

Draft Version 2

POLITICALLY RESTRICTED **POSTS (PoRPs)**

COUNCIL POLICY

This procedure applies to all employees of the Council, including teachers and staff employed by governing bodies.

This Policy reflects the guidance provided by the Local Government Employers (LGE) in accordance with the following Acts of Parliament:

- The Local Government Act 1972 (LGA1972)
- The Local Government and Housing Act 1989 (LGHA 1989)
- The Local Democracy, Economic Development and Construction Act 2009

There are no additions or amendments to the guidance published by the LGE made by or on behalf of Dudley MBC.

Corporate Human Resources
Directorate of Law, Property and Human Resources

March 2010

1.0 PURPOSE

The purpose of this guidance note is to provide advice and guidance to HR Managers and Officers.

2.0 OBJECTIVE

The objective is to ensure that as an authority, we do not breach the following acts:

- The Local Government Act 1972 (LGA1972)
- The Local Government and Housing Act 1989 (LGHA 1989)
- The Local Democracy, Economic Development and Construction Act 2009

3.0 SCOPE

This policy applies to all employees of the Council, including teachers and staff employed by governing bodies.

The policy also applies to elected members of the authority.

4.0 DEFINITIONS

PoPRs	Politically Restricted Posts
Officers	Council Employees
Members	Elected Councillors
Standards Committee	The Standards Committee is made up of 6 Elected Members of Dudley MBC (2 Members each from the 3 major parties). It also has 3 non-elected independent members. Currently the Committee is chaired by the Bishop of Dudley, the Rt. Rev David Walker.

The Council has a legal duty to establish a Standards Committee. Its role includes the promotion and maintenance of high standards of conduct within the Council.

5.0 RESPONSIBILITIES

5.1 Managers

To communicate the policy to employees; to ensure compliance with the policy by team members and to check with HR if they require any advice with the application of this Policy.

5.2 Employees

Employees and potential employees must ensure that they comply with this policy.

5.3 Human Resources

HR Officers are responsible for ensuring that they advise managers in line with this policy. HR Officers should familiarise themselves with all aspects of this Policy as managers and employees could ask for guidance in its application.

The HR Team supporting Central Directorates is responsible for ensuring the implementation, regular review and updating of the Policy in line with changes to the relevant Acts of Parliament. They are also responsible for offering consistent advice to HR colleagues.

5.4 Standards Committee

The Standards Committee hears appeals from employees whose posts are declared as Politically Restricted due to the post being designated as a “sensitive” post.

The Standards committee will consider the job description of the post when making a decision.

The Standards Committee’s decision is final.

6.0 POLICY

6.1 Background

The Local Democracy, Economic Development and Construction Act 2009 received royal assent on 12th November 2009. Section 30 changes the approach to identifying posts which are politically

restricted by removing the duty to maintain a list of posts earning above a nominated salary. This takes effect from 12th January 2010 with the result that authorities will need to review the Politically Restricted Posts by virtue of salary level to assess if they should be genuinely politically restricted by virtue of the duties that they actually perform.

The first statutory attempt to ensure the political impartiality of those who serve in local government was under the Local Government Act 1972 (LGA 1972) which prevents a councillor from being employed in any capacity by the local authority he is serving.

In 1989, the Local Government and Housing Act 1989 (LGHA 1989) introduced the principle of 'politically restricted posts' (PoPRs) and of restricting the political activities of local authority employees.

The effect of including a Local Authority employee on the list of politically restricted posts is to prevent that individual from having any active political role either in or outside the workplace. Politically restricted employees will automatically be disqualified from standing for or holding elected office, and these restrictions are incorporated as terms in the Employees Contract of Employment under section 3 of the Local Government Officers (Political Restrictions) Regulations. It is left to the discretion of each Local Authority whether or not to reinstate an employee who resigns his post, and then stands for, but loses an election.

In practice, this equates to debarring a substantial number of Local Government employees from standing for office as:

- Local Councillors
- MP's
- MEP's
- Members of the Welsh Assembly
- Members of the Scottish Parliament

They are also restricted from:

- Canvassing on behalf of a political party or a person who seeks to become a candidate
- Speaking to the public at large or publishing any material that could give the impression that they are advocating support for a political party.

All Local Authority employees, including craft and manual workers, fall within the scope of the act including part-time posts.

6.2 Restrictions on Members Becoming Officers

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

6.3 Restrictions on Officers Becoming Members

Under s80 of LGA 1972, an authority employee will be disqualified from being elected or holding office as a member of that local authority. This principle also applies more widely to employment with certain bodies over which the authority has influence. Therefore under s80, an individual is also disqualified from standing or holding office with that specific authority if he holds any paid employment with a local or joint authority on which the authority is represented, or is employed by a company which is under the control of the local authority.

6.4 Politically Restricted Posts

Each Local Authority is under a duty to draw-up and regularly update a list of those posts which are politically restricted. These fall into two broad categories;

Specified Posts

- Head of the Paid Service
- Statutory Chief Officers
- Non-Statutory Chief Officer
- Deputy Chief Officer
- The Monitoring Officer
- The Chief Finance Officer
- Officers exercising delegated powers
- Assistants to political groups

All these post holders are politically restricted without rights of exemption to appeal to the Standards Committee.

Sensitive Posts

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

- Giving advice on a regular basis

- to the Authority itself,
 - to any committee or sub-committee of the Authority,
 - to any joint committee on which the Authority is represented,
 - where the Authority are operating executive arrangements, or to the Executive of the Authority and again to any committee of that Executive or to any member of that Executive who is also a member of the Authority.
- Speaking on behalf of the Authority on a regular basis to journalists of broadcasters.

These post holders can appeal to the Standards Committee 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.

6.5 The Independent Adjudicator

Under s.3A of the LGHA, from 1st April 2008 in England the responsibility for granting exemptions from political restriction has passed to local authority Standards Committees. The secretary of state may also provide advice on relevant matters.

6.6 Procedures on Appeal

Employees included in the lists compiled by local authorities on duties-related grounds can appeal against their inclusion, if they feel that they cannot influence policy, or that the local authority has incorrectly applied the duties-related criteria.

All such appeals require a letter from the applicant formally seeking exemption and a full job description of the post.

7.0 ASSOCIATED DOCUMENTS

8.0 DOCUMENT REVISION HISTORY

Revision Number	Date	Amendment	Document Manager	Document Author
01	Feb 2010	<p>Update format</p> <p>Inclusion of sections 1 to 5.</p> <p>Update of 6.1, 6.2, 6.3 and 6.4 due to changes to Act of Parliament to remove "Posts paid at or above a certain level."</p> <p>Update of 6.5 and 6.6 due to appeal procedures.</p>	Teresa Reilly	Nicola Monckton