

# POLITICALLY RESTRICTED POSTS POLICY

This document applies to all Council employees.

- Employees on Teachers' Terms & Conditions

*This document may not be applicable to employees who transferred into LCC under TUPE legislation and remain on the terms and conditions of their previous organisation.*

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[APPLICATION FOR APPEAL \(FORM PO2\)](#)

## POLICY STATEMENT

This policy provide details of politically restricted posts which are subject to restrictions and the process for challenge if a post is so designated to ensure that there is no perceived bias.

This policy only applies to post holders of politically restricted posts, although all employees are required to observe the Council's Code of Conduct which requires all staff to be politically neutral in respect of their employment duties.

This policy incorporates advice for Local Authority Employees Standing for Election Executive Directors shall follow the procedure set out within the Appendices to this policy to ensure all appropriate posts are listed.

Advice on the ability to stand for election is contained in [Appendix 4](#).

## LEGAL BACKGROUND

The Local Government and Housing Act 1989, as amended by the Local Democracy, Economic Development and Construction Act 2009, provides for each local authority to prepare, maintain and publish a list of posts which are identified as “**politically restricted**”.

The effect of these provisions is that where certain posts are “**politically restricted**”, this means that individuals who hold them are effectively prevented from having any active political role either inside or outside the workplace.

This not only debars post holders from holding or standing for elected office but also prevents them from the following:

- Participating in political activities, publicly expressing support for a political party or undertaking other activities such as canvassing on behalf of a person who seeks to be a candidate; and
- 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

Employees covered by this legislation are not barred from membership of political parties but are from political activity.

## RESPONSIBILITIES

### THE CHIEF EXECUTIVE AS THE HEAD OF PAID SERVICES

Dealing with appeals from staff designated as holding a **SENSITIVE** post.

### EXECUTIVE DIRECTORS AND ASSISTANT DIRECTOR LEVEL

- Determining whether a new or changed post in their services is politically restricted (NB For all posts up to Head of Service level)
- Notifying potential candidates and/or officers of the effect on their conditions of service
- Ensuring that the Service Manager – People is informed of changes to the list

- Keeping copies of any correspondence or notifications to the officer and Service Manager – People

## **SERVICE MANAGER - PEOPLE**

- Holding the Official Copy of the list and ensuring it is kept up to date, on behalf of the Chief Executive.
- Publishing the list and dealing with requests to inspect it on behalf of the Chief Executive
- Registering appeals from officers, giving an opinion and recording the details and outcomes of appeals
- Reviewing and revising the policy.
- Ensuring that the status of all people/posts are recorded on the relevant HR systems operated by people management, including the Official Copy as referred above

## **CATEGORIES OF POLITICALLY RESTRICTED POSTS**

The categories of post covered by these restrictions are as follows:

### **SPECIFIED POSTS**

**Specified** posts are automatically subject to restrictions on political activity and, as such, there is no right to appeal. These posts are:

- Chief Executive as Head of Paid Service
- Statutory Chief Officers e.g. Director of Children's Services
- Non-statutory Chief Officers\* e.g. Executive Directors, Chief Fire Officer
- Deputy Chief Officers e.g. Assistant Directors and Assistant Chief Executives reporting directly to Chief Executive and/or Executive Directors
- Monitoring Officer
- Chief Finance Officer
- Posts to whom the Council has delegated any of its powers to make decisions
- Assistants to political parties

\* a person who, in respect of all or most of the duties of the post, reports directly or is directly accountable to the Head of the Council's Paid Service.

### **SENSITIVE POSTS**

A **Sensitive** Post is one which meets one or both of the following duties related criteria:

Where it involves giving advice on a regular basis to:

- the Executive or any Executive Committee,
- the full Council or a Committee, Sub-Committee or
- Joint Committee on which the Council is represented, or
- any Member of the Executive who is also a member of the Council.

**Note:** the provision of purely factual information is not seen as advice

- Or speaks on behalf of the Council on a regular basis to journalists or broadcasters.

These post holders may appeal to the Chief Executive to be exempted from the list, on the grounds that the Council has wrongly applied the criteria, or that they are not in a position to influence policy. The procedure, process and relevant form for appealing is contained in [Appendix 1](#), [Appendix 2](#) and [Application for Appeal \(Form PO2\)](#).

## EXEMPTED POSTS

Teachers, Head teachers and Lecturers who teach in a school, college or other educational institution or establishment are exempt from political restrictions.

## RECORDS

The Official Copy of politically restricted posts shows the post title and the relevant category and is updated on a regular basis. This public document is published on the Lincolnshire County Council website and can be accessed at [List of Posts affected by Political Restrictions](#).

Employee data necessary to ensure that the Official Copy is kept up to date, along with necessary correspondence to employees when being advised of their PORPS status and category, in addition to necessary documentation relating to appeals lodged and completed are stored in systems that comply with relevant data protection legislation.

People management staff update regularly the data stored in these systems to take into account any new posts being created (that may be subject to a PoRPs category), any restructures or reorganisations and any other relevant factors.

## APPEALS

Officers in the **Sensitive** Post category may apply to the Chief Executive for exclusion from political restriction on the grounds that their post is not politically sensitive.

Officers similar to those in the **Sensitive** Post category, whose post has not been determined as politically sensitive by the Council, may be included by the Chief Executive upon challenge by any person.

## POLITICAL RESTRICTIONS AND ACTIVITY

Types of political restrictions and activity are listed in Appendix 3.

## FURTHER INFORMATION

Further information is contained in:

[Appendix 1 Overview of Appeal Procedure](#)

[Appendix 2 Appeal Process](#)

[Appendix 3 Political Restrictions and Activity](#)

[Appendix 4 Local Authority Employees Standing for Election](#)

[Application for Appeal \(Form PO2\)](#)

[Posts affected by Political Restrictions](#)

## APPENDIX 1 – OVERVIEW OF APPEAL PROCEDURE

The following **four stage** procedure should be followed

### STAGE 1 - DECISION MAKING (Operated by Executive Director)

Each time a new post up to Head of Service level is established or an existing post is changed or filled, the Executive Director is responsible for determining:

- Whether the post is politically restricted;
- If the post is politically restricted, which category (**Specified** or **Sensitive**) applies

The Executive Director will be supported in this activity by Service Area Managers and People Management as necessary.

**NB:** The Service Manager – People will operate this stage for posts at Assistant Chief Executive, Executive Director, Assistant Director and Head of Service level.

*If the post is identified as politically restricted then move to the second stage.*

### STAGE 2 - IMMEDIATE ACTION (Operated by Executive Director)

In the case of an existing post/person, the Executive Director is responsible for notifying the post holder of the modification to their terms and conditions of employment, including the effective date, the effect of the designation and details of any right of appeal, if applicable.

When actively seeking to fill a post which is politically restricted or new post:

- action the vacancy in the normal way and mark the PoRP status of the post clearly
- highlight to the Recruitment Team the further particulars need to reflect the PoRP status
- ensure that during the interview process, the PoRP status is confirmed to candidates
- ensure that the terms and conditions document incorporates the PoRP status
- provide details of any right of appeal, if applicable
- cover the practical effect of the restriction and the arrangements to deal with (potential) breaches in the Induction Process

The Executive Director will be supported in this activity by Service Area Managers and People Management as necessary.

### STAGE 3 - APPEAL

Officers who occupy **SPECIFIED** Posts have no right of appeal.

Officers occupying a post which is included on the list determined by the Council to be a **SENSITIVE** Post may apply direct to the Service Manager – People to be removed from the list.

The Chief Executive as Head of Paid Services will consider this appeal. As an example, this procedure is appropriate if an employee wishes to stand for election.

Officers in the **SENSITIVE** Post category can appeal against inclusion on the list but will need a “Certificate of Opinion” issued by the Service Manager – People with which to lodge this appeal with the Chief Executive.

This procedure is appropriate when a post is a new addition to the PoRPs list.

The Certificate of Opinion must:

- be accompanied by a current description of duties and responsibilities
- indicate whether the Council believes that the post/person should be retained or deleted from the list
- show which of the tests (if any) have led the Service Manager – People to take that view

The Certificate of Opinion has been incorporated into an appeal form PO2 below which will be issued to those who wish to register an appeal.

The Service Manager – People will receive requests for a Certificate of Opinion direct and must respond within 14 days and will consult the appropriate Executive Director regarding the view to be included in each Certificate.

The completed form will be sent to the Chief Executive who may arrange a meeting with the employee. The Chief Executive will decide whether to uphold the appeal of the employee or not.

The direction of the Chief Executive will be passed to the appropriate Executive Director who will then be responsible for:

- amending personnel records
- changing or confirming the contractual position in writing to the officer

The Chief Executive may request additional information in order to make a decision. The Service Manager – People will provide that information after consultation with the relevant Executive Director.

#### **STAGE 4 – RECORDING (Operated by all Officers involved)**

The official ‘list’ of politically restricted posts will be held on the people management systems referred to earlier.

In addition to recording the status of posts and people, Executive Directors should retain (or ensure retention) of any relevant correspondence concerned with PoRP status on the employee’s personal file.

## **APPENDIX 2 – APPEAL PROCESS**

### **APPEALS PROCESS FOR OFFICERS IN THE SENSITIVE CATEGORY**

- Complete Parts 1, and 2A of the Appeals Form (Appendix 3 Form PO2 below).
- Send the Appeals Form to the Service Manager - People
- Officers should receive within 14 days, the Appeals Form with the duly completed Certificate of Opinion (Part 2B of the Appeals Form) which will indicate whether or not the Service Manager – People considers the post to be politically sensitive and if it is, giving the reason.

A copy of the officer's job description will also be supplied.

- Officers will complete Parts 3 and 4 of the Appeals Form.
- Officers will send the completed Appeals Form to the Chief Executive.
- Officers will be given the opportunity to meet with the Chief Executive.

Following that meeting the Chief Executive will notify the employee of their decision.



## **APPENDIX 3 - POLITICAL RESTRICTIONS AND ACTIVITY**

The types of political activities that are prohibited by the Acts include:-

- Becoming or remaining a member of another principle local authority  
  
Standing as a candidate for election to the House of Commons, the European Parliament, the Welsh Assembly or a local authority
- Acting as an election agent or sub-agent
- Being an officer of a political party, or a branch or committee or sub-committee of a political party, if this involves participation in the general management of the party or branch, or dealing with persons (other than members of the party or branch) as a representative of the party or branch
- Canvassing on behalf of a political party or any candidate for election to the House of Commons, the European Parliament, the Welsh Assembly or a local authority
- Publishing any written or artistic work of which the officer is an author or editor (either solely or with others) if the work is, or appears to be, intended to affect public support for a political party
- Speaking to the public with the apparent intention of affecting public support for a political party

**THIS LIST IS NOT EXHAUSTIVE AND IS INTENDED AS A GUIDE ONLY.**

**EMPLOYEES SEEKING TO BECOME ELECTED TO AN AUTHORITY OR TO TAKE PART IN POLITICAL ACTIVITY ARE ADVISED TO TAKE INDEPENDENT LEGAL ADVICE.**

## **APPENDIX 4 - LOCAL AUTHORITY EMPLOYEES STANDING FOR ELECTION**

### **PURPOSE**

This document sets out the guidance from the Electoral Commission with regard to its view on the specific question of when local authority employees need to resign their position if they wish to stand for election to the County Council, any other principal local authority or as an MP or MEP. It should be noted that this is advice given as guidance only, and should not be relied upon as legally definitive.

The full range of disqualifications of candidates at local elections is complex, and some exceptions may also apply. Candidates should be strongly advised to consult the relevant legislation to ensure that none of the relevant disqualifications apply and, if in doubt, to seek their own legal advice.

### **Disqualification for election and holding office as a member of a local authority**

There are a number of disqualifications for election and holding office as a member of a local authority, which are set out in Section 80 of the Local Government Act 1972.

Section 80(1) (a) states that “a person shall be disqualified for being elected or being a member of a local authority.... If he holds any paid office or employment which are or may be made or confirmed by the local authority”. This includes those who hold a paid office on joint boards or committees on which the local authority is represented.

The Local Government and Housing Act 1989, as amended by the Local Democracy, Economic Development and Construction Act 2009, provides for each Local Authority to prepare, maintain and publish a list of posts which are specified or identified as “politically restricted”.. If a person holds one of these posts, they will be disqualified from election to any local authority in Great Britain.

### **Consent to nomination**

If a person wishes to stand for election to any local authority they need to be validly nominated. Being validly nominated includes the requirement to sign a consent to nomination. A consent to nomination requires a signature from the person being nominated on a declaration that they are qualified to be elected. Rule 7 of the Local Elections (Principal Areas) (England & Wales) Rules 2006 states that the declaration to be signed is as follows:

**“I declare that on the day of my nomination I am qualified and that, if there is a poll on the day of election, I will be qualified to be elected...”**

It is the view of the Electoral Commission that the person signing the declaration on the consent to nomination must qualify to be elected on the day of nomination **and** on the day of election – not just on the day they take up office if successful. This means that a person who holds any paid office, or is employed by the local authority, cannot stand validly nominated as a candidate at an election to that authority i.e. Lincolnshire County Council, unless they have resigned and served any notice period before the date of nomination.

As contractual relationships can be very complex, if a candidate is in any doubt about their position, they should seek advice from Human Resources.

## **Conclusion**

The advice from the Electoral Commission included in this document is that a person would be disqualified from being elected if they hold any paid office or employment by the local authority i.e. Lincolnshire County Council, that would disqualify them standing as a candidate at the time of nomination.