

Report To:	STANDARDS AND PERSONNEL APPEALS COMMITTEE	Date:	30 JUNE 2021
Heading:	ETHICAL GOVERNANCE UPDATE		
Portfolio Holder:	N/A		
Ward/s:	N/A		
Key Decision:	NO		
Subject to Call-In:	NO		

Purpose of Report

1. Update in respect of Committee on Standards in Public Life best practice recommendation number 5 regarding gifts and hospitality.
2. Update in respect of Politically Restricted Posts

To provide the Committee with an overview of politically restricted posts as required by legislation set out in the Local Government and Housing Act 1989 (LGHA 1989) with further details in the Local Government (Political Restrictions) Regulations 1990 and amended in the Local Democracy, Economic Development and Construction Act 2009. The report seeks authority to commence a review of the existing list.

3. Update in respect of Members' Code of Conduct complaints.

Recommendation(s)

The Committee is requested to:

1. Note the update regarding Committee on Standards in Public Life best practice recommendation 5 regarding gifts and hospitality;
2. Authorise the Monitoring Officer (being the appointed proper officer for the purposes of maintenance of the list) to carry out a review of the existing list of politically restricted posts with the support of HR and thereafter consult with the Trade Unions in respect of the revised list before reporting back to the next Standards and Personnel Appeals Committee any changes, deletions or additions for approval;
3. Note the updated position in respect of Members' Code of Conduct complaints as set out in Appendix 2.

Reasons for Recommendation(s)

Update in respect of Committee on Standards in Public Life – as part of ongoing work of the Committee.

Politically restricted posts - to comply with the requirements of the Local Government and Housing Act 1989.

Code of Conduct complaints update - to reflect good practice. To enable Members to monitor the volume and progress of complaints.

Alternative Options Considered

(with reasons why not adopted)

Update in respect of Committee on Standards in Public Life – the Committee could decide not to accept the update or to not implement best practice recommendation 5, but this would not be in line with best practice and the previous views of the Committee.

Politically restricted posts - none considered. The Council is under a duty to comply with the legislation and review the list regularly.

Code of Conduct complaints update – none considered. The update is for noting.

Detailed Information

1. UPDATE REGARDING THE BEST PRACTICE RECOMMENDATION OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

The Committee has committed to continuing to consider and implement the best practice recommendations of the Committee on Standards in Public Life and this is part of the proposed work plan for 2021/2022 which appears elsewhere on the agenda.

Best practice recommendation 5 states:

Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

The current practice is for the Monitoring Officer to review returns annually and the Register of Members' Gifts and Hospitality is audited by internal audit on a regular basis. The Register is not currently published or reported to Committee. A reminder to complete declarations is sent to Members annually. There are an average 1-3 declarations per year.

The Committee has previously agreed to:

- Develop a Register on the Council's Website.
- Introduce quarterly reporting through Committee (albeit that Members were concerned this is disproportionate to the number of declarations made on an annual basis).
- Produce a Guidance Note for Members (in line with the annual reminder).

The Council's Report Management System – Modern.gov – is currently being upgraded and will shortly become Cloud based in line with the Digital Transformation Programme. The system has facility for Gifts and Hospitality to be recorded on it and published in a similar way to the Register of Members' Interests. As part of the upgrade the Gifts and Hospitality function will be activated by the end of August; it is proposed that all new Member Declarations of Gifts and Hospitality will be entered on to the Modern.gov system once the function is active which will be available for public scrutiny. Declarations made through Modern.gov will be updated on an ongoing basis and so will not need to be updated quarterly. All future meetings of this Committee will receive a summary update of the Declarations made. The Register currently shows that the last declaration was made in January 2020.

Committee is asked to note the update regarding Committee on Standards in Public Life best practice recommendation 5 regarding gifts and hospitality.

2. POLITICALLY RESTRICTED POSTS

As part of the Standards and Personnel Appeals Committee proposed work plan for 2021/2022 it is recommended that the list of politically restricted posts within the Authority should be reviewed. It is good practice to review the list regularly to ensure the list remains up to date. The list was last updated and approved by Committee in June 2018. The Monitoring Officer was appointed proper officer for the purposes of maintenance of the list previously by the Committee. It would now be appropriate to carry out a review.

Historical Position

The first statutory attempt to ensure the political impartiality of those who serve in local government was under the Local Government Act 1972 (LGHA 1972) which prevents a Councillor from being employed in any capacity by the local authority he/she is serving.

In 1989, the Local Government and Housing Act 1989 introduced a principle of 'politically restricted posts' and of restricting the political activities of local authority employees. These reforms were made in response to the Widdecombe report which had identified issues of concern involving local authority officers and the apparent lack of political impartiality, which lead to separate loyalties and prejudicial service.

The report distinguished 'twin-tracking' which is where a local authority employee is also an elected Member of another local authority, for special criticism. The concerns included inability to serve the interests of the council on which they sit and the potential lack of political impartiality. Twin-tracking involving those holding 'politically restricted seats' is now restricted by the Local Government and Housing Act 1989 Part 1, which prohibits such activities.

The Local Government and Housing Act 1989 also outlined provisions relating to the appointment of assistants for political groups ('political assistants').

Restrictions under the Local Government Act 1972 - Restrictions on Members becoming Officers

A local authority cannot appoint as an employee, in any capacity, any councillor who is currently a member of that authority or who has been a member in the previous 12 months (section 116 Local Government Act 1972).

Restrictions on Officers becoming Members

Under section 80 of the Local Government Act 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 section 80; therefore, an individual is disqualified from standing or holding office with that specific authority if he holds any paid office or employment with a local or joint authority.

Politically Restricted Posts

The legislation regarding politically restricted posts is to be found in Part 1 of the Local Government and Housing Act 1989 (LGHA 1989) with further details in the Local Government (Political Restrictions) Regulations 1990 and amended in the Local Democracy, Economic Development and Construction Act 2009. The aim of this legislation is to ensure the political impartiality of local government employees who hold posts involving duties of a politically sensitive nature.

The effect of including a local authority employee on the list of 'politically restricted posts' is to prevent that individual from having any active political role either in or outside the workplace.

Politically restricted 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 under section 3 Local Government (Politically Restricted Posts) Regulations 1990. 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.

In practice, this equates to debarring a substantial number of local government employees from standing for office as:

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

They are also restricted from:

- canvassing on behalf of a political party or a person who is or seeks to be a candidate (Regulation 3, Schedule Part I, paragraph 5, Local Government (Politically Restricted Posts) Regulations 1990);
- 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 (Regulation 3, Schedule Part II, paragraph 5, Local Government (Politically Restricted Posts) Regulations 1990).

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.

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 statute.

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. Politically restricted posts fall into three broad categories:

Specified posts:

- the Head of the Paid Service (section 4 LGHA, 1989)
- the Statutory Chief Officers
- Non-Statutory Chief Officers
- Deputy Chief Officers
- the Monitoring Officer (section 5 LGHA, 1989)
- the Chief Finance Officer (section 151 LGHA, 1989)
- 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 section V100G(2) of the Local Government Act
- Assistants to Political Groups.

All these post holders are politically restricted without rights of appeals for exemption to the Standards and Personnel Appeals 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, will be automatically included on the list of politically restricted posts (Local Government (Politically Restricted Posts) (No. 2) Regulations 1990).

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 Standards and Personnel Appeals 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 Standards and Personnel Appeals Committee to be exempted from the list, on the grounds that the authority has wrongly applied the criteria.

The current list of politically restricted posts is attached as **Appendix 1**. The Monitoring Officer will work in conjunction with HR to review the list to take account of any changes to establishment or pay scales since the list was last updated in 2018. The draft revised list will be submitted to the Corporate Leadership Team and Trade Unions for comment before being reported back the next meeting of this Committee.

Procedure on Appeal

Employees included in the list 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).

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* in 1999.

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.

The Committee is asked to authorise the Monitoring Officer to carry out a review of the existing list of politically restricted posts with the support of HR and thereafter consult with the Trade Unions in respect of the revised list before reporting back to the next Standards and Personnel Appeals Committee any changes, deletions or additions for approval.

3. CODE OF CONDUCT COMPLAINTS UPDATE

This report outlines in **Appendix 2** the number of complaints of alleged Member misconduct which remain outstanding and a summary overview of the status of ongoing complaints.

Since the last update to the Committee:

- 6 complaints relating to District Councillors have been concluded with summary details contained in the report;
- There have been 8 new formal complaints in this period regarding District Councillors.

The Committee is requested to note the updated position in respect of Members' Code of Conduct complaints.

Implications

Corporate Plan:

To ensure we deliver high-quality public services we have adopted a set of corporate values which underpin the successful delivery of our priorities. How we work is as important as what we do. The Council's values are: People Focussed; Honest; Proud; Ambitious.

Legal:

Politically restricted posts are governed by legislation set out in the body of the report and the draft list has been developed taking the statutory criteria into account.

Finance:

There are no financial implications arising from this report except as set out below:

Budget Area	Implication
General Fund – Revenue Budget	The Authority incurs costs in investigating complaints of alleged Member misconduct if investigations are carried out externally, and these charges are borne by the General Fund. The Council investigates complaints in house as far as possible to reduce costs. Where complaints need to be investigated externally these costs are expected to be contained within existing budgets.
General Fund – Capital Programme	None
Housing Revenue Account – Revenue Budget	None
Housing Revenue Account – Capital Programme	None

Risk:

Risk	Mitigation
The Council has recognised the following Corporate Risk:	Ongoing work by the Standards and Personnel Appeals Committee in relation to the Committee on

<p>Ethical Governance – failure/delay to implement changes to the Members' Code of Conduct and recommendations of the Committee on Standards in Public Life (CSPL) and Peer Challenge (CR003)</p> <p>Significant resource to deal with implications of proposed Code of Conduct changes.</p> <p>Significant resource to deal with implications of implementing the recommendation of the CSPL.</p> <p>Potential for negative perception of the Council which impacts upon the Council's reputation.</p> <p>Potential for adverse impact upon the workings of the Council.</p> <p>Without new legislation does not provide holistic response to the recommendation of the CSPL.</p>	<p>Standards in Public Life – report on Local Government Ethical Standards</p> <p>Present Quarterly Complaint Monitoring reports to Standards and Personnel Appeals Committee</p> <p>Members received training regarding the Code of Conduct, their behaviours and roles and responsibilities as part of the induction in May 2019. In line with the Corporate Peer Challenge recommendation and the adoption of a new Code of Conduct at the AGM on 20 May 2021 further training will be organised.</p>
--	--

Human Resources:

The review of politically restricted posts will be undertaken with Human Resources.

Environmental/Sustainability

There are no Environmental/Sustainability implications in the report.

Equalities:

The review of politically restricted posts will be carried out in accordance with legislation and consideration of the Council's commitment to equality and diversity implications.

Other Implications:

Trades Unions and Corporate Leadership Team will be consulted on the list of politically restricted posts before reporting back to the Standards and Personnel Appeals Committee at their next meeting.

Background Papers

None.

Report Author and Contact Officer

Ruth Dennis
DIRECTOR OF LEGAL AND GOVERNANCE
r.dennis@ashfield.gov.uk
01623 457009