by the full Council and not delegated to any other committee:

1. To be responsible for:

1.1. Monitoring the operation of the council's Constitution and keeping its terms under review, including all procedure rules

1.2. Making recommendations to the council for any change or additions to the procedure rules or Articles of the Constitution or executive arrangements

2. To determine all matters relating to the adoption and operation of the Members' Allowances Scheme including recommendation to the council of the adoption of or amendment to any such Scheme

3. To keep under review the portfolios of the Cabinet and the terms of reference and delegations of Council functions to committees and formally appointed bodies and officers

4. To consider the council's arrangement relating to accounts including

(a) the approval of the statement of accounts and any material amendments of the accounts recommended by the auditors

(b) to keep under review the council's financial and management accounts and financial information as it sees fit

5. To consider the council's arrangements relating to the external audit requirements including:

(a) the receipt of the external audit reports so as to;

(i) inform the operation of the council's current or future audit arrangements

(ii) provide a basis for gaining the necessary assurance regarding governance prior to the approval of the council's accounts

6. To consider the council's arrangements relating to internal audit requirements including:

(a) considering the Annual Internal Audit report, reviewing and making recommendations on issues contained therein

(b) monitoring the performance of internal audit

(c) agreeing and reviewing the nature and scope of the Annual Audit Plan

7. To review the adequacy of the council's Corporate Governance arrangements (including matters such as internal control and risk management) and including to review and approve the annual statement of Corporate Governance.

8. To agree and update regularly the council's Code of Corporate Governance, monitoring its operation and compliance with it, and using it as a benchmark against performance for the annual Statement of Corporate Governance.
9. To designate the Head of Paid Service, the Monitoring Officer and all statutory "proper officers".
10. To approve payments or provide other benefits in cases of maladministration as required and make recommendations arising from any review of a report of the Local Government Ombudsman
11. Following a decision of Council to undertake a community governance review to agree the terms of reference for and conduct such a review, making recommendations to Council who will determine the outcome of such reviews.
12. Functions relating to elections and parishes set out in Part D of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (or any replacement or amendment of it)
13. Charities and charitable trusts (so far as not the responsibility of Cabinet).