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| REPORT TO: | STANDARDS COMMITTEE |
| DATE: | 5 September 2023 |
| SUBJECT: | POLITICALLY RESTRICTED POSTS STATEMENT |
| LEAD OFFICER: | Tracy Brennand, Assistant Director, People and Workforce Development |
| REPORT SUMMARY: | <p>The report outlines:</p> <ul style="list-style-type: none"> • The key statutory definitions of politically restricted posts and proposals to maintain compliance with legislation in this area by ensuring that where required, officers in specific roles are aware of the restriction to political activity. • Recommendations for amendments to contracts of employment and job descriptions for roles identified as politically restricted. |
| RECOMMENDATIONS: | <p>This report makes the following recommendations:</p> <ul style="list-style-type: none"> • That the Council implements the Politically Restricted Posts statement as detailed in Appendix 1. • That updates are made to contracts of employment and job descriptions for roles identified as politically restricted. • That employees who occupy politically restricted posts are provided with information and guidance to explain the restrictions, including the appeal process where relevant. • To update the recruitment process ensuring job adverts and appointment letters include information regarding politically restrictions, where applicable. • The changes listed above will take effect from 1 November 2023. |
| REASON FOR RECOMMENDATION: | Under the provisions of the Local Government and Housing Act 1989, as amended, certain officers of local authorities are subject to restrictions relating to political activities. Section 2(2) of the Local Government and Housing Act 1989, as amended imposes on every local authority a duty to prepare and maintain a list of posts which fall within section 2(3) of the Act. |
| ALTERNATIVES CONSIDERED: | To not implement a politically restricted posts statement could lead to recruitment of employees to posts which are politically restricted and of which they are unaware; increasing risk of political activity where it is restricted. |
| FINANCIAL IMPLICATIONS: (Authorised by Section 151 Officer) | <p>The Standards Committee needs to consider the implications of not approving the recommendations outlined in this report. Without the political restrictions, recommendations to Executive Cabinet and other decision making Committees may become biased and not deliver objective value-for-money outcomes as it furthers officers' political aims or objectives that may not align with the Council's approved plans and policies.</p> <p>Such decision making could place the Council at risk of financial instability and / or incur fines due to actions considered <i>ultra vires</i>.</p> |
| LEGAL IMPLICATIONS: (Authorised by Monitoring | The Local Government and Housing Act 1989 (as amended) stipulates that certain posts within local authorities are subject to |

Officer)

restrictions on political activities, which, post holders are able to undertake.

The Council is required to produce and regularly review a list of politically restricted posts.

Politically restricted posts fall into two broad categories; and are either specified posts or posts with defined duties (known as 'sensitive posts'). The Local Democracy, Economic Development and Construction Act 2009 defined certain posts as specified posts as set out in the main body of the report.

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

- Giving advice on a regular basis to Council, the Executive, a Committee, Sub-Committee, or any joint Committee the Council is represented at or where the authority are operating executive arrangements,;
- Those who speak on behalf of the authority on a regular basis to journalists and broadcasters.

Unlike specific post holders, sensitive post holders can appeal if they consider that the criteria has been incorrectly applied to their role.

If the current review of the list of politically restricted posts results in staff coming under these restrictions for the first time then advice will have to be sought from HR in relation to how the contracts for those staff can be varied.

RISK MANAGEMENT:

Local authorities are legally bound to produce and maintain a list of politically restricted posts and to ensure that employees in those positions are aware of the restrictions to political activity (Local Government and Housing Act 1989). Failure to maintain a politically restricted posts statement could lead to recruitment of employees to posts, which are politically restricted and the employee is unaware of the restrictions imposed upon are unaware; increasing risk of political activity where it is restricted.

EQUALITIES:

The approach to identification of politically restricted posts is set out in legislation and based on activity undertaken as part of the role. This does not include consideration of personal characteristics.

LINKS TO CORPORATE PRIORITIES:

The maintenance of a politically restricted posts statement ensures legal compliance and upholds our corporate values of trust and integrity. The organisation aims to uphold the highest standards of behaviour and ensuring decisions made are not influenced by political allegiance is essential to this.

ACCESS TO INFORMATION

The background papers relating to this report can be inspected by contacting the report writer Jennifer Tyson (Head of HR Strategy and Operations)



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Details of appendices attached to the report:

Appendix 1 – Politically restricted posts statement

1 INTRODUCTION

- 1.1 Politically restricted posts are those in which the job holder cannot take part in certain political activities, whilst in employment with a local authority. The specific requirements are set out in the [Local Government and Housing Act 1989](#).
- 1.2 It is important that political restrictions are adhered to in order to prevent advice and decisions from being improperly influenced by political allegiance.
- 1.3 Politically restricted posts are split into two broad categories: specified and sensitive. Specified posts are automatically subject to restrictions on political activity and as such, there is no right of appeal. Where posts are deemed to be politically sensitive the employee does have a right to appeal this designation if they feel the legislation has not been applied correctly in respect of their role.
- 1.4 Reference to politically restricted posts can be found at P15.4 of the contract of employment for Tameside employees.

P15.4 Political neutrality

Employees, excluding political assistants, must follow every lawfully expressed policy of the Council and must not allow their own personal or political opinions to interfere with their work. Where employees are politically restricted, by reason of the post they hold or the nature of the work they do, they must comply with any statutory restrictions on political activities. The Local Government and Housing Act 1989 provides for posts falling within the criteria as being politically restricted. Any employee who is politically restricted because they meet any other criteria set out in the legislation will receive personal notification. Further information relating to those posts which are politically restricted is available upon request to the Council's Statutory Monitoring Officer or the Standards Committee, who will consider and determine any applications for exemption from the restrictions

2 LEGAL BASIS

- 2.1 The Local Government and Housing Act 1989 defines a politically restricted post as one that disqualifies the post holder (an employee of a local authority) from taking an active role in a political party either in or outside the workplace.
- 2.2 Employees in politically restricted posts are automatically disqualified from standing for, or holding elected office such as local councillor or MP (Member of Parliament). They are also restricted from canvassing on behalf of a political party or a person who is, or seeks to be a candidate, and 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.
- 2.3 The cumulative effect of these restrictions is to limit the holders of politically restricted posts to membership of political parties only, with no active participation within the party permitted. More information can be found in the Politically Restricted Posts statement (Appendix 1).
- 2.4 In 2009 an amendment to the Local Government and Housing Act 1989 removed the concept of political restriction by salary level. Salary level is no longer used to determine politically restricted posts.

3 SPECIFIED AND SENSITIVE POSTS

- 3.1 There are two categories of politically restricted posts: specified and sensitive.

Specified Posts

3.2 The following persons are regarded as holding politically restricted posts:

- Head of the Paid Service
- Statutory Chief Officers, (including the Director of Children's Services and Director of Adult Social Services in England, the Director of Public Health, the Chief Finance Officer)
- The Monitoring Officer
- Non-statutory Chief Officers (officers reporting to the Head of Paid Service excluding secretarial/clerical support staff).
- Deputy Chief Officers (officers reporting to a Chief Officer excluding secretarial/clerical support staff).
- Officers exercising delegated powers as set out within Part 3a of the Constitution (see link in the table below).
- Assistants to political groups.

In Tameside these roles are outlined in the table below:

| Legal Definition | TMBC |
|---|---|
| The Head of the Paid Service | Chief Executive |
| The Monitoring Officer | Interim Borough Solicitor |
| Statutory Chief Officers | Director of Children's Director of Adults Director of Population Health Director of Resources |
| Non-statutory Chief Officers | Director of Place |
| Deputy Chief Officers (officers reporting to a Chief Officer excluding secretarial/clerical support staff). | Assistant Directors Any other employee who is required to report directly to a statutory or non-statutory Chief Officer. |
| Officers exercising delegated powers | Part 3a Terms of Reference and Scheme of Delegation |
| Assistants to political groups | None |

Sensitive Posts

3.3 Sensitive posts are defined in Section 2 (3) of the Act and are those which involve one or more of the following:

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

3.4 Section 2 (2) of the Local Government and Housing Act 1989 places a duty on local authorities to prepare and maintain a list of the posts which fall into the category of 'sensitive'.

3.5 The initial categorisation of sensitive posts has been undertaken with Assistant Directors for their services.

3.6 Examples of sensitive posts include:

- Lawyer/Solicitor
- Democratic Services Officer
- Member Services Officer
- Electoral Manager
- Communications Manager
- Marketing and Communications Officer
- Policy Officer/Senior Policy Officer
- Scrutiny Manager

4 POLITICALLY RESTRICTED POSTS STATEMENT

- 4.1 A politically restricted posts statement has been created (Appendix 1) which sets out the specific restrictions placed upon holders of politically restricted posts. The statement will be issued to employees where a post is politically restricted.

5 IMPLICATIONS FOR THE WORKFORCE

Terms and conditions of employment

- 5.1 Where posts are determined to be politically restricted, employees will receive notification which sets out the restrictions that apply. Guidance will also be provided in relation to the appeals process for politically sensitive posts (see Section 6 below).
- 5.2 Employees in posts identified as politically restricted will be subject to a contractual variation where this is not currently contained within the contract of employment. The variation to contract will be encouraged on a voluntary basis. The right of appeal will ensure that where an issue is raised this will be given full consideration.
- 5.3 In the event that agreement cannot be reached a dismissal and re-engagement approach may be considered to ensure that political neutrality is maintained in roles that are subject to restriction. It is not expected that this will be required.

New posts

- 5.4 Where a new post is politically restricted, it is important that this requirement is identified at the point the post is created and that candidates are informed at the earliest stage of recruitment.
- 5.5 When completing the Request to Fill (RTF) form, managers will be required to identify whether a post is politically restricted, and should refer to the politically restricted posts statement to guide them in making this decision. A link to the statement will be embedded within the form.
- 5.6 Where a post is identified as politically restricted, recruitment documentation will be amended to reflect this:
- Job advertisements will include a statement informing applicants that the post is politically restricted.
 - Appointment letters will refer to the fact that the post is politically restricted.
 - The Summary of Contract Particulars (section P15.4) will indicate whether a post is politically restricted.
 - This will be included in job descriptions.

Current posts

- 5.7 Current employees whose posts are identified as politically restricted will receive a letter advising of this with the appropriate information about political restrictions and the appeal

process where relevant.

- 5.8 Work has been undertaken with Assistant Directors to establish the political sensitivity of roles within each service area based on the activities undertaken.
- 5.9 An annual review of the list of politically restricted posts will be undertaken alongside Assistant Directors.

6 APPEALS

- 6.1 Appeals can only be made for posts classified as 'sensitive'.
- 6.2 In accordance with Section 3A of the Local Government and Housing Act 1989, and as amended by the Localism Act 2011, the Chief Executive (Head of Paid Service), will consider any application for exemption from political restriction.
- 6.3 If the Chief Executive is satisfied that the duties of the post do not require it to be deemed 'sensitive', the post will not be regarded as a politically restricted post.
- 6.4 In order to apply for a political restriction exemption, employees should submit a request in writing to the Chief Executive, explaining the reasons why they believe the post should not be politically restricted.

7 SCHOOLS

- 7.1 Teachers and Headteachers are exempt from political restrictions and will not be regarded as holding politically restricted posts whatever their role or remuneration level. It is not expected that employees in support roles in school will be politically restricted.

8 RECOMMENDATIONS

- 8.1 As set out at the front of the report.