

Political Restrictions on Local Government Employees

1. Introduction

The Council is under a duty to draw up and regularly update a list of politically restricted posts. Political restrictions on some posts are necessary in order to ensure political neutrality; and to prevent advice and decisions from being improperly influenced by separate loyalties.

This guidance covers the requirements set out in the relevant legislation. The legislative framework is set out in Appendix 1.

Politically restricted posts fall into two broad categories; and are either **specified posts** or posts with defined duties (known as '**sensitive posts**').

This policy also sets out the rules that apply to **all Council employees**, regardless of whether they are in a politically restricted post or not, regarding seeking political office within Tower Hamlets.

2 Specified posts

The specified posts are:-

- The Head of Paid Service
- The statutory Chief Officers (including the Director of Children's Services, the Director of Adult Services, the Chief Education Officer, and the Director of Public Health);
- 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)
- The Monitoring Officer
- The Chief Finance Officer
- Employees covered by the Council's Scheme of Delegation; whose duties also involve giving advice to committees, sub-committees or to the Executive or speak on behalf of the Council to journalists (i.e. one or more of the criteria set out in section 3 below).
- Assistants to political groups.

All these post holders are politically restricted without rights of appeal for exemption.

3. Sensitive posts

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

- Giving advice on a regular basis to:-
 - Any of the Council's committees or sub-committees;

- Any joint committee on which the authority are represented;
- The Council's executive which includes the mayor and/or cabinet members; where advice is purely factual information, employees are not covered by political restrictions.
- Those who speak on behalf of the authority on a regular basis to journalists and broadcasters.

These posts can appeal to the Head of Paid Service to be exempted from the list, on the grounds that the authority has wrongly applied the criteria.

Teachers, Head teachers and lecturers are all exempt from political restrictions and will not be regarded as holding "politically restricted posts" whatever their role or remuneration level.

4. The Restrictions

Employees in politically restricted posts are effectively prevented from having an active political life either inside or outside the workplace. Employees in politically restricted posts are automatically disqualified from standing for or holding elected office as:-

- Local councillor
- MP
- MEPs
- Members of the Welsh Assembly
- Members of the Scottish Parliament

They are also restricted from:-

- Participating in political activities, publicly expressing support for a political party or undertaking other activities on behalf of a political party or someone seeking to be a candidate. This includes canvassing.
- Being an officer of a political party (or any branch of a party); or becoming a member of any committee or sub-committee where the duties might require him/her (a) to participate in the general management of the party or the branch; or (b) to act on behalf of the party or branch in dealing with people other than members of the party or members of another associated political party.
- 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 or someone seeking to be a candidate; where the intention is to affect public support for a political party. This includes giving an interview that is likely to result in the publication of statements made or opinions expressed.

The effect of these restrictions is to prevent politics from coming into play where an employee is in a politically influential position. This could arise where an employee implements the Council's policies, gives advice to the Council, or speaks on behalf of the Council.

5. Appeals

(1) Specified posts – There is no right of appeal for exemption.

(2) Sensitive Posts – The Head of Paid Service

has the authority to grant exemptions from political restrictions. Employees wishing to appeal should write to the Director of Law, Probity and Governance (Head of Legal Services) setting out the reasons they feel their post should not be politically restricted; attaching a copy of their job description.

6. Restrictions on members becoming officers

A local authority cannot appoint as an employee in any capacity, any councillor who is currently a member of that authority or who had been a member in the previous 12 months (s.116 LGA 1972)

Note: this does not preclude a councillor being appointed to or elected to a position on the executive that could be described as 'paid office'.

7. Restrictions on officers becoming members

No employee, regardless of whether they are in a politically restricted post or not, may be elected or hold office as a member of the local authority by which they are employed.

A Tower Hamlets employee wishing to stand as a candidate in Tower Hamlets must have resigned from the Council by issuing their manager with a notice of resignation in writing *and* must be able to serve any relevant notice period before the date that they submit their nomination as a candidate in an election (i.e. employment with Tower Hamlets must have ended before the individual can stand as a candidate in Tower Hamlets).

Once notice of resignation has been given it cannot normally be withdrawn without the employer's express permission. Where an employee resigns in order to seek political office, he or she should assume that the job will not be 'held open' pending the outcome of the election. An employee who resigns their Tower Hamlets service may lose their continuous service status, with implications for leave, redundancy payments and sick pay. They may wish to take advice on this before resigning.

There is no restriction on an employee who resigns a post and is unsuccessful in seeking political office within Tower Hamlets, from applying for the post they once occupied if it is advertised for open competition. However, continuous service may not apply.

This principle also applies to employment with certain bodies over which the authority has influence i.e. Tower Hamlets Homes.

8. Political Assistants and Elected Mayors' Assistants

Political Assistants

A Local Authority may appoint up to three assistants for political groups (s.9 LGHA 1989)

The following conditions and safeguards will apply:-

- Only one post can be appointed to a political group;
- The council may have only three posts at any given time, but the appointments can only be made if posts are allocated to all of the groups who qualify
- three largest groups in each authority qualify for a post (if the membership of the group consists of at least 10% of the membership of the Authority);

- Where only one group has a membership of 10% or more; then that group plus one other may appoint a Political Assistant i.e. a maximum of two political Assistants.
- The Authority may determine the salary; however, it must not exceed the maximum figure specified in the Local Government (Assistants to Political Groups) (Remuneration) Order 2006;
- The contract of employment must terminate at or before the annual council meeting following the first election after the person was appointed; or the first annual council meeting after the person has been in post for three years (if the council is elected by thirds). Note, this does not prevent the postholder from being appointed for a further term;
- The local authority cannot delegate any Council functions to a Political Assistant; and the Political Assistant cannot supervise another authority officer (other than when receiving secretarial or clerical support);
- Unlike other politically restricted posts, political assistants are permitted to speak to the public at large and may publish written or artistic work that gives the impression of advocating support for a political party. However, they must not give the impression that they are speaking as an authorised representative of a political party. They must not be involved in a publication that gives the impression that it is authorised by a political party.

Elected Mayors' Assistants

An elected mayor may appoint a Mayors' Assistant to provide assistance to him or her. (Elected Mayor and Mayor's Assistant) (England) Regulations 2002 (SI 2002/975)

The following conditions apply:-

- A mayors' assistant will be an employee of the authority;
- The position will be regarded as politically restricted;
- The local authority cannot delegate any Council functions to a mayors' assistant; and the assistant cannot supervise another authority officer (other than in respect of secretarial or clerical services);
- The elected mayor may set the remuneration level within the financial resources of the authority;*
- The contract of employment must terminate at the end of the mayor's term of office or the date the mayor ceases to hold office (should it end earlier than the full term).

*Note: As a mayor's assistant would not be assisting a 'political group', the maximum pay specified in the regulations does not apply and it is for the elected mayor to determine pay (having regard to the resources of the authority).

9. Tower Hamlets Homes

The principles regarding political restrictions also apply to employment with certain bodies over which the authority has influence. Tower Hamlets Homes is one of these bodies. This means that:-

1. Employees of Tower Hamlets Homes may not simultaneously serve as an elected member for Tower Hamlets;
2. Political restrictions will apply to employees of Tower Hamlets Homes if their duties involve giving advice to committees, sub-committees or to the Executive, or speak on behalf of the Council to journalists (as set out in Section 3 above). This does not include giving advice to the board of Tower Hamlets Homes, even though its membership includes Tower Hamlets Councillors.

Politically Restricted Posts The Legislative Framework

1. Introduction

The key legislation:

- The Local Government Act 1972 (LGA),
- Local Government Housing Act 1989 (LGHA),
- The subsequent amendments introduced by the Local Democracy, Economic Development and Construction Act 2009 and attendant Regulations.

2. The posts

Specified posts - Part 1, s.2(1) of the LGHA.

The Chief Finance Officer – s.151 LGA 1972 (Part 1, s.2 (6)(d) LGHA).

Employees covered by the scheme of delegation - Part 1, s.2(1) of the LGHA and s.100G (2) of the LGA (Part 1, s.2(1)(g) (LGHA).

Assistants to political groups - Part 1, s.2(1)(f) and s.9 LGHA.

Sensitive Posts - Part 1, s.2(3) of the LGHA .

The exemption of Teachers, Head Teachers and lecturers - Part 1, s.2 (10) LGHA.

3. Appeals

Schedule 4 of the Localism Act 2011.

4. The restrictions

Schedule 1, of the Local Government Officers (Political Restrictions) Regulations 1990.

5. Restrictions on members becoming officers

s.116 LGA .

6. Restrictions on officers becoming members

s.80 LGA.

7. Political Assistants

s.9 LGHA.

8. Mayor's Assistants

Elected Mayor and Mayor's Assistant) (England) Regulations 2002 (SI 2002/975)

9. Tower Hamlets Homes

s.80 LGA and s.69 LGHA

Standing for Election to Office

Any employee wishing to stand for election as a local Councillor is responsible for:-

- Ensuring that they have the necessary qualifications to stand in the election
- Ensuring that they are not disqualified from standing

Prospective candidates should be aware that it is their responsibility to ensure that they are qualified to stand. Employees should be aware that it is a criminal offence to make a false statement on a nomination paper to confirm that they are not disqualified. If in doubt, employees should seek their own independent legal advice.

Tower Hamlets Council employees CANNOT stand for election as a Councillor in Tower Hamlets. This principle also applies to employment with certain bodies over which the authority has influence i.e. Tower Hamlets Homes.

Tower Hamlets Council employees CANNOT stand for election as a Councillor in any Council if they hold a politically restricted post.

FAQs

Q1 Are employees paid above spine point 44 on the national pay spine (or an equivalent salary) automatically covered by political restrictions?

No. This was the case up to January 2010, however this was removed; and whether or not the post is politically restricted, now depends of the nature of the job. The post must be either a specified post or a 'sensitive post'. (The Local Democracy, Economic Development and Construction Act 2009).

Q2 What are specified posts?

Specified posts are:

- The Head of Paid Service
- The statutory Chief Officers (including the Director of Children's Services, the Director of Adult Services, the Chief Education Officer, and the Director of Public Health);
- 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);
- The Monitoring Officer;
- the Chief Finance Officer;
- Employees covered by the Council's Scheme of Delegation; whose duties involve giving advice to committees, sub-committees or to the Executive or speak on behalf of the Council to journalists.
- Assistants to political groups

Q3 What are sensitive posts?

Sensitive posts are where employees:

- Give advice on a regular basis to the authority itself, 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. Those that give advice (excluding purely factual information) on a regular basis;
- Those who speak on behalf of the authority on a regular basis to journalists and broadcasters.

Q4 Specified posts include posts covered by the Council's Scheme of Delegation, which in Tower Hamlets covers officers from 1st - 4th tier (check). Does this mean that all officers from the 1st – 4th tier are automatically politically restricted with no right of appeal?

No, not necessarily. A post mentioned on the Scheme of Delegation will only be politically restricted if the role also involves the criteria set out for "sensitive posts" i.e. the post regularly provides advice to the Executive, committees and/or journalists and broadcasters.

Q5 If I don't agree that my post should be politically restricted, can I ask for this to be reviewed?

If your post is politically restricted because you carry out 'sensitive post' functions then you can appeal to the Head of Paid Service for exemption. You should set out your appeal grounds in writing and send it to the Corporate Director, Law, Probity and Governance (Head of Legal Services)

However, if your post is politically restricted because it is a specified post, then post holders are politically restricted without rights of appeal for exemption.

Q6 What is it that people in politically restricted posts are not allowed to do?

Employees in politically restricted posts are effectively prevented from having an active political life either inside or outside the workplace. Employees in politically restricted posts are automatically disqualified from standing for or holding elected office including:

- Local councillors
- MP
- MEP
- Members of the Welsh Assembly
- Members of the Scottish Parliament

They are also restricted from:

- Participating in political activities, publicly expressing support for a political party or undertaking other activities such as canvassing on behalf of a political party or a person who seeks to be a candidate;
- Being an officer of a political party or any branch of such a party or a member of any committee or sub-committee of such a party if his/her duties as an officer or member would be likely to require him/her (a) to participate in the general management of the party or the branch; or (b) to act on behalf of the party or branch in dealing with persons other than members of the party or members of another political party associated with the party
- Speaking to the public at large which includes the giving of an interview which is likely to result in the publication of statements made or opinions expressed, during the course of a meeting or publishing any written or artistic work that could give the impression that they are advocating support for a political party or a person who seeks to be a candidate with the intention of affecting public support for a political party

The effect of these restrictions is to prevent politics coming into play where an employee is in a politically influential position. This could be where an employee implements the Council's policies, gives advice to, or speaks on behalf of the Council.

Q7 If I resign from my position with the Council in order to stand for election to a political office and I am not elected, can I have my old job back?

Your job will not be held open for you. You must make sure you consider the implications before you resign.

Q8 I am an employee of Tower Hamlets Council but not in a politically restricted post. Can I be elected to the Council in Tower Hamlets?

No, you cannot be both an elected member and employee with Tower Hamlets, even if you don't hold a politically restricted post. However, if your post is not politically restricted, then you could be an elected member with a different local authority.

Q9 I am an employee of Tower Hamlets Homes, the Council's Arms Length Management Organisation and I plan to stand for election as a Tower Hamlets Councillor. Can I do this and still be employed by Tower Hamlets Homes?

Tower Hamlets Homes is a "body over which the authority has influence" and you cannot be both an elected member and employee with Tower Hamlets Homes. This applies to all employees.

In addition, if your role involves giving advice to committees or the Executive or you speak on behalf of the Council regularly to journalists (i.e. your role meets the criteria for a 'sensitive post') then you are in a politically restricted post; and all other political restrictions will also apply. However, this does not include giving advice to the board of Tower Hamlets Homes, even though its membership includes Tower Hamlets Councillors.

Q10 I regularly provide information to Committees but over points of fact. I do not give advice, express opinions or make recommendations. Is my post still politically restricted?

Your post is not politically restricted if the information you provide to Committees is purely factual.

Q11 What is the Council's List of Politically Restricted Posts?

The Council is under a duty to draw up and regularly update a list of all the posts that are politically restricted. This list is held and maintained by the Head of Legal Services on behalf of the Corporate Director for Law, Probity and Governance (the Monitoring Officer) who is also required to certify as to whether a post is politically restricted.