



Standards Committee

24th June 2008

Report from the Borough Solicitor

Wards Affected:
None

Applications for exemption from political restriction

1.0 Summary

- 1.1 The Local Government and Public Involvement in Health Act 2007 recently transferred the function of granting and supervising the exemptions from political restriction from an Independent Adjudicator to the Standards Committee. This report explains what political restriction is and the basis on which an exemption can be granted.

2.0 Recommendations

- 2.1 Note that as a result of the Local Government and Public Involvement in Health Act 2007 the Standards Committee now has the responsibility for granting and supervising exemptions from political restriction.

3.0 Detail

Background

- 3.1 The Local Government and Housing Act 1989 (the Act) defines certain posts within the Council as politically restricted posts and then prohibits staff that hold politically restricted posts from engaging in certain political activities.
- 3.2 Section 3A of the Act allows some employees who are in politically restricted posts to apply for an exemption from the restrictions. On 1 April 2008 the Local Government and Public Involvement in Health Act 2007 transferred

responsibility for the grant and supervision of exemptions from political restriction to the Standards Committee from the Independent Adjudicator.

- 3.3 Members are advised that this change is unlikely to have any significant effect as applications for exemption from political restriction are very rare. Brent has had one within the last five years.

Politically restricted posts

- 3.4 The politically restricted posts within the Council include the Chief Executive, Chief Officers, Deputy Chief Officers, the Monitoring Officer, section 9 political assistants, any post where the salary for the position meets or exceeds the salary threshold set by the Secretary of State (currently spinal column point 44 of the salary scales for local government officers' incorporated in the National Joint Council's Scheme) and certain other posts where, on the face of it, the duties involve advising committees or speaking to journalists regularly.
- 3.5 The Council is required to keep and maintain a list of the posts in the Council that are politically restricted by reason of salary or their advising committees or speaking to journalists.
- 3.6 Staff that hold a politically restricted post are prohibited from doing certain things such as;
- Being a candidate for election as a member of the House of Commons, European Parliament, a local authority or the Welsh Assembly and Scottish Parliament.
 - Canvassing on behalf of a political party or a person who is or seeks to be a candidate for election to one of those Authorities
 - Speaking to the public at large or to a section of the public with the apparent intention of affecting public support for a political party
 - Publishing or authorising any other person to publish any written or artistic work of which they were the author or one of the authors, or a collection of written works or artistic works on which they acted in an editorial capacity that could give the impression that they are advocating support for a political party

Application for exemption

- 3.7 The Act allows a person whose post is classified as politically restricted because the salary level of the post exceeds the threshold set by the Secretary of State or because on the face of it the duties of that post fall within section 2(3) of the Act to apply for an exemption from political restriction.
- 3.8 The committee must grant an exemption where it considers that the duties of the post do not in fact fall within section 2(3) of the Act. Section 2(3) of the Act is set out below

“(3)The duties of a post under a local authority fall within this subsection if they consist in or involve one or both of the following, that is to say –

- (a) giving advice on a regular basis to the authority themselves, 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;*
- (b) speaking on behalf of the authority on a regular basis to journalists or broadcasters”.*

3.9 Members should note there is no discretion as to whether to grant an exemption. If the committee decides that the duties of the post do not in fact fall within section 2(3) of the Act then the committee must grant the exemption.

3.10 If this committee decides to grant an exemption then this is given effect by a direction to the Council to remove the post from the Council’s list and the post is therefore no longer considered politically restricted.

Local Authority Certificate

3.11 Where a post is politically restricted because the salary exceeds the level set by the Secretary of State then an application for exemption must also include a certificate as to whether in the Council’s opinion the post falls within section 2(3) of the Act.

3.12 The certificate will be provided by the relevant Director in whose department the post is Council is. The Council is under a duty to provide a certificate when requested to do so.

3.13 Where an application for exemption is received from someone whose post is politically restricted because the Council considers that it falls within section 2(3) of the Act then that person is not required to obtain a certificate but can request one and the Council is then required to provide one.

3.14 Although the certificate of the authority is evidence for the committee that is should consider, it is not on its own determinative of the matter and the committee must reach its own conclusion.

Adding a post to the Council’s list

3.15 In addition to granting exemptions from political restriction the Act also provides for any person to make an application to the committee to have a post added to the list of politically restricted posts.

- 3.16 Once again the committee must decide whether the duties of the post fall within section 2(3) of the Act. If they do then the committee may give a direction to the Council to add the post to the list of politically restricted posts. Officers consider it unlikely that the committee will receive any such applications.

Procedures

- 3.17 To ensure a consistent approach and a timely handling of any applications the Borough Solicitor is drafting procedures that the Council will follow in the event of an application for exemption.

4.0 Financial Implications

- 4.1 None

5.0 Legal Implications

- 5.1 The terms of reference of the Standards Committee have been amended to include granting exemptions from political restriction using the Borough Solicitor's delegated powers.

6.0 Diversity Implications

- 6.1 None.

7.0 Staffing Implications

- 7.1 The transfer of this function to the committee is unlikely to create any significant work for the committee or for officers as there has only been one application in Brent in the last five years.

Background papers

The Local Government and Public Involvement in Health Act 2007

The Local Government and Housing Act 1989

Should any person require any further information about the issues addressed in this report, please contact Dan Bonifant, Local Government Lawyer on telephone number 020 8937 1368.

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