

GUIDANCE FOR STAFF:

**POLITICALLY RESTRICTED POSTS  
AND POLITICAL NEUTRALITY**

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## **Politically restricted and other staff**

The Council's staff is made up of two types of employee, those who hold "politically restricted posts" and those who do not. The rules are based on salary and responsibilities.

- All staff in work related time, both those who are politically restricted and those who are not, must follow the Employees Code and also must be politically neutral. They must not do anything during the working day that is a restricted activity.
- Politically restricted staff in their private time cannot do anything that is a restricted activity.
- But other staff in their private time are not affected by the rules on politically restricted activities.

If a member of staff is asked to do something that they think may break the rules in this Guidance then they should first tell the person concerned that they are uncomfortable doing what is requested. If that person persists, then the matter should be reported to a manager or Head of Service. Staff should not comply with the request if they know or suspect it to be wrong. The Council has approved a "whistle-blowing" policy to provide protection.

## **The Legal Provisions**

A local authority cannot appoint as an employee in any capacity, any councillor who is currently a member of that authority or who had been a member in the previous 12 months (s.116 LGA 1972). This includes teachers and support staff (including teachers of voluntary aided schools).

Under s80 of LGA 1972, an authority employee will be disqualified from being elected or holding office as a member of that local authority. This principle also applies to joint authorities under s80, therefore an individual is disqualified from standing or holding office with that specific authority if he holds any paid office or employment with the local authority or a joint authority.

The main provisions regarding politically restricted posts are set out in the Local Government and Housing Act 1989 and in the Local Government Officers (Politically Restrictions) Regulations 1990 (the regulations).

Politically restricted employees will automatically be disqualified from standing for or holding certain elected office, and these restrictions are incorporated as terms in the employee's contract of employment under the regulations. It is left to the discretion of each authority whether or not to reinstate an employee who resigns his post, and then consequently fights and loses an election.

This prevents local government employees from standing for office as:

- MPs
- MEPs
- Members of the Welsh Assembly
- Members of the Scottish Parliament

They are also restricted from:

- Standing as a candidate in a local government election
- Acting as an election agent
- Being an officer of a political party or any branch of a political party or a member of any committee or sub-committee of such a party
- Canvassing on behalf of a political party or a person who is or seeks to be a candidate
- 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

They can display an election poster in their own home or vehicle.

(further details of the restrictions are set out in the rules for staff below)

All local authority employees, including craft and manual workers, fall within the scope of the Act. Part-time posts are also included where, if the individual was employed full-time, the equivalent remuneration would equal or exceed the threshold set-out in the regulations.

### **Which posts are politically restricted?**

Each local authority is under a duty to draw-up and regularly update a list of those posts which are politically restricted. The effect of including a local authority employee on the list of 'politically restricted posts' is to significantly restrict that individual from having any active political role outside the workplace ie in their private lives.

Politically restricted posts fall into three broad categories:

#### Specified posts:

- the Head of the Paid Service (s4 LGHA)
- the statutory chief officers, (including the director of children's services and director of adult social services in England, and the chief education officer and director of social services in Wales)
- non-statutory chief officers
- deputy chief officers
- the monitoring officer (s 5 LGHA)
- the chief finance officer (s 151 LGA)

- officers exercising delegated powers, i.e. persons whose posts are for the time being specified by the authority in a list maintained in accordance with s 100G(2) of the LGA
- assistants to political groups

All these post holders are politically restricted without rights of appeal for exemption to the local authority's standards committee.

#### Posts paid at or above a certain level

All posts where the remuneration level is or exceeds the 'spinal column point' 44 on the NJC for Local Government Services scales, which currently equates to a yearly salary of £36,730 (as of 1 April 2008), will be automatically included on the list of politically restricted posts.

Remuneration is a wider term than 'salary level' and would include other variable elements of pay (aside from regional weightings) such as 'acting up'/overtime/shift bonus and performance-related pay elements. Cars and other fringe benefits in kind are not intended to be included.

These post holders are allowed to appeal to the local 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.

#### 'Sensitive' posts:

A sensitive post is one which meets one or both of the following duties-related criteria:

- 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
- speaking on behalf of the authority on a regular basis to journalists or broadcasters

These post holders can appeal to the local 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, and will not be regarded as holding politically restricted posts whatever their role or remuneration level.

Staff who are unsure of their exact status can clarify their position with Human Resources.

## **The local standards committee**

From 1 April 2008 in England the responsibility for granting exemptions from political restriction passed to local authority standards committees. The secretary of state may also provide advice on how the exemptions will be considered.

### **Procedure on appeal**

Employees included in the lists compiled by local authorities on either remuneration-related or duties-related grounds can appeal against their inclusion, if they feel that they cannot influence policy, or that the local authority has incorrectly applied the duties-related criteria.

All such appeals require a letter from the applicant formally seeking exemption and a full job description of the post a 'certificate of opinion' from the authority will also be required in the case of a post-holder at or above the remuneration ceiling.

### **Advice on procedures**

The secretary of state has not yet issued any detailed advice on the new regimes. In the meantime the general guidance and model certificate of opinion provided in the circular letter issued by the previous Independent Adjudicator remains helpful for English local authorities, which will be introducing new procedures locally transferring the independent adjudicator's role to the standards committee.

### **Police and Fire Service**

Police officers are not covered but police support staff are covered by the provisions of the Act.

Fire authorities are considered local authorities and therefore firefighters and support staff are covered by the provisions of the Act.

### **Human rights and politically restricted posts**

The compatibility of political restrictions on local authority posts with an individual's rights under the European Convention of Human Rights was tested in the case of Ahmed and others v UK [1999] 188 ECHR.

The European Court of Human Rights held that the political restrictions did not breach Article 10 (the right to freedom of expression) or Article 11 (the right to freedom of association) of the applicant's Convention rights, as the public has a

right to expect that those holding higher level local government office are politically impartial.

### **Political Assistants**

A local authority may appoint up to three assistants for political groups subject to stringent conditions and safeguards.

The appointment of each assistant is down to the political group each post (political assistant) is to represent. The selectors can take account of the candidate's political activities during the selection process, although the posts are 'politically restricted'.

The criteria laid down for the posts are that

- only one post can be appointed to a political group
- the three largest groups in each authority qualify for a post (if the membership of the group consists of at least 10% of the membership of the authority)
- although it is for the authority to determine the salary payable, the remuneration of the assistants must not exceed £34, 986 being the maximum figure specified by
- their terms and conditions must not be less favourable than those of other political assistants in the authority
- the contract of employment must terminate at or before the annual council meeting following the first elections after the person was appointed (or the first annual council meeting after the person has been in post for three years if the council is elected by thirds)
- the local authority cannot delegate any functions to an assistant, and no other authority officer can be required to work under the direction of an assistant (other than in respect of secretarial or clerical services)

Unlike other politically-restricted posts, political assistants are not restricted from 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. However, they may not speak in public so as to create the impression that they are speaking as an authorised representative of a political party. They must also not publish or be involved in the publication of a written or artistic work which gives the impression that the publication is authorised by a political party.

Darlington Borough Council normally does not have any political assistants.

## **Rules for all staff :**

### **Standards and Attitude**

The Employee Code of Conduct says all employees of the Council are expected to give the highest possible standard of service to the public, Councillors and fellow employees and where it is part of their duties, to provide appropriate advice to Councillors and fellow employees with impartiality.

### **Confidentiality and Disclosure of Information**

The confidentiality of information received in the course of your duties should be respected and must never be used for personal or political gain. Also, of course, you should not knowingly pass information on to others who might use it in such a way.

You should not communicate confidential information or documents to others who do not have a legitimate right to know. Furthermore, information which is stored on computer systems must only be disclosed in accordance with the requirements of the Data Protection Act 1998.

Information given in the course of your duties should be accurate and fair and never designed to mislead.

Any particular information received by an employee from a Councillor which is personal to that Councillor should not be divulged by the employee without the prior approval of that Councillor, except where such disclosure is required by law.

### **Political Neutrality**

Employees serve the Authority as a whole. It follows that you must serve all Councillors equally and ensure that the individual rights of all Councillors are respected.

From time to time, some employees may also be requested to advise a full meeting of a political group or its executive. You must do so in ways which do not compromise your political neutrality and inform the Chief Executive in advance.

Whether you hold a politically restricted post or not, you must not allow your own personal or political opinions to interfere with your work and you must at all times perform your duties in an objective manner.

## **Rules for politically restricted staff**

The law implies a term into the contracts of employment of every politically restricted employee that they will not engage in any of the restricted activities. Breaching this is not a criminal offence, but could give rise to disciplinary action.

The “restricted activities” apply to independent politicians and their supporters/ supporting organisations in exactly the same way as they apply to political parties, and their members/candidates. Politically restricted staff who engage in restricted activities for an independent politician will equally be in breach of their contract of employment.

### **The “restricted activities”**

Politically restricted staff may not do any of the following, in their private time or in work-related time (other staff may not carry them out in their work-related time):-

#### **Being a candidate or election agent**

There is a detailed list of bodies for which employees in a politically restricted post cannot hold membership or act as an election agent for a candidate seeking membership.

#### **Holding office in a political party**

Be an officer of a political party, or of any branch of such a party, or a member of any committee or subcommittee of such a party or branch.

#### **Canvassing for candidates and parties**

Canvass on behalf of a political party or on behalf of a person who is, or proposes to be, a candidate for election to any of the bodies listed in (a) above.

#### **Speaking to the public and giving interviews**

Speak to the public, at large or to a section of the public, with the apparent intention of affecting support for a political party.

- This is allowed to the extent that doing so is necessary for the proper performance of the person’s official duties.
- “Speaking to the public” includes giving an interview, which to the knowledge of the person giving it, is likely to result in the publication of statements made, or opinions expressed, during the course of the interview

### **Writing and publishing political material**

Publish any written or artistic work of which he/she is the author (or one of the authors), or any written work or collection of artistic works in relation to which he/she has acted in an editorial capacity, if the work appears to be intended to affect public support for a political party.

### **Membership of political parties**

Nothing in the rules prevents politically restricted staff from being a member of a political party and carrying out activities which are not restricted activities. However, being an officer such as a party or branch chair, treasurer or spokesperson etc will probably conflict with the restrictions set out above.

### **Election posters and badges etc.**

The rules specifically allow politically restricted staff to display campaigning posters in their windows at home, on their own cars or to wear political badges on their clothing without breaking the rules on restricted activities.

### **Staff wanting to canvass etc.**

The rules for politically restricted staff are legal requirements automatically implied by law into their employment contracts. They cannot be “contracted out” of. As a result directors and managers may not agree any arrangement, such as a secondment or un-paid leave, that allows them to remain in Council employment and at the same time to engage in any of the restricted activities in their private time. If the holder of a politically restricted post wants to do anything that is a restricted activity, he or she must resign.