

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PERSONNEL COMMITTEE

Agenda Item No 7

meeting date: WEDNESDAY, 18 SEPTEMBER 2019
title: POLITICALLY RESTRICTED POSTS POLICY
submitted by: JANE PEARSON – DIRECTOR OF RESOURCES
principal author: MICHELLE SMITH – HEAD OF HR

1 PURPOSE

1.1 To ask Members to approve a Politically Restricted Posts policy for the authority.

1.2 Relevance to the Council's ambitions and priorities:

- Council Ambitions - A well-managed Council must ensure that it operates in accordance with legislation and upholds the principles of public life including integrity and objectivity.
- Community Objectives - None.
- Corporate Priorities – See above.
- Other considerations – None.

2 BACKGROUND

2.1 The Local Democracy, Economic Development and Construction Act 2009 required all local authorities to maintain a list of posts which are identified as politically restricted. The Act made amendments to previous legislation under Part 1 of the Local Government and Housing Act 1989 and the Local Government Officers (Political Restrictions) Regulations 1990.

2.2 The Council last reviewed the list of politically restricted posts in 1990.

3 ISSUES

3.1 The restrictions aim to ensure that post-holders act with political neutrality and do not allow their own personal or political opinions to influence or improperly interfere with their work.

3.2 If a post is designated as 'politically restricted' it means that the post-holder is effectively prevented from having any active role either in or outside the workplace. In summary, a post-holder in a politically restricted post is prevented from:

- announcing their candidature for election to a local authority, the House of Commons or the European Parliament;
- becoming an officer of a political party or branch of a party or member of Committee or Sub-Committee of a party if the duties involve the management of the party or branch or representing the party or branch;
- canvassing on behalf of a political party or on behalf of a person seeking election;
- acting as an election agent or subagent for an individual;

- 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;
- publishing any material or works intended to affect public support for a political party.

3.3 Politically restricted posts fall into two broad categories and are either 'specified posts' or posts with defined duties, known as 'sensitive posts'. Specified posts are automatically subject to restriction, without rights of appeal for exemption and are listed at 3.2 of the attached policy at Appendix A. Sensitive posts are those that meet one or both of the criteria outlined at 3.3 of the attached policy.

3.4 Each local authority is under a duty to draw up and regularly update and prepare a list of those posts which are politically restricted. This is shown at Appendix 2 of the attached policy.

3.5 The list will be kept under review and posts-holders will be informed of their restricted status by letter. New starters will be advised in their contract of employment. Job Descriptions do not routinely include a reference to political restriction at present, but as and when they are reviewed it will be added.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – There are no resource implications to the approval of the policy.
- Technical, Environmental and Legal – Failure to comply with legislation could put the council at risk of legal sanctions.
- Political – No political implications have been identified.
- Reputation – The reputation of the council as a good and responsible employer will be affected if it is found to be in breach of legislation.
- Equality & Diversity – No equality and diversity issues have been identified.

5 RECOMMENDATION

5.1 That Members receive the report.

5.2 That Members approve the Politically Restricted Posts Policy as attached at Appendix A.

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For further information please ask for Michelle Smith, ext 4402.



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POLITICALLY RESTRICTED POSTS POLICY

What does it mean to be Politically Restricted?

1. Introduction

1.1 Certain posts are 'politically restricted', which means that while individuals who hold them may belong to a political party they are effectively prevented from having any active political role either in or outside the workplace. This not only debars post holders from holding or standing for elected office (specifically a county, borough or district councillor, an MP, a Member of the European Parliament or a Police and Crime Commissioner), but also excludes them from the following:

- Participating in political activities, such as publicly expressing support for a political party or being an officer of a political party, or undertaking other activities such as canvassing on behalf of a person who seeks to be a candidate; and
- 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.

1.2 The cumulative effect of these restrictions is to limit the holders of politically restricted posts to bare membership of political parties, with no active participation within the party permitted.

1.3 These restrictions aim to prevent politics coming into play where an employee is in a politically influential position. This could be where an employee implements the authority's policies, gives advice to, or speaks on behalf of, the Council.

2. Legislation Update

2.1 With effect from 12 January 2010, the Local Democracy, Economic Development and Construction Act 2009 changed the approach to identifying posts which are politically restricted under Section 2 of the Local Government and Housing Act 1989 (LGHA).

2.2 Originally posts were deemed to be politically restricted if they were earning above spinal column point 44, but Section 30 of the 2009 Act has now removed the concept of political restriction by salary level.

3. Categories of Politically Restricted Posts

3.1 Posts will now only be considered to be politically restricted if they fall into the following two broad categories:

- Specified Posts
- Sensitive Posts

3.2 Specified Posts

Specified posts are automatically subject to restrictions on public political activity and as such, there is no right of appeal. These posts are listed as follows:

- The Head of Paid Service (Section 4 Local Government and Housing Act)

- The statutory Chief Officers
- Non-statutory Chief Officers, other Directors and Chief Officers
- The Monitoring Officer (Section 5 Local Government and Housing Act)
- The Chief Finance Officer (Section 5 151 Local Government Act)
- Officers exercising delegated powers, i.e. persons whose posts are for the time being specified by the Council in a list maintained in accordance with S 100G(2) of the Local Government Act 1972
- Assistants to political groups

3.3 Sensitive Posts

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

- i. Giving advice on a regular basis to a Council itself, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented; and / or
- ii. Speaking on behalf of the authority on a regular basis to journalists or broadcasters.

3.4 It is the Councils duty to prepare and maintain the list of politically restricted posts. This list will be held and maintained by Human Resources and employees will be notified personally of any amendments that affect their post. (See notification letter at Appendix 1).

3.5 All Heads of Service are considered to be employed in politically restricted roles as a result of 3.3 (i) above.

3.6 The council is required to prepare and maintain a list of politically restricted posts. This is shown at Appendix 2.

4. Advertising a Politically Restricted Post

4.1 When recruiting to a new post, the criteria must be used to determine whether the post is politically restricted and on what grounds it is restricted. If the post is politically restricted this will be included in the job description and be stated in the employee's Contract of Employment.

4.2 If the post is politically restricted, what this means must be discussed with candidates at interview.

5. Holders of Politically Restricted Posts

5.1 The primary objective of this policy is to ensure that employees in politically restricted posts do not allow any perception to arise that their own personal or political opinions may have influenced or improperly interfered with their work.

5.2 This policy only applies to post holders of politically restricted posts, although all employees are required to observe the Councils' Code of Conduct for Staff which requires all staff to be politically neutral in respect of their employment duties.

5.3 Holders of politically restricted posts will be notified of their restricted status.

- 5.4 The terms of these regulations will be deemed, to be incorporated within your contract of employment with the Council and any breach of the political restrictions will be regarded as a breach of your contractual obligation. Such breaches will be dealt with under the Councils disciplinary procedure.
6. Restrictions on Speaking and Writing in Public
- 6.1 The regulations also address the post holder's conduct outside his/ her employment in far wider terms. Post holders are not permitted to speak in public where there is an apparent intention to affect public support for a political party. Similarly, such post holders are not permitted to publish any written or artistic work whether as author or editor, nor can they authorise or permit another person to publish such work if the work appears to be intended to affect public support for a political party.
- 6.2 This includes writing or 'speaking' on social media for example on blogs, on-line forums, Facebook and twitter, where the work appears to be intended to affect public support for a political party. However, this prohibition does not preclude the display of a poster or other document at the post holder's home or on his or her car or other personal possessions. These restrictions are to be interpreted so as not to prevent the officer from carrying out their official duties.
7. Human Rights and politically restricted posts
- 7.1 The compatibility of political restrictions on local authority posts with an individual's rights under the European Convention of Human Rights was tested in a 1998 European Court of Human Rights case. Ahmed and others v UK [1999] 188 ECHR.
- 7.2 In this case, the Court held that the political restrictions did not breach Article 10 (the right to freedom of expression) of 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.
8. Appeal Procedure
- 8.1 There is a right of appeal for officers who will be politically restricted on the basis that it appears to the Council that their post is 'sensitive', but not for those who hold "specified" posts. Any officer wishing to appeal against their political restrictions should contact the Chief Executive and make a request in the form of a letter for a post to be deleted from the list. This right of appeal rests with the post holder.
- 8.2 Any employee proposing to apply for removal from the list must inform their Director.
- 8.3 The appeal letter should formally request an exemption and set out reasons why the employee believes their duties do not require them to be politically neutral. They should include all relevant information to enable the Chief Executive to consider the appeal.
- 8.4 In consultation with the Monitoring Officer, the Chief Executive may grant an exemption to the political restriction of an officer post under Section 3A of the Local Government and Housing Act 1989, as amended by Localism Act 2011. The employee will be notified of the decision.

Notification Letter

Local Government (Political Restrictions) Regulations 1990 (LGO (PR)R 1990) [SI 851]

A review has recently been carried out of the posts within the Council that are subject to political restrictions under the above Act. By virtue of your appointment with the Council, you are deemed to hold a

Option para 1 – Specific post

.. “Specific post” within the terms of that legislation in you role of

Option para 2 – Sensitive post

...”Sensitive post” within the terms of the legislation.

This means that you are effectively prevented from having any active political role either in or outside the workplace. This not only debars post holders from holding or standing for elected office, but also prevents them from the following:

- Participating in political activities, publicly expressing support for a political party or undertaking other activities such as canvassing on behalf of a person who seeks to be a candidate; and
- 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.

These restrictions aim to prevent politics coming into play where an employee is in a politically influential position. This could be where an employee implements the Council policies, gives advice to, or speaks on behalf of, the Council.

The terms of these regulations will be deemed, to be incorporated within your contract of employment with the Council and any breach of the political restrictions will be regarded as a breach of your contractual obligation. Such breaches will be dealt with under the Councils disciplinary procedure.

Officers who will be politically restricted on the basis that it appears to the Council that their post is 'sensitive' have the right to appeal.

Any officer wishing to appeal against their political restrictions must be lodged in writing to the Chief Executive.

The letter of appeal must include the reason that you feel that your post cannot influence policy, or that the Council has incorrectly applied the duties related criteria. Appeals will be considered by Chief Executive and appropriate members of the Corporate Management Team. There is no further right of appeal.

APPENDIX 2

POLITICALLY SPECIFIED POSTS
Head of Paid Service or Non Statutory Chief Officers
Chief Executive
Director of Community Services
Director of Economic Development and Planning
Statutory Chief Officers (Monitoring and Chief Finance Officers)
Director of Resources and Chief Finance Officer
Head of Legal Services and Monitoring Officer
POLITICALLY SENSITIVE POSTS
Give advice to the authority, any Committee or sub-Committee, joint Committee, Cabinet and/or Portfolio Holder; and/or speak on behalf of the authority to the media, journalists or broadcasters
Head of Cultural and Leisure Services
Head of Engineering Services
Head of Environmental Health Services
Head of Financial Services
Head of HR
Head of Legal and Democratic Services
Head of Planning Services
Head of Regeneration and Housing
Head of Revenues and Benefits
Solicitor
Administration Officer/Mayor's Secretary
P/T committee Services and Complaints Officer
Electoral and Licensing Officer
P/T IER and Elections Assistant
Principal Communications Officer
Tourism and Events Officer