

**To:** Standards Committee

**Date:** 5 December 2008

**Item No:** 9

**Report of:** Head of Legal and Democratic Services

**Title of Report:** POLITICALLY RESTRICTED POSTS

### **Summary and Recommendations**

**Purpose of report:** To inform the Committee on their new duty to consider applications for exemptions from politically restricted posts.

**Report Approved by:**

**Legal:** Jeremy Thomas

**Policy Framework:**

**Recommendation(s):** 1) To note the report and the Committee's new responsibility  
2) For the Head of Legal and Democratic Services to remind all officers about the requirements of politically restricted posts.

### **Background**

1. The Local Government and Housing Act 1989 introduced restrictions on the political activities of officers. In particular it relates to officers who hold "politically restricted posts" which are listed in Section 2 of the 1989 Act. These posts are the monitoring officer; head of paid service; statutory chief officers; a non statutory chief officer; a deputy chief officer, the monitoring officer; any person holding a post as an assistant to a political group; and any other person whose post is specified by the Council in a list maintained in accordance with this section.
2. In relation to OCC a statutory chief officer is the officer having responsibility for the purposes of section 151 of the Local Government Act 1972, section 73 of the Local Government Act 1985, section 112 of the

Local Government and Finance Act 1988, for the administration of the authority's financial affairs.

3. A non-statutory chief officer means:
  - 3.1. a person for whom the head of paid service is directly responsible;
  - 3.2. a person who for most or all of his duties reports directly to or is directly accountable to the head of paid service; and
  - 3.3. any person who for most or all of his duties reports directly to or is directly accountable to the Council itself or any of its committees.

These criteria do not apply to a person whose duties are solely clerical, secretarial or in the nature of support services.

4. 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.
5. This policy is important for two main reasons:
  - 5.1. that members of a local authority should be able to receive impartial advice from its officers.
  - 5.2. that members, and those who have elected them, should have complete confidence that their officers will act impartially in implementing the Council's policies.
6. 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".
7. The 1989 Act also includes all officers who are paid at the spinal column point 44, which at Oxford City Council is £35,852 (pay award pending) and all those officers who regularly give advice to the Council or its committees and those that regularly speak on behalf of the Council to the media.
8. In order to allow officers to pursue their personal political aspirations it is possible for an officer to apply for his post to be exempt from political restriction under Section 3 of the Act.

## **Consultation on Political Restrictions**

9. In 2004 a consultation paper was issued by the Office of the Deputy Prime Minister (ODPM) upon a review of political restrictions on local government employees. The review was prompted by a European Court ruling in 1998 that political restrictions are not incompatible with the right to freedom of expression under the European Convention on Human Rights, and a commitment to such a review given by the Government in the course of passage of the Local Government Act 2000 through Parliament.
10. The Committee was invited to consider the content of the consultation paper and the questions posed in it, and to decide whether it wished to offer any comment to the ODPM.
11. At its meeting on the 15 November 2004 the Committee resolved to respond to the consultation as follows:
  - 11.1. political restrictions based on the nature of the job was the most appropriate means of defining jobs to which political restrictions applied – the salary level of the employee represented an unrefined cut-off mechanism (Questions 1-4 in the Consultation Paper);
  - 11.2. that employees should be required to resign from the Authority on adoption as a political candidate (Question 4);
  - 11.3. that there should be a distinction between officers giving advice and officers providing factual information, with the latter category of officer generally being exempt from political restriction (Question 4);
  - 11.4. that there would seem to be no merit in making changes to the independent adjudicator arrangements (Questions 5-8);
12. Further to the consultation the Government amended the law under the Local Government and Public Health Act 2007.

## **The New Position**

13. The Local Government and Public Involvement in Health Act 2007 came into force on 1 April 2008. Under section 3A of this Act the responsibility for consideration of applications for exemption from political restriction is removed from the independent adjudicator and given to the Standards Committee.
14. Accordingly at the meeting of this Committee on the 5 September 2008 the Committee amended its terms of reference to include this new responsibility to consider applications for post holders to be exempt from political restriction.

15. The Council is required by statute to have and maintain a list of all posts that are politically restricted. The 2007 Act removed the salary limit for politically restricted posts and therefore Oxford City Council does not have any politically restricted posts other than those specific posts that are prescribed in section 2 of the 1989 Act (see paragraph 1 of this report)..
16. The Committee must consider applications relating to posts that are included the list maintained by the Council and it is the post holder who makes the application.
17. The Committee may choose to consider applications for exemption from any person even if they do not hold the post to which the application relates, for example a person who has been offered a job with Oxford City Council but who is a member of another authority.
18. Since the Council does not have any politically restricted posts other than those statutory post holders set out in the 1989 Act, it is difficult to envisage the Committee being required to consider applications for exemption.
19. The Committee also has the discretion to consider any post that is not on the list and determine that it should be included whether or not an application has been received. Again, it is not clear in what circumstances the Committee would wish to exercise this discretion if at all.

### **Consideration of Applications**

20. In considering any application the Committee must give priority to an application from a post holder who certifies in his application that the application is submitted for the purpose of enabling him to be a candidate in an election. The level of priority the Committee afford the application is dependent upon the time available to the Committee before the election in which the post holder wishes to stand.
21. To decide whether to allow the application for exemption the Committee must be satisfied that the duties of the post do not fall within:
  - 21.1. 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;
  - 21.2. speaking on behalf of the authority on a regular basis to journalists or broadcasters.

There is no guidance on what constitutes the giving of advice but it is likely to be more than simply presenting reports to the Council or its committees. Therefore upon an application received, the Committee may consider that officers who occasionally attend a committee in order to present reports where they are not required to provide advice may be exempted.

22. If the Committee finds that the duties of the post holder do not fall within the two categories mentioned above it **must** direct:

22.1. that, for so long a period as the Committee think appropriate the post is not to be regarded as a politically restricted post; **and**

22.2. that the post is not to be specified in the list maintained by the Council or (as the case may be) it is to be removed from that list.

When considering the length of the exemption the Committee may wish to consider whether the exemption should apply to the applicant only; to all future post holders; to a specific election; until the job description is amended; or until a fixed date in the future.

23. Before the Committee can determine an application by a person other than the post holder; or posts considered at the Committee's discretion the Committee must be satisfied that:

23.1. the duties of the post do not fall into the categories mentioned at paragraph 21 above; and

23.2. the post is neither:-

23.2.1. in any list maintained by the Council; and

23.2.2. of a description specified in any regulations that may be made by the Secretary of State.

24. When considering applications the Committee must have regard to any general advice given by the Secretary of State. As at the date of this report there is no guidance issued.

### **Recommendations**

25. To note the report and the Committee's new responsibility

26. For the Head of Legal and Democratic Services to remind all officers about the requirements of politically restricted posts.

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**Background papers:** None

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