

Standards Committee : 12 October 2010

Title of report: The Standards Committee’s Functions In Relation to Politically Restricted Posts

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

The Working Party which the Standards Committee set up to review the current role and functions of the committee recommended that the committee’s terms of reference should be amended to refer to its function in hearing appeals from officers about political restrictions. This recommendation was approved by the committee. The purpose of this report is to consider how the Standards Committee’s functions in relation to politically restricted posts should be dealt with and what further amendments to the Council’s Constitution may be required.

2. Key Points

Section 3A of the Local Government and Housing Act 1989 sets out the functions of standards committees in relation to politically restricted posts and These include considering any application for exemption from political restriction by the officer holding the post in question and the giving of directions to the Council requiring it to designate a particular post as being 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.
- 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.

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.

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.

Two questions arise. Firstly how any applications or appeals in relation to politically restricted posts should be dealt with and secondly what criteria should be applied when dealing with appeals against political restriction.

Issues of political restriction tend to arise shortly before parliamentary and local elections and it is important that appeals and applications can be dealt with on an urgent basis so that individuals know whether they can stand in those elections or what political activity they or cannot engage in. It is therefore suggested that the necessary amendments to the Council's Constitution are made to create a Political Restriction Sub-Committee of the Standards Committee to deal with such matters. It is also suggested that the sub-committee be chaired by an independent member where possible.

The most recent guidance on dealing with political restriction matters was issued by the Independent Adjudicator, who previously had responsibility for these matters, in August 2002. Extracts from that advice forms Annex 1 to this report.

3. Implications for the Council

It is important that there is an effective and speedy process in place for dealing with political restriction matters.

4. Consultees and their opinions

N/a

5. Officer recommendations and reasons

It is recommended that:

- (a) the committee recommend to Corporate Governance and Audit Committee that the Council's Constitution be amended as set out in Annex 2 of this report; and
- (b) the committee consider the guidance at Annex 1 of this report and decide whether they wish to apply that guidance in dealing with any further political restriction matters.

6. Cabinet portfolio holder recommendation

N/a

7. Next steps

To implement any recommendations of Committee.

8. Contact officer and relevant papers

Dermot Pearson
Senior Legal Officer

Telephone: 01484 221437
Internal: 860 1437
E-mail: Dermot.pearson@kirklees.gov.uk

Background Papers:

None

ANNEX [Extract from the Independent Adjudicator's circular letter to local authorities dated August 2002]

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.

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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.

ANNEX 2 [Suggested amendments are in italics]

ARTICLE 9 – THE STANDARDS COMMITTEE

9.3 Role and Function

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 set out in Part 4 of the Standards Committee (Further Provisions) (England) Regulations 2009

(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.

(k) To deal with applications for exemption from political restrictions made by Council officers in respect of their own posts and, where appropriate, to give directions to the Council requiring it to include a particular post in the Council's list of politically restricted posts kept in accordance with section 2(2) of the Local Government and Housing Act 1989.

9.4 Sub-Committees

9.4.1 There shall be *five* sub-committees as follows:

- A local assessment sub-committee to consider complaints made in respect of potential breaches of the member code of conduct to determine whether an investigation should be undertaken
- A review sub-committee to consider requests for reviews of a decision not to proceed to investigate a complaint
- A hearings sub-committee to consider and determine complaints following investigation and report
- A dispensations sub-committee to consider requests for dispensations from councillors, co-opted members with voting rights and parish and town councillors
- *A political restrictions sub-committee to consider appeals by officers against their posts being designated as politically restricted and to consider whether directions to the Council should be given in accordance with section 2(2) of the Local Government and Housing Act 1989.*

9.4.2 Any member of the Committee may be a member of any sub-committee and the membership of each shall not be fixed, but shall be determined on each occasion it is required to sit except that in the case of the local assessment, review and hearings sub-committees:

9.4.2.1 Each sub-committee shall be chaired by an external member

9.4.2.2 If the complaint under consideration involves a parish council member, then a parish council committee member must be on each sub-committee considering that complaint

9.4.2.3 If the complaint under consideration involves a Kirklees council member, then a Kirklees council committee member must be on each sub-committee considering that complaint

9.4.2.4 Each sub-committee shall have 3 members with preferably one external member (who must be the Chair), one Kirklees member and one parish member. The quorum for a sub-committee shall be three members and if it is not possible to continue with the sub-committee because a member becomes unavailable then a fresh committee must be established to consider the complaint.

9.4.2.5 No member may sit on more than one sub-committee considering a particular complaint.

9.4.3 Any member of the committee may be a member of the dispensations sub-committee and the membership of the dispensations sub-committee shall not be fixed, but shall be determined on each occasion it is required to sit. Where possible the dispensations sub-committee shall consist of at least one independent member who shall chair the sub-committee, and where the application for dispensation is from a town or parish councillor there shall be a parish councillor committee member on the sub-committee provided that in cases where a decision on an application for a dispensation is urgently required the membership of the sub-committee may consist of such members as are available

9.4.4 *Any member of the committee may be a member of the political restrictions sub-committee and the membership of the political restrictions sub-committee shall not be fixed, but shall be determined on each occasion it is required to sit. Where possible the dispensations sub-committee shall consist of at least one independent member who shall chair the sub-committee, provided that in cases where a decision on a political restriction mater is urgently required the membership of the sub-committee may consist of such members as are available.*