

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

Standards Committee

10th November 2008

1. **GRANTING AND SUPERVISION OF EXEMPTIONS OF POSTS FROM POLITICAL RESTRICTIONS**

Report of the Monitoring Officer.

RECOMMENDED

- 1.1 That the Standards Committee notes its responsibilities in respect of the granting and supervision of exemptions from political restrictions of posts within the Authority's establishment.
- 1.2 That Authority be requested to amend the terms of reference for the Standards Committee to allow it to consider concerns from any member of the public who believes that a post has been wrongly omitted from the "politically restricted post list" as set out in the attached Appendix 1.
- 1.3 That a further report be considered, in due course, once appropriate regulations and guidance have been published in relation to the Standards Committee's new responsibility.

2. **PURPOSE OF REPORT**

- 2.1 This report provides members of the Standards Committee with background information on politically restricted posts and outlines the implications of the Standards Committee's new responsibility in respect of the granting and supervision of exemptions of posts from political restrictions.
- 2.2 At the Authority meeting held on 23rd June 2008 revised terms of reference for the Standards Committee were approved to include a new power for granting exemptions for politically restricted posts. This addition reflected Section 202 of the Local Government and Public Involvement in Health Act 2007 which added a new section into Section 3A of the Local Government and Housing Act 1989 to provide that the granting and supervision of exemptions of posts from political restrictions should be the responsibility of the

standards committee of each local authority in England, rather than that of the Independent Adjudicator. The new provisions also give the Standards Committee, upon the application of any person, the power to give directions to add a post to the “politically restricted post list”.

- 2.3 Whilst the new regime came into effect on 1st April 2008 the Secretary of State has not yet issued any detailed advice/guidance under Section 3B of the Local Government and Housing Act 1989, as amended. Subject to receipt of this, there will be a need for the Standards Committee to agree a more detailed procedure to ensure that the necessary mechanisms are in place for considering cases in the future.

3. **BACKGROUND**

- 3.1 Section 1 of the Local Government and Housing Act 1989 prohibits those holding politically restricted posts from becoming or remaining members of a local authority and from standing for election to Parliament. Although holders of politically restricted posts can be members of a political party, they cannot be politically active. Specifically, the Local Government Officers (Political Restrictions) Regulations 1990 prohibit Local Government Officers from:

- a) Candidature for public elected office (other than to a Parish, Town or Community Council);
- b) Acting as an election agent or sub agent for any such candidate;
- c) Holding office in a political party;
- d) Canvassing at elections; and
- e) Speaking or writing publicly with the apparent intention of affecting public support for a political party.

This policy stems from the long established tradition that local government officers involved in advising elected members of their authority should be seen to observe a policy of political neutrality.

- 3.2 Under Section 2 of the 1989 Act, every local authority is under a duty to prepare and maintain a list of certain categories of politically restricted posts that have not been designated as exempt from inclusion in the list.

- 3.3 The Standards Committee will be advised of the awaited guidance in due course and will also then receive a summary of the current procedures to see how these may need amending.
- 3.4 Any member of the public can complain if they believe that a post has wrongly been omitted from the list of politically restricted posts.
- 3.5 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.
- 3.6 Finally, in terms of employment law, a consequence of the legislation means any violations of the restrictions are a breach of contract.

Implications for the Standards Committee

- 3.7 Section 202 of the Local Government and Public Involvement in Health Act 2007 outlines a new responsibility for the Standards Committee which was previously undertaken by an Independent Adjudicator, as follows:

The Standards Committee shall:

- (a) Consider applications for exemption from the 'politically restricted post list' – by the post holder – and make decisions whether they should be on the list or not.
 - (b) Consider concerns from any member of the public who believes that a post has been wrongly omitted from the 'politically restricted post list'.
- 3.8 Applications can only be made for posts on the list, or being proposed to go onto the list held by the authority. The Standards Committee must give priority to those applications which are linked to people applying for exemption because of candidacy for elections.
 - 3.9 The legislation also states that the local authority shall:
 - (a) Give its Standards Committee all information that it may reasonably require to make decisions;

- (b) Comply with any direction from the Standards Committee;
and
- (c) Notify the post holder about the decision taken by the Standards Committee.

Procedure on Appeal

3.10 Guidance is due to be issued by the Department of Communities and Local Government but in the meantime, the Local Government Association suggests that the Standards Committee follow the guidance set out in the previous Independent Adjudicator's Circular Letter dated August 2002. This confirms that the post holder will need to submit a letter formally requesting an exemption and the local authority will need to submit a "Certificate of Opinion". The ultimate test of whether an individual post is, in fact, politically sensitive, will depend on the nature of the duties the postholder regularly carries out and whether the nature of those duties require the postholder to be politically neutral.

4. EQUALITY IMPACT ASSESSMENT

4.1 In preparing this report an initial Equality Impact Assessment is not required and has not been carried out.

5. LEGAL IMPLICATIONS

5.1 The Standards Committee's new power in respect of granting and supervision of exemptions from posts being designated as politically restricted has been added by Section 202 of the Local Government and Public Involvement in Health Act 2007. The new power also requires the Standards Committee to consider concerns from any member of the public who believes that a post has been wrongly omitted from the "politically restricted post list".

5.2 The European Court of Human Rights held in Ahmed and Others - v- UK (1999) 188 ECHR that political restriction of local authority posts did not breach Article 10 (the right to freedom of expression) or Article 11 (the right to freedom of association). The public has a right to expect that those holding higher level government office are politically impartial.

6. **FINANCIAL IMPLICATIONS**

- 6.1 There are no significant resource implications that arise from this report.

**N SHARMA
MONITORING OFFICER**

Background Papers

Independent Adjudicator - Circular letter to local authorities August 2002.

Section 202 of the Local Government and Public Involvement in Health Act 2007.