



STANDARDS COMMITTEE

ITEM:

3 NOVEMBER 2004

OFFICE OF DEPUTY PRIME MINISTER: CONSULTATION ON CODE OF CONDUCT FOR EMPLOYEES AND POLITICALLY RESTRICTED POSTS

Summary of report

This report sets out the main points of the Office of the Deputy Prime Minister (ODPM) consultation paper on the draft Code of Conduct for employees and review of political restrictions of Council employees and the decision of Cabinet from its meeting on 20 October 2004 on this matter.

Recommendations

That the Committee consider the draft Code of Conduct for Local Government Employees and Politically Restricted Posts and comment accordingly.

Signed

Assistant Director of Legal Services and Monitoring Officer

Date: 26 October 2004

Background papers:

Report to Cabinet 20 October 2004: ODPM; Consultation on Code of Conduct for Employees and Politically Restricted posts
ODPM Consultation Document – A Model Code of Conduct for Local Government Employees and the review of the Regulatory Framework covering the political activities of Local Government employees.

Contact officer: Frazer Powell, Walsall 652015

Report detail

The Cabinet at its meeting on 20 October 2004 considered the consultation document and requested that the 16 comments upon the proposals set out in paragraph 3.3 of the report be approved in order that the Council can respond to the ODPM by 19 November 2004 .



CABINET

20 OCTOBER 2004

AGENDA ITEM:

ODPM CONSULTATIONS ON CODE OF CONDUCT FOR EMPLOYEES & POLITICALLY RESTRICTED POSTS

Ward(s): ALL

Forward Plan: No

Portfolio: Councillor Zahid Ali – Community Engagement & Organisational Development

Service Area: Human Resources, covering all services

Summary of report:

This report sets out the main points of the ODPM consultation paper on a draft code of conduct for employees and review of political restrictions of council employees.

Background Papers:

ODPM Consultation Documents – A Model Code of Conduct for Local Government Employees and the Review of the Regulatory Framework Covering the Political Activities of Local Government Employees.

Recommendations

That 16 comments upon the proposals contained in this report be approved in order that a response from the council can be made to the ODPM by 19 November 2004.

Signed:

Executive Director: Jamie Morris

Date: 24.09.04

Signed:

Portfolio Holder: Councillor Zahid Ali

Date: 24.09.04

Resource and Legal Considerations

The proposals would amend the Local Government Act 1989 in so far as political restrictions apply. The Code of Conduct would be enacted under Section 82 of the Local Government 2000. Any changes to Political Restrictions legislation would have the effect of enabling more employees to participate in political activity to which they are allowed paid time of under the legislation.

Citizen Impact

The proposals could enable more staff to take political office as citizens of the borough. A robust code of conduct enables the citizens of Walsall to have confidence in the standards and behaviour of staff.

Environment Impact

None identified.

Performance Management and Risk Management Issues

The employee code of conduct gives the council greater ability to manage the performance of its' employees.

Equality Implications

The European Court of Justice has already ruled that the current legislation is compatible with Human Rights legislation. The council's Equal Opportunities in Employment Policy will be followed in the implementation of any new regulations.

Consultation

Trade Unions and Executive Directors will also be consulted on these proposals.

Vision 2008

A robust code of conduct is essential to enable Walsall to move towards being an excellent authority.

Contact Officer:

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1. CODE OF CONDUCT FOR LOCAL GOVERNMENT EMPLOYEES

- 1.1 The Local Government Act 2000 placed a new statutory framework to govern the conduct of Members and employees of Local Authorities.
- 1.2 Arising from this a consultation document has been produced by the ODPM. A full copy of the document is available on the website www.odpm.gov.uk. The consultation period finishes on 19 November 2004.
- 1.3 Walsall MBC introduced a revised Code of Conduct for employees in 2003. If the new statutory code of conduct contains provisions that are not in our code of conduct they will immediately be incorporated by statute.

2. PRINCIPAL QUESTIONS

- 2.1 Many of the questions posed by the consultation document do not apply to Walsall (for example provisions relating to Fire Fighters, Political Assistants and Council Managers). Therefore no response will be sent to these questions.
- 2.2 With regards to other proposals that are within the consultation document, many are already contained within Walsall's Code of Conduct, which was approved by the council last year. It therefore follows that the council would support these proposals becoming statutory.
- 2.3 With regards to proposals not contained within our existing Code of Conduct, these are set out below, together with a commentary and a recommended response.

Q1 – The proposals will not apply to Teachers. Is it right to exclude them from this code?

Commentary – Teachers are already subject to their own national code of conduct.

Recommended Response – Yes.

Q2 – Are there any other categories of employee who should be excluded?

Commentary – It is important that a national code of conduct applies to every employee if they are not already bound by one.

Recommended Response – Yes

Q6 – The proposed code states:-

“An employee must not in his official or personal capacity

a) allow his personal interests to conflict with the authority's requirements or

b) use his position improperly to confer an advantage or disadvantage on any person.

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

Commentary – The activities of council employees outside of work are under public scrutiny in a way that private sector employees are not. Therefore a higher standard is expected of them.

Recommended Response – Yes

Q9 The proposed code requires employees to declare interests, hospitality, benefits or gifts received as a consequence of his employment. Should this list of declarations be available to the public?

Commentary – It is essential that staff not only behave beyond reproach, but are seen to behave beyond reproach

Recommended Response – Yes

Q10 Should the above list be restricted to offices above a certain salary?

Commentary – Staff at all levels could potentially be compromised by receiving gifts. This could include Home Care Staff receiving a gift from a service user or an employee who works with contractors on a day to day basis receiving a gift from an employee of such a contractor.

Recommended Response – No, the list should apply to all employees.

Q11 Should the above provision be explicitly limited to interests and gifts that may have a bearing on the way the functions of the council are discharged by the employee?

Commentary – This would be very hard to distinguish and could create areas of doubt. If employees declare all interests and gifts then clarity is maintained.

Recommended Response – No.

Q13 The proposals contain provisions to protect employees who report wrongdoings ("Whistle Blowing"). Should the code impose a duty upon employees to report misconduct?

Commentary – Employees already have statutory protection and the code simply repeats this. However, employees may still feel uncomfortable with raising wrongdoings. It would therefore be unreasonable to compel employees to do so, but would be better to encourage them.

Recommended Response – No. However the code should encourage staff to report wrongdoings.

Q14 The Code proposes that an employee may not be involved in the appointment or any other decision relating to the discipline, promotion pay or conditions of another employee or prospective employee who is a relative or friend. Is “friend” the appropriate term to use? If so should it be defined and how?

Commentary – It is important to distinguish between colleagues who are friends and friendships that extend beyond work. One definition could be a person with whom the person spends recreational time outside of the working environment and events arising from working together (such as birthday celebrations) or actively share a mutual interest with that person.

Recommended Response – Yes, but using the definition above.

3. POLITICAL ACTIVITIES OF LOCAL GOVERNMENT EMPLOYEES

3.1 The Local Government and Housing Act 1989 places restrictions on certain staff from engaging in political activity this includes:-

- Being a Councillor, MP or MEP.
- Being an active member of a political party, such as membership of a committee of that party, general management of or speaking on behalf of that party or the branch of that party.
- Canvassing on behalf of a political party or a candidate for election.
- Speaking to the public with the apparent intention of affecting support for a political party.
- Publishing written or artistic work if intended to affect public support for a political party.

3.2 The provisions apply to:-

- Chief Executive
- Chief Officers (i.e., Executive Directors)
- Deputy Chief Officers (i.e., Assistant Directors and Heads of Service)
- Monitoring Officers
- Political Assistants
- Staff whose pay is equal to or exceeds SCP 44 (currently £32,127)
- Staff whose duties involve giving advice to the Council on a regular basis or speaking to the press on a regular basis on behalf of the Council.

3.3 Proposed Changes

Q1 – Scope of Restrictions

The ODPM is asking for views on whether the salary threshold of SCP 44 should be raised thus reducing the number of posts affected. Would reducing the number of posts affected be compatible with maintaining the apolitical nature?

Commentary – Staff whose posts are politically restricted by the remuneration criteria have a right to appeal to the ODPM for exemption if their job does not involve advising the council nor speaking to the press. This therefore makes this provision somewhat redundant. Similarly there are posts below this salary level which are politically restricted by duties. Raising the salary threshold to the top of the national pay spine (i.e., SCP 49) would be more appropriate.

Recommended Response – The remuneration based criteria is of little use as it stands as decisions as to whether or not posts should be restricted are based upon duties. If the remuneration criteria is to remain, the threshold should be raised to above SCP 49.

Q2 – It has been suggested that it might be possible to permit local government staff to participate in national politics (in the same way that civic servants are allowed to take part in local politics).

Commentary – This would need careful consideration. If an employee became involved in national politics and this put them into conflict with the council, the position could be difficult. Conversely, an employee may wish to be involved in national politics that would have no impact upon the council (for example a lobby group on fox hunting).

Recommended Response – In principle the council would support this move on the understanding that any activity would not put the employee into conflict with the council.

Q3 – There is a proposal that broad categories of posts be made exempt based upon the job description. Would this be workable and what categories could be exempt? Conversely are there areas of work not covered by the restrictions that could be? If so, which?

Commentary – If the duties related criteria remain the same, then the vast majority of posts remain exempt. It would make more sense to restrict posts on the duties related criteria only.

It would then be possible to designate posts and groups of posts as politically restricted (as happens now). It would be harder to exempt groups of senior staff as these posts are usually more individualistic in nature.

With regards to extending the criteria, there is a case to include staff who speak on behalf of the council to the public (other than giving advice of a factual nature) and staff who represent the council on other bodies (such as regional groups, West Midlands LGA etc) to be restricted.

Recommended Response – It would be difficult to give block exemptions based on job descriptions. Therefore this proposal is not supported. Staff who represent the council on outside bodies or regularly speak to the public on matters other than giving factual information should also be included.

Q14 – All appeals against political restriction are currently handled by an independent adjudicator at the ODPM. The consultation document asks whether or not this role should remain as it is or whether the Council's Monitoring Officer should take on this role. Alternatively, should the role be undertaken by a non departmental body such as the Standards Board for England?

Commentary – There are very few requests made for exemption from political restriction in the country, and even fewer are turned down. Councils are required to provide a statement of opinion on the case and in the main the adjudicator endorses these. It would therefore make sense for this role to be undertaken within the council by the Monitoring Officer, with the safeguard that a) a list of decisions made is sent to the Independent Adjudicator each year and b) the Independent Adjudicator can hear appeals and provide advice. Given the role of the Standards Board is to promote high standards of conduct amongst Elected Members, it would, I feel make sense to base the Independent Adjudicator in this body.

Recommended Response – The Monitoring Officer should be allowed to grant exemptions, whilst the Independent Adjudicator could hear appeals and would monitor decisions made. The Independent Adjudicator should be a part of the Standards Board.

Q15 – The Local Government and Housing Act 1989 permits employees to take a maximum of 208 hours per annum to perform duties as Elected Members of other councils. The consultation paper asks if this is still an appropriate amount.

Commentary – Any increase in hours could, potentially, give rise to the councils appointing staff knowing that they are Councillors in other authorities and by effectively “sponsoring” them through paid time off. Equally, a decrease in hours could reduce the availability of some employees to fully function as Councillors and may in itself be a breach of Human Rights legislation.

Recommended Response – The council would not support any changes to the current arrangements.

Q16 – The Local Government and Housing Act 1972 prohibits employees being a Councillor in the Authority in which they are employed. The consultation document asks if this should be changed.

Commentary – Without doubt, there would be conflicts of interest in such cases and the impartiality of staff would be called into question. There would appear to be no case to justify this.

Recommended Response – The Council would not support this proposal