

Brighton & Hove City Council

For general release

Meeting: Standards Committee

Date: 19th October 2004

**Report of: Director of Strategy and Governance
and Monitoring Officer**

**Subject: Consultation Paper – Political Restrictions for Local
Government Employees**

Ward(s) affected: All

1. Purpose of the report

- 1.1 The report brings to the Committee's attention a recent consultation paper issued by the Office of the Deputy Prime Minister (ODPM) on proposals to review existing legislation in respect of the political activities that local government employees can engage in. This report outlines; the background to the existing legislation, the draft proposals contained in the review and the proposed responses that the Local Government Information Unit (LGIU) intends to submit in response to the consultation. The report is intended to inform discussion at the Standards Committee meeting as to how the council should formally respond to the consultation.

2. Recommendations

- 2.1 That members note the draft proposals contained in the consultation paper.
- 2.2 That the Monitoring Officer be instructed to respond to the consultation paper with the comments as set out in the report and with any further comments of the Director of Human Resources.

3. Information

- 3.1 The ODPM has published a consultation paper entitled a *Review of the Regulatory Framework Governing the Political Activities of Local*

Government Employees. This is appended to the report at Appendix 1.

- 3.2 The review is considering the restrictions imposed by the Local Government and Housing Act 1989 which disallows certain local government employees from engaging in political activities.
- 3.3 The review has been published at the same time as another ODPM consultation paper *A Model Code of Conduct for Local Government Employees* (see separate report on this draft Model Code of Conduct). The closing date for comments to the ODPM on both consultation papers is 19th November 2004

Background to the existing legislation

- 3.4 Current legislation does not allow certain council employees to stand for elected office as a councillor, MP or MEP. It also restricts them from taking part in a range of political activities. These restricted activities include:
- ◆ writing or speaking publicly to affect support for a political party
 - ◆ canvassing at any election on behalf of a political party or candidate
 - ◆ holding office in a political party
- 3.5 These restrictions apply to a wide range of local authority employees, including craft and manual workers as well as junior and senior managers and senior officers, specifically:
- ◆ chief officers and their deputies¹
 - ◆ anyone earning more than £32,127 a year
 - ◆ those giving regular advice to committees or sub-committees
 - ◆ political assistants
 - ◆ those who regularly speak on behalf of the council to the media
- 3.6 The existing legislation was developed from the findings of the Widdicombe Committee in the late 1980s which investigated concerns that officers in some authorities were behaving in a politically partisan manner (for example, Derek Hatton at Liverpool

¹ Namely the Head of Paid Service; the statutory chief officers, including the director of education and the director of social services, non-statutory chief officers and deputy chief officers; the monitoring officer, the chief finance officer and officers exercising delegated powers.

City Council)). Although the Widdicombe Committee found that malpractice was rare the legislation was enacted.

- 3.7 Teachers, headteachers and lecturers are all exempted from political restrictions whatever their role or remuneration level and some others who earn more than the remuneration level may apply for exemption. The numbers who apply and are successful in achieving an exemption are few.

Issues

- 3.8 The consultation paper invites views on whether modifications should be made to the existing legislation. It asks whether reducing the number of officers covered by the restrictions would have an adverse effect on local government and, if it were desirable to reduce the restrictions, what the best way to achieve this would be. It specifically considers the following issues:

- ◆ reviewing the salary threshold
- ◆ allowing local authority staff to participate in national politics
- ◆ defining certain post as exempt from restrictions
- ◆ redefining political activity
- ◆ changing the role of the Independent Adjudicator (who governs the application process for exemptions)
- ◆ political assistants

Salary Threshold

- 3.9 The consultation paper proposes that the current salary threshold, which is currently NJC spine point 44 (£32,127), could be changed. It is an arbitrary threshold that limits those earning above this level of remuneration from participating in active politics. Raising it would require secondary legislation and would therefore be a relatively easy change to make and would be a first step to addressing the issues of excessive political restriction. The consultation paper seeks views on the appropriate spine point.

LGIU response

Although the LGIU would welcome a raising of the bar as the first step, the LGIU would prefer to see a second step change so that the salary threshold would be abolished as it believes that the sole

determinant of restrictions should be the nature of the post. The LGIU envisages that this should only be for chief officers and their deputies. Rather than trying to specify exemptions to the existing legislation it would like to see primary legislation enacted to ensure that it only applies to those chief officers as listed in the Local Government and Housing Act (LGHA) 1989.

Political Activity Redefined

- 3.10 The consultation paper asks whether the nature of the restrictions on political activity should be redefined and if so, how. It gives an example of a change that might be considered to allow local government officers to participate in national politics, subject to the local authority first granting permission. It is suggested that this council should support such an amendment.

The existing legislation also requires an officer to resign on announcement of candidature for election as a councillor, MP or MEP.

LGIU response

The LGIU would like to see the restrictions on political activity redefined so that employees only have to resign on election as a councillor, MP or MEP rather than on announcement of candidature.

Changing the role of the Independent Adjudicator (IA)

- 3.11 The current Independent Adjudicator process is not well known. The IA is currently appointed by the Secretary of State and operates through the Office of the Deputy Prime Minister. In 2003 the IA considered 23 applications for exemption and granted 21. The consultation paper asks what changes might be considered. It suggests that the monitoring officer may be best placed to decide whether a post might be exempt from political restriction or alternatively that the role of IA should be discharged by the Standards Board for England.

LGIU response

The LGIU considers it appropriate that an independent body should be the arbiter in the process rather than each local authority having to set up its own processes, which not only would create an

additional burden for the authority but may also lead to inconsistencies between authorities. Should a non-departmental body be appointed to take over the role, the LGIU would wish to see a process which is transparent, speedy and fair. There would also need to be a right of appeal.

Moreover, the LGIU believes that both authorities and the independent adjudicator need to distinguish between officers giving advice to committees or sub committees and those providing factual information. Currently it believes the interpretation of giving advice casts the net too widely and some junior officers who are not directly linked to the political process but are brought into the modern ways of working to give factual advice to councillors are caught in the net of political restrictions. The LGIU would like to see this reviewed so that posts which are not those listed in the Local Government and Housing Act 1989 as chief officers or their deputies are not restricted.

Political Assistants

3.12 Political assistants' pay threshold has not increased since 1995 and the consultation paper seeks views on how their pay and the political restrictions imposed on them might be updated. Political assistants' salaries are capped at a level which can only be raised by Statutory Instrument. Unlike the pay limit for restrictions on political activities there is no provision in the 1989 Act for the Secretary of State to make an Order specifically to link the pay limit for political assistants to a National Joint Council Spine Point – to do so would require an amendment to the Act. It is suggested that this council should support such an amendment.

3.12.1 The paper also poses the question of whether political parties or political groups should contribute to the salary of political assistants and political parties will have their own views on this.

3.12.2 The paper suggests that changes to the regime of restrictions on the activities of political assistants could be considered.

LGIU response

The LGIU would agree that the political restrictions which are placed on political assistants should be abolished. They are clearly illogical. It may be possible for an exemption to be made for this category of officer using secondary legislation.

Paid Time Off for Employees as Elected Members

3.13 Section 10 of the 1989 Act restricts local authorities to giving their staff a maximum of 208 hours per year of paid leave for carrying out their duties as elected members of other authorities.

3.13.1 The Local Government Act 1972 prohibits councillors from becoming employees of the same council for which they are councillors.

3.13.3 The consultation paper poses the questions:

Is it desirable to increase or decrease the number of paid hours given to an employee to function as a councillor of another authority and if so what the new limit should be? and

Should the current rules prohibiting councillors from being officers of the same authority be revised or deleted?

LGIU response

Paid time off for councillor duties and for undertaking other public duties (such as school governor) is an issue on which the LGIU has been campaigning for some time. The Scottish Parliament has considered introducing an additional 10 working days granted in the run up to, and including the day of, election to allow time for campaigning. This would be an improvement on the current arrangements.

The key issue is not the maximum 208 hours of paid leave but the entitlement to a right to paid time off for public duties (other than the duties of functioning as a councillor) which is not guaranteed under current legislation. The only rights are for reasonable time off which does not currently have to be paid. The LGIU would like to see a minimum standard for paid time off for such public duties.

The LGIU also notes that in Scotland, the Scottish Parliament has reduced to 3 months (from 12 months) the period during which former councillors are unable to take up employment with the council after their period of service ends. In Scotland, the current 12 months period for politically restricted posts will be retained and this will also apply to former councillors who have been involved in the

appointment of council staff. It is suggested that such an amendment to English legislation would be an improvement.

Further comment on the restrictions on elected members becoming officers

Although the principle of restricting elected Members from becoming officers of the authority of which they are a Member is understandable, the current rules, contained in section 80 of the Local Government Act pose two problems:

- ◆ the section is drafted with such opacity as to make a confident interpretation and practical application of the rules virtually impossible. It could therefore benefit from simplification.
- ◆ the section covers not only employment with the Council but any employment other than with the Council where appointments *may* be made by someone who may in turn be appointed by the Council or its committees or may be required to work under the direction of such a committee or joint committee. This would cover employment with trusts and partnerships if the Council makes appointments to the employing body, no matter how minimal its representation. At a time when Council's are being encouraged to work in partnerships with other bodies, agencies and community groups, there is a risk of large sections of the local employment market not being accessible to potential Councillors.

It is therefore suggested that the current rules need to be made more transparent and the application of the rules limited to cases where there is likelihood of potential conflict of interest."

Conclusion

- 3.14 The current legislation has led to large numbers of local government employees being unable to play a role in any type of political activity. The LGIU's proposed responses, should they be adopted by the Government, will largely alter this position. The LGIU's responses are therefore considered reasonable ones.

The Committees views are sought on the council's response to the consultation paper and on the recommendation that the monitoring officer should respond to the consultation paper endorsing and supporting the comments as set out in this report.

4. Consultation

- 4.1 Annex B of the ODPM consultation paper lists all the consultees that ODPM have sent the consultation paper to including the public sector trade unions.
- 4.2 In addition to this council consulting its Standards Committee, the views of the Director of Human Relations are also being sought. Those views will be collated into the council's response to ODPM.

Contact Officer – Dianne Bates, Tel 291513

The consultation paper can be downloaded from the ODPM web-site <http://www.odpm.gov.uk> go to local government then consultation papers

COMMITTEE REPORT APPENDIX



Meeting/Date	19 th October 2004
Report of	Director of Strategy and Governance and Monitoring Officer
Subject	Consultation Paper – Political Restriction for Local Government Employees
Wards affected	All

Financial implications

There

Could potentially be financial implications attached to the proposed increase in the threshold of pay for political assistants and the amount of paid time off for employees as elected members of other authorities should the pay threshold for politically restricted posts be changed.

Finance Officer consulted: Steve Linnett
2004

Date 7th October

Legal implications

The legal implications are addressed in the body of the report

Lawyer consulted: Dianne Bates
September 2004

Date 29th

Corporate/Citywide implications None directly arising from the contents of the report	Risk assessment No direct implications
Sustainability implications No direct implications	Equalities implications No direct implications
Implications for the prevention of crime and disorder None directly arising from the contents of the report	

COMMITTEE REPORT APPENDIX



Background papers

Review of the Regulatory Framework Governing the Political Activities of Local Government Employees published by the ODOM 19th August 2004
Local Government Information Unit Briefing Paper 181/04– Political Restrictions for Local Government Staff.

Local Government Act 1972, Local Government and Housing Act 1989, Local Government (Assistants for Political Groups) (Remuneration Order) 1995, The Local Government (Politically Restricted Posts) Regulations 1990 [SI 851], The Local Government (Politically Restricted Posts) (No 2) Regulations 1990 [SI 1447], and Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 [SI 2237]

Contact Officer

Dianne Bates – Senior Lawyer Corporate Law Team – Tel 291513