



CORPORATE AFFAIRS COMMITTEE

17th NOVEMBER 2004

<p>COUNCIL RESPONSE TO THE GOVERNMENT CONSULTATION ON THE REVIEW OF THE REGULATORY FRAMEWORK GOVERNING THE POLITICAL ACTIVITIES OF LOCAL GOVERNMENT EMPLOYEES</p>
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<p>RICHARD LONG DIRECTOR, LEGAL & DEMOCRATIC SERVICES</p>
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Purpose of the Report

- 1 To seek Committee approval for the Council's submission to the ODPM in respect of the consultation paper "Review of Regulatory Framework Governing the Political Activities of Local Government Employees".

Background

- 2 In August this year the Government issued a consultation paper relating to a review of the legislation governing the political activities of local government employees.
- 3 The current legislation is mainly contained within the Local Government and Housing Act 1989 and was introduced following recommendations made in 1986 by the Widdicombe Committee. The legislation defines certain posts as being 'Politically Restricted', and imposes a number of restrictions on the holders of posts designated as 'Politically Restricted'. These are outlined in the following paragraphs.
- 4 Politically Restricted posts are:
 - Chief Executives
 - Chief Officers
 - Deputy Chief Officers
 - Monitoring Officers
 - Political Assistants

- Any member of staff whose grade exceeds spinal column point 44 of the NJC pay scale (currently £32,127)
 - Any member of staff whose duties involve giving advice to full Council, the Cabinet, Committees or Members on a regular basis, or speaking on a regular basis to journalists or broadcasters on behalf of the authority.
- 5 Holders of politically restricted posts cannot:
- announce an intention to be a candidate for election to the House of Commons, European Parliament or a local authority
 - be an agent or sub agent for a candidate
 - be an officer of a political party if this involves the person in general management or acting on behalf of the party or branch
 - canvass on behalf of a political party candidate for election
 - speak in public with the apparent intention of affecting support for the political party. (Political assistants may speak in public but must not create an impression that they are speaking as an authorised representative of a political party.)
 - publish or cause to be published written or other work intended to affect support for a political party
- 6 In view of the importance of the Consultation Paper both to the Council as an employer, to the Political Groups, and to the Political Assistants employed by the Council, it was agreed that a consultation exercise would be carried out, and that a draft of the Council response incorporating the views of the above should be presented to Corporate Affairs Committee for approval as the Council's submission.

Proposals

- 7 The Consultation document posed 14 questions. These are attached at Appendix 1, along with proposed responses based on the submissions following the consultation.
- 8 There were no fundamental differences between the submission of the various consultees. Where there were slightly differing views, or a difference of emphasis, this has been reflected in the text.

Recommendations

- 9 Members are asked to approve the draft which is attached at Appendix 1, as the Council's response to the ODPM Consultation exercise.

Background Papers

- 10 Consultation Paper, Review of the Regulatory Framework Governing the Political Activities of Local Government Employees: ODPM, August 2004.

Author

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Paul Rowsell
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Dear Mr Rowsell

Consultation on the Review of Regulatory Framework Governing the Political Activities of Local Government Employees

I attach the comments of the Council in respect of the above Consultation Paper.

In formulating its response, the Council asked for and took into consideration the views of its Head of Human Resources, all the registered political groups in the Council, and the Political Assistants. All of these were broadly in agreement in respect of their responses to the Consultation document.

The format of the Council response follows the 14 questions included in the document. Where there were differences of opinion or emphasis between the internal respondents, these are noted in the text.

Yours sincerely

Chris Davies
Members' Office Manager

RESPONSE OF MIDDLESBROUGH COUNCIL

REVIEW OF THE REGULATORY FRAMEWORK GOVERNING THE POLITICAL ACTIVITIES OF LOCAL GOVERNMENT EMPLOYEES

- Q1 Would reducing the number of officers covered by the restrictions be compatible with maintaining the apolitical nature of Local Government employees?**

It is accepted that it would be possible to reduce the number of officers covered by the restrictions and yet maintain the apolitical nature of local government employees. However any reduction would be likely to be small.

- Q2 If a reduction in the number is considered desirable, how could this best be achieved? Would it be appropriate to raise the spine point threshold at which posts become politically restricted? If so, to what level/ by how many points?**

A reduction in the number of officers covered by the restrictions could be achieved by raising the spine point threshold. However, in order to ensure that the appropriate types of work were covered it should probably be raised only by a small degree – perhaps four or five spinal column points.

More importantly, however, the Council considers that it is job content, and in particular the degree of influence on policy that the postholder commands, rather than the level of salary, which should be the principal determinant as to which posts are subject to restriction.

- Q3 Would broad exemptions from the restrictions based on job descriptions be appropriate and workable? If so, what categories of work should be considered exempt, and why? Conversely, are there areas of work not currently covered by restrictions but should be? If so, which?**

Broad exemptions from the restrictions based on job descriptions could be workable although it might be more productive to consider, instead of a salary restriction, simply having a restrictions based on job content. As stated above, the Council considers that it is job content, and in particular the degree of influence on policy that the postholder commands which should be the principal determinant as to which posts are subject to restriction.

Q4 Should the nature of the restrictions on political activity be redefined? If so, how?

The restrictions on political activity appear to be closely linked to the intention of the current legislation. Redefinition would only be required if there is a broader policy initiative to move away from the current legislative intent, which does not appear to be the case from the wording of para 2.4 of the Consultation document.

Q5 Is there any need to change the current arrangement for independent adjudication? If the independent adjudicator is to be retained, should he continue to be appointed by the Secretary of State and operate through the Office of the Deputy Prime Minister?

Q6 Would it now be appropriate for monitoring officers to take over the role of determining whether posts should be exempt from restrictions?

Q7 Should a Local Authority itself be able to authorise exemptions? If so, should such decisions be made at officer or Member level? If authorities were empowered to make such decisions, what safeguards should there be to ensure that standards are maintained? Would the independent adjudicator have any role in this?

Q8 Could the adjudication role, or a similar one created in the light of the response to this consultation, be performed by a non-departmental body such as the Standards Board for England?

The Council feels that the independent adjudicator role is important and should not be changed. It is difficult to give a view on the appointment process without knowing what the possible alternatives might be.

If, however, the Government is persuaded that change is desirable, then Monitoring Officers or Local Standards Committees could take over the role of determining whether a post should be exempt from the restrictions. But the Council fears that the value of the independent adjudicator, for example in ensuring consistency between authorities and preventing local conflicts of interest, would be lost.

Also, if local authorities were required to authorise exemptions themselves, with exemptions being decided at officer level, this could place considerable pressure on the responsible officers. The adjudication role could be performed by a body such as the Standards Board, as this would also ensure independence from the Council.

Having considered the alternatives, the Council still considers that the retention of the independent adjudicator is the most appropriate mechanism for considering exemptions.

Q9 Should political groups contribute to the salary of their assistants (to mirror the system used for political assistants to MPs)?

Whilst it would on the surface seem to be consistent for political groups to contribute to the salary of their assistants in the same way that MPs' Political Assistants are funded, this would, of course, depend on the clearly identified provision of adequate funding.

The Council understands that MPs' political assistants are paid for from a grant that is available to all MPs, and inasmuch their salaries are not strictly paid for by the MP, but are met by way of that grant. Furthermore, MPs' political assistants tend to work for a single MP, whereas in local government the political assistant tends to work for the whole Group. This could make the funding complex, as there would have to be consideration to matters such as political balance within each Council. If the proposal is that in future Political Assistants' salaries should be met by the Groups with no clearly defined and adequate grant mechanism, then the proposal would not be acceptable, and would be particularly disadvantageous to smaller minority Groups.

The views of the Political Assistants were clear: they believe that being direct employees of the Council gives greater job security, greater consistency, and protection from potentially unscrupulous influence from Councillors or Political Groups. Losing status as Council Officers could also undermine legitimate access to information and Council systems.

On balance, in view of the above comments and given the many differences between the way that local Councils/ Councillors and MPs are funded and operate, the Council does not support any moves toward political groups contributing to the salaries of their assistants.

Q10 Should pay continue to be regulated directly by Government and Parliament? If not, what safeguards should be implemented? Should the method of amending political assistants pay be changed? If so, should assistants pay be set by Local Authorities: or linked to the National Joint Councils Scale? If the latter, at what point? Would a range be more appropriate?

The limit on Political Assistants pay has not been reviewed since 1995 and therefore has not kept pace with equivalent gradings. Therefore, some better method of assessing and increasing political assistants pay should be considered.

There was general agreement within the Council that Political Assistants' pay should be set by local authorities. There was also a high level of agreement that the existing 'cap' on salaries should be removed, and that the terms and conditions, and standards of remuneration, that apply to other Council officers should equally apply to Political Assistants. There was a high degree of support for individual Council's job evaluation schemes being used to establish appropriate local levels of remuneration, and that this would ensure consistency with other employees. However, it is also recognised that such schemes may not be universal.

In view of the above, the Council believes that the most practical approach would be to simply remove the cap on Political Assistant's salaries, to make their salaries locally determined, and to require that these are linked to NJC scales.

Q11 Should the rules governing Mayoral political assistants be brought in line with those for Local Authorities – or visa versa?

Middlesbrough Council does not have any Mayoral Assistants. Nevertheless, there seems to be no reason why employees of a similar type (Mayoral Assistants and Political Assistants) should not be treated fairly, equally, and with a degree of consistency.

Q12 Should the constraints on the political activities of political assistants now be varied? If so, in what way?

The Political Groups felt strongly that there is little rationale in taking into account, when employing Political Assistants, their political allegiances and past activities (as permitted under S9.1, Local Government and Housing Act 1989), and then being required to prevent them from continuing to express these allegiances, or to continue to undertake such activities, upon taking up employment. There were some differences of opinion as to how much the current constraints should be varied – for example whether or not Political Assistants should be allowed to canvass on behalf of candidates to be elected as Councillors in the Authority that employs them, or whether they should be allowed to act as election agents in their own time.

However, there was agreement that the current constraints should be relaxed, and the Council believes that the following adjustments to the current restrictions would be reasonable:

- political assistants should be allowed to be officers of a political party, or be a committee or sub-committee member of a party, if this involves them in general management of, or acting on behalf of, the party or branch

- should be allowed to canvass on behalf of candidates (other than in respect of candidates who are standing to be elected as Councillors in the Authority that employs them) in their own time
- Political Assistants should no longer be prevented from announcing an intention to stand as a candidate for election to the House of Commons, the European Parliament, or a Local Authority (other than the one by which they are employed). Only if the Political Assistant is subsequently elected to the House of Commons or the European Parliament should their appointment be terminated.

Q13 Is it desirable to increase or decrease the number of paid hours given to an employee to function as a Councillor in another Authority? If so, what should be the new limit?

From an employers point of view, replacing members of staff is never easy for the Council and the more senior the staff the more difficult this can be. Any increase in the number of paid hours could therefore present local difficulties for some employing authorities.

Q14 Should the current rules prohibiting Councillors from being officers of the same Authority be revised or deleted, or are they necessary to ensure that Members are not allowed the make decisions which impact on their own employment?

There was unanimous agreement that current prohibition on Councillors being Officers of the same authority should not be changed. The Council believes that to change this would be to ignore the difficulties that would inevitably be faced both by Councillors who are also employees, and by their co-workers and managers.

However, the Council does believe that the rules should be changed in order to allow officers who are not politically restricted to stand as candidates for election to their employing Authority. If the candidate is successful, and is elected, only then should their employment with the Authority be terminated. Furthermore, if Councillors resign or fail to be re-elected, then they should be allowed to take up employment with the same Authority in a non-Politically Restricted post without having to wait for any period of time to elapse.



CORPORATE AFFAIRS COMMITTEE

17th NOVEMBER 2004

<p>COUNCIL RESPONSE TO THE GOVERNMENT CONSULTATION ON A MODEL CODE OF CONDUCT FOR LOCAL GOVERNMENT EMPLOYEES</p>

<p>RICHARD LONG DIRECTOR, LEGAL & DEMOCRATIC SERVICES</p>
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Purpose of the Report

- 1 To inform Committee of the Council's submission to the ODPM in respect of the consultation paper "A Model Code of Conduct for Local Government Employees".

Background

- 2 In August this year the Government issued a consultation paper relating to the proposed introduction of a Code of Conduct for Local Government Employees.
- 3 Section 82 of the Local Government Act 2000 makes provision for the Secretary of State to specify, by way of Regulations, a code of conduct for relevant Local Government employees.
- 4 Such a Code of Conduct would be required to form part of the Council's standing orders, to be incorporated into the Constitution. It would also become part of our employees' terms and conditions of employment with the Council.
- 5 The Consultation Paper seeks comments on the scope and content of the draft Code of Conduct. A response has been prepared on behalf of the Council by Linda Maughan, Head of HR Client Services

Proposals

- 6 The Consultation document posed 16 questions. These are attached at Appendix 1, along with Council's response.

Recommendations

- 7 Members are asked to note the Council's response, which is attached at Appendix 1, to the ODPM Consultation exercise.

Background Papers

- 8 Consultation Paper, A Model Code of Conduct for Local Government Employees: ODPM, August 2004

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Dear Mr Tandoh

Consultation on A Model Code of Conduct for of Local Government Employees

I attach the comments of the Council in respect of the above Consultation Paper.

The format of the Council response, which has been prepared by the Council's Head of Human Resources, follows the 16 questions included in the document.

Yours sincerely

Chris Davies
Members' Office Manager

RESPONSE OF MIDDLESBROUGH COUNCIL

A MODEL CODE OF CONDUCT FOR LOCAL GOVERNMENT EMPLOYEES

QUESTION 1

Is the Government right to exclude teachers, firefighters and community support officers?

It would seem to be more consistent for all employees to be covered by the same code of conduct.

QUESTION 2

Are there other categories of employee who should not be subject to the employees' code, for example, school support staff? If so, which categories, and why should they be excluded?

There would appear to be no benefit in excluding further groups of staff since even though they are accountable through the headteachers' governing body they must presumably also be expected to follow similar standards of conduct to other local government employees.

QUESTION 3

Do you agree that council managers should be subject to the same code as other employees?

The Council has no experience of working with a Council Manager and therefore has no comment in relation to this question.

QUESTION 4

Should different rules, or a separate Code, apply to political assistants?

The position of Political Assistants is different to that of the majority of employees. However, providing there is nothing in the code that implies political neutrality then it would seem appropriate for them to be subject to the same code.

QUESTION 5

Are the provisions relating to the use of public funds and property adequate to ensure effective stewardship of resources?

The provision seemed adequate although in Section 4A it might be appropriate to consider including some reference to funds being used for the purpose for which they are intended.

QUESTION 6

Is it appropriate for the code to impact on an employee's private life or should it only apply to an employee at work?

It does seem appropriate for the code to impact on an employee's private status where this overlaps with work, especially in relation to the types of instances illustrated in the consultation paper.

QUESTION 7

As with the members' code, should there be a standard list of interests and/or hospitality/benefits/gifts that must always be registered?

Yes

QUESTION 8

If so, what should the list contain? Should it mirror part 3 of the councillors' code or be restricted to financial interests?

Financial interest might be too narrow , and should be analagous to the requirements under the members' Code of Conduct.

QUESTION 9

Should such a list be available to the public?

Since the employees involved would be complying with requirements arising from their employment, there is a view that it would not be appropriate for the lists to be available to the public. However, this would not sit comfortably with the new expectations of openness that are required under the Freedom of Information legislation.

QUESTION 10

Alternatively, could the need for a list be restricted to officers above a certain salary, as applies, for example, to the current political restrictions regime?

It does not seem appropriate for the list only to be restricted to officers above a certain salary point. Issue such as hospitality, benefits, or gifts are not always linked to salary or grading, but might also be linked to ability to influence certain processes.

QUESTION 11

Should this provision be explicitly limited to interests, gifts etc, that may have a bearing on the way in which the functions of the authority are discharged by the employee?

It is hard to see how one might limit this provision to interests or gifts that only have a bearing on the discharge of Council functions, since this might not always be obvious.

QUESTION 12

Does the proposal on the reporting of misconduct provide suitable protection for employees?

Yes, so far as this is possible, although whether this is the perception of employees is another matter

QUESTION 13

Should the Code impose a duty on employees to report misconduct?

No – this could not be enforced.

QUESTION 14

Is 'friend' the appropriate term to use in the draft code? If so, should it be defined, and what should the definition be? (for example, a person with whom the employee spends recreational time outside the work environment, or actively shares a mutual interest?)

The Members' Code of Conduct definition of friendship seems appropriate, inasmuch as it would be difficult to justify different definitions relating to Members and Officers.

QUESTION 15

Does the phrase `relative or friend' as defined above adequately cover all the relationships with which this part of the code should be concerned?

As above – whatever the definition there should be consistency between Members' and Officers' codes.

QUESTION 16

Do you have any comments on what arrangements might be appropriate for ensuring employees are informed about the code?

Clearly it will be helpful if there is as much publicity as possible about the new code nationally and regionally. It might also be appropriate to ask all Councils to make some notification - perhaps via payslips - of the need to view information on websites, staff intranets, etc. Staff newsletters and other internal communications arrangements could also be used to inform members of staff of the detail of the code.

Middlesbrough Council
17 November 2004