



MENDIP DISTRICT COUNCIL GOVERNANCE ASSETS AND PUBLIC SPACES

POLITICALLY RESTRICTED POSTS POLICY AND PROCEDURE

The Post holders referred to in this document may have changed job titles following the Council's management restructure approved by Full Council on 10 July 2016.

If clarity is required regarding the Post Holder discharging any functions under this Policy please liaise with one of the Group Managers listed below:

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MENDIP DISTRICT COUNCIL

POLITICALLY RESTRICTED POSTS POLICY AND PROCEDURE

This policy can be made available in other languages and formats such as large print and audio on request.

What is it?

Certain posts in the Council are 'politically restricted' which means that staff employed in these posts may not undertake political activities. Not all posts within the Council are politically restricted.

This policy stems from the view that local government employees in certain positions should be seen to fulfil their duties in an entirely politically neutral manner, ensuring that they act at all times in an objective and impartial way.

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To whom does it apply?

The relevant legislation – the Local Government and Housing Act 1989, supported by the Local Government (Political Restrictions) Regulations 1990 – defines those posts within a local authority which are deemed to be subject to political restriction.

In general terms, these posts fall within two categories:

- **Specified posts** – the Head of Paid Service, Chief Officers ⁽¹⁾ and their deputies, the Monitoring Officer, the Section 151 Officer, and assistants to political groups
- **Sensitive posts** – all posts identified by the authority as being posts whose duties include the giving of advice to the authority or its committees or sub committees, or speaking on behalf of the authority on a regular basis to journalists or broadcasters

Definition of political restriction

Persons who hold a politically restricted post are subject to certain restrictions, which are included in their terms and conditions of employment by virtue of the 1990 Regulations Reg 3 and Schedule 1. While holders of politically restricted posts may nonetheless hold membership of a political party, they may not be active in their membership. In practical terms this means:

1. If a person holds a post with the Council deemed to be politically restricted, he/she may not engage in political activity. This means that he/she may not stand for election as any of the following:
 - a local Councillor at any authority;
 - an MP;
 - an MEP;
 - a Member of the Welsh Assembly;
 - a Member of the Scottish Parliament.
2. A person holding a politically restricted post is not permitted to canvas on behalf of a political party or a person who is already, or who seeks to be, a candidate.
3. A person holding a politically restricted post may not speak to the public or publish any written or artistic work that could give the impression that he/she is advocating support for a political party.

Any person employed by Mendip District Council in a politically restricted post who wishes to undertake any of the activities in points 1, 2 or 3 above will be required to resign from his/her role with Mendip District Council before doing so.

If he/she engages in any of the activities identified in points 1, 2 or 3 above, he/she will be deemed to be acting in breach of their contract of employment and will be subject to disciplinary proceedings which may lead to dismissal.

Employees are also referred to the [Officer Code of Conduct Policy](#).

Political Restriction within the Council

As stated above, there are two categories of politically restricted posts – specified posts and sensitive posts.

Holders of specified posts do not have a right of appeal against their designation of their posts as politically restricted, as such designation is as provided in Section 2 of the 1989 Act.

Holders of sensitive posts have the right to apply for an exemption from political restriction, to the Monitoring Officer in accordance with the: 'How to Apply for an Exemption' process as set out at page 15 of this document.

There is a right of appeal against the Monitoring Officer's decision to the Head of Paid Service as set out at Appendix B.

Applying the categories identified in Section 2 of the 1989 Act, specified posts at Mendip District Council are as follows:-

1. First category – posts individually identified in the legislation (Section 2(1) – post holders are politically restricted without rights of exemption)

1989 Act	MDC
Statutory Chief Officers	
The Head of Paid Service	Chief Executive
Chief Finance Officer (Section 151 Officer)	Section 151 Officer
Monitoring Officer	Monitoring Officer

2. Second category – posts defined by their relationship to others (post holders are politically restricted without rights of exemption)

1989 Act	MDC
Non statutory Corporate Officers	
Employees for whom the Head of Paid Service is directly responsible	Deputy Chief Executive(s)
Employees who, as regards all or most of their duties, report directly to, or is directly accountable to, the Head of Paid Service and/or the Council, or any committee or subcommittee of the Council	

Senior Officers	
Employees who, as regards all or most of their duties, report directly to, or are directly accountable to, one or more of statutory officers or non-statutory officers	Group Manager Community Health Services Group Manager Corporate Services Group Manager Housing Services Group Manager Law & Governance Services Group Manager Neighbourhood Services Group Manager Planning & Growth Services Deputy Corporate Financial Advisor Senior Economic Development Officer Executive Support Officers

3. Third category – posts whose duties have certain characteristics identified in the legislation (politically sensitive posts) (Sections 2(2)(c), 3(a) and (b))

Post holders can apply to the Monitoring Officer to be exempted from the list, on the grounds that the Council has wrongly applied the criteria. The ultimate test whether an individual post is, in fact politically sensitive, will depend on the nature of the duties the post regularly undertakes.

1989 Act	MDC
Gives advice on a regular basis to the authority themselves, to any committee or subcommittee 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.	Asset Transformation Officer Assistant Conservation Officer Benefits and Revenues Officer (Client Office) Business Support and Compliance Officer Community Protection Officer Community Safety Officer Conservation Officer Contracts Manager Corporate Health & Safety Advisor Customer Services, Licensing & Land Charges Manager (Client Office) Democratic Services Officer Economic Development Officer Elections Assistant Enforcement Officer Engineer Environmental Health Officer

	<p>Finance & Procurement Manager (Client Office)</p> <p>Graduate Planner</p> <p>Group Manager Assistant Community Health Services</p> <p>Group Manager Assistant Corporate Services</p> <p>Group Manager Assistant Housing Services</p> <p>Group Manager Assistant Law & Governance Services</p> <p>Group Manager Assistant Neighbourhood Services</p> <p>Group Manager Assistant Planning & Growth Services</p> <p>Head of Electoral Management</p> <p>IT Officer</p> <p>IT Systems Administrator</p> <p>Legal Assistant</p> <p>Licensing Officer</p> <p>Member Support/Democratic Services Officer</p> <p>Planner</p> <p>Planning Officer</p> <p>Planning Policy Officer</p> <p>Principal Economic Growth Planner</p> <p>Principal EHO – Private Sector Housing</p> <p>Principal Lawyer and Practice Manager</p> <p>Principal Licensing Officer</p> <p>Principal Planner</p> <p>Principal Planning and Property Lawyer</p> <p>Principal Revenue Benefits & Fraud Officer (Client Office)</p> <p>Principal Technical Officer</p> <p>Project and Development Officer (HOT)</p> <p>Property and Planning Lawyer</p> <p>Property Team Leader</p> <p>Senior Choice Based Lettings Officer</p> <p>Senior Corporate Lawyer</p> <p>Senior Elections Officer</p> <p>Senior Enforcement Officer</p> <p>Senior Environmental Health Officer</p> <p>Senior Litigation and Housing Lawyer</p> <p>Senior Planner</p> <p>Senior Planning and Property Lawyer</p> <p>Senior Planning Policy Officer</p> <p>Senior Property Lawyer</p>
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	<p>Senior Strategic Assets Officer Shape Mendip Project and Improvement Officer Supervisor – BE Technical Support</p>
<p>Speaks on behalf of the Council on a regular basis to journalists or broadcasters</p>	<p>Principal Communications & Marketing Officer Communications & Consultation Assistant Consultation & Engagement Officer</p>

4. Fourth category – posts to which duties have been delegated (Section 2(2)(c))

Post holders referred to in the Scheme of Delegations to Officers as politically restricted posts are politically restricted, without rights of exemption.

1989 Act	MDC
Officers exercising delegated powers, i.e. persons whose posts are for the time being specified by the Council in a list maintained in accordance with section 100G(2) of the Local Government Act 1972 and section 15 of the Local Government Act 2000	This inclusion ensures that a person who is in a post not normally politically restricted, but who, for the time being, is exercising powers normally exercised by the holder of a politically restricted post, is regarded as being in a politically restricted post for the duration of the delegation. The list need not include any delegations made for less than six months.

Maintaining the list

The Council's Human Resources team maintains a list of politically restricted posts within the Council, which is subject to annual review.

What is the responsibility of the holder of a politically restricted post?

A holder of a politically restricted post should not allow his/her own personal political opinions to interfere with his/her work.

Line manager responsibilities

Recruitment

When engaged in the process of recruitment in relation to posts – whether new posts or amended posts - including the writing of job descriptions and the referral of posts for evaluation, it shall be the responsibility of line managers to identify whether those posts are politically restricted within the terms of the legislation, and if so, how the post in question should be categorised.

In addition, Managers may not recruit as a new member of staff, someone who has held the role of a local Councillor, an MP, an MEP, a member of the Welsh Assembly or a member of the Scottish Parliament, within the previous 12 months.

Managers should discuss a post's political restriction with candidates at recruitment stage and make sure candidates are aware of the implications of taking the post. Please refer to [Recruitment Policy](#).

Disciplinary action

Should an employee undertake political activities within or outside of the workplace whilst holding a post deemed to be politically restricted, Managers will refer to the Disciplinary Procedure to assess whether the employee has committed a disciplinary offence and the appropriate sanction. Please refer to [Disciplinary Process and Procedure](#).

Dealing with employees who hold politically restricted posts

Should a member of staff wish to stand for election, it is in the interests of those applying for exemption from political restriction or applying for a direction as to whether their post is politically sensitive to ensure that they make an application to the Monitoring Officer for a Certificate of Opinion (Appendix A) at least two months before they intend to stand for election.

Monitoring Officer's role

The Monitoring Officer will consider applications from employees for exemption from political restriction or applications for a direction as to whether a post is politically sensitive, provided that the post is included in the list of politically restricted posts maintained by the Council or the Council proposes to specify the post as being politically restricted.

As stated above, the Monitoring Officer's role is limited to sensitive posts, and does not apply to specified posts.

Any exemption which is granted will be granted in respect of the post, rather than granted to the postholder (although in the majority of cases, the application will be made by a post holder who wants to carry out political activities).

If the Monitoring Officer determines that the duties of the post do not fall within the ambit of section 2(3) of the 1989 Act, the Monitoring Officer will direct that the post is not to be regarded as politically restricted and that the post be removed from the list of politically restricted posts maintained by the Council.

The Monitoring Officer may, on application from any person, review any post not included in the list of politically restricted posts. If the Monitoring Officer considers that the duties of the post fall within section 2(3) of the 1989 Act and that the post is not currently included in either the list of politically restricted posts or in the Scheme of

Delegations to Officers, then the Monitoring Officer may issue a directive that it be included in the list of politically restricted posts.

The Monitoring Officer will give priority according to the time available before any election, to any application for removal from the list of politically restricted posts by an employee who certifies that it is for the purpose of enabling him/her to be a candidate in a forthcoming election.

The Monitoring Officer will also give general advice on the application of criteria for designation of a politically restricted post.

Monitoring Officer's discretion

The only area over which the Monitoring Officer has discretion is whether or not a post falls within the parameters set out in section 2(3) of the 1989 Act. Otherwise, the Monitoring Officer is bound by legislation in determining whether applications for exemptions as made to him/her should be granted – there is no scope for discretionary approvals, or for exemptions to be granted conditionally.

Section 2(3) of the 1989 Act guidance

Although adjudication of matters arising as a result of differing interpretations of section 2(3) of the 1989 Act remains a matter for the Monitoring Officer, the following guidance aims to assist the Monitoring Officer in any decisions as to whether or not a post is politically restricted. The guidance is not binding on either the Council or the Monitoring Officer and is intended to offer assistance in decision-making without fettering the discretion of either party.

Section 2(3) of LGHA 1989, states:

‘The duties of a post under a local authority fall within this subsection if they consist in or involve one or both of the following, that is to say:

- (a) giving advice on a regular basis to the authority themselves, 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;
- (b) speaking on behalf of the authority on a regular basis to journalists or broadcasters.’

Issues within Section 2(3)

There are several questions raised by the wording of section 2(3) LGHA 1989:

- Is a 'post under a local authority' limited to a post held by an employee of the Council?
- What do the words 'consist in or involve' imply?
- What constitutes advice?
- What constitutes on a regular basis?
- Does advice have to be proffered to the whole authority, cabinet, committee, sub-committee or joint committee or to any one member of such a body?
- Does speaking mean giving formal presentations or does it include answering telephone queries? Would distributing a written press release constitute speaking to journalists and broadcasters?

Interpretational issues

In interpreting the provisions of section 2(3) LGHA 1989, the following may be taken into account:

'Post under a local authority' - in this context, may be taken to mean any post established by the Council, whether the incumbent is a permanent full or part time employee, a temporary employee, a person seconded to the Council from another body or a consultant under contract to the Council.

'Consist in or involve' - in this context, may be taken to mean that either giving advice to the Council/Cabinet etc. or speaking to the media, or both, constitute a recognised part of the post holder's activities.

'Advice' - in this context, may be taken to mean information provided with the intention that it should influence the policy adopted by the Council in respect of any matter properly before it; or any strategic decisions made by or on behalf of the Council.

'Regular basis' - in this context, may be taken to mean that the activity to which it refers is:

- incorporated in the job profile for the post; or
- undertaken as an expected part of the post holder's normal duties (example post holder is required to draft reports containing advice and/or recommendations; post holder is required to attend committee meetings; post holder is required to speak at meetings);
- undertaken on more than an occasional basis, though not necessarily frequently.

'The body to whom the advice is offered' - may in this context, consist of any number of Members from one upwards, as long as the Member or Members concerned, are acting in their official capacity as members of the Council/ Cabinet or any of its committees, sub-committees or joint committees.

‘Speaking’ - in this context, may be taken to mean the passing of any information, whether verbally or through the written word, to a journalist or broadcaster when it is reasonable to assume that the post holder knows that the information so provided is likely to be disseminated to the public at large.

How to apply for an exemption – (sensitive duties posts only)

The post holder may apply to the Monitoring Officer to be exempted from the third category list (sensitive duties post).

All applications require a letter from the post holder addressed to the Monitoring Officer. The application will state the title of the post, the basis upon which the post is currently deemed to be politically restricted and the reason why the post holder considers that political restriction is no longer appropriate e.g. they no longer influence policy or that the Council has incorrectly applied the duties criteria to the post (see section 'Political Restriction within the Council' on Page 2).

The application will be accompanied by a certified job profile of the post. The Monitoring Officer may provide the post holder with an opportunity to make oral representations in support of their application; the post holder may be accompanied by an accredited trade union representative or work colleague.

Determination of applications

The Monitoring Officer will issue a direction in the form of a Certificate of Opinion (Appendix A), as to whether or not, in their opinion, the duties of the post meet the section 2(3) LGHA 1989 criteria, for politically restricted posts.

If the Monitoring Officer directs that the duties of the post are not to be regarded as a politically restricted post, Human Resources will comply with the direction and remove the post from the third category list.

The post holder will be notified by Human Resources of the Monitoring Officer's decision, within five days' of the date of the Certificate of Opinion.

There is a right of appeal to the Head of Paid Service as set out in Appendix B.

Directions to include a post in the list of politically restricted posts

An application may be made to the Monitoring Officer by the incumbents of posts or any person for a direction that a post be included in the list of politically restricted posts. This would apply in a case where the Council had not designated a post as politically restricted and may be unwilling to do so.

The procedure detailed above will apply. The Monitoring Officer may only give a direction where she determines that the post satisfies the test referred to in section 2(3) LGHA 1989 AND the post is neither referred to in the Scheme of Delegations to Officers nor listed as a politically restricted posts.

Transferring exemptions to another local authority or post

The 1989 Act requires an application for exemption to be made by the post holder in respect of a particular post and accompanied by a Certificate of Opinion relating to the duties of the post at the time of the application for exemption. An original exemption cannot therefore be transferred to another local authority or to another post.

Amendments to this Procedure

The Monitoring Officer has delegated authority to amend this Procedure.

Frequently asked questions

Qu. What if I am unhappy that my post is deemed to be politically restricted?

If your role is on the sensitive list and you feel it has been erroneously applied to this list, you may apply to the Monitoring Officer for an exemption. If you are dissatisfied with the decision of the Monitoring Officer you may appeal to the Head of Paid Service, using [the Appeals Process set out in Appendix B](#).

Qu. What if I change my post/role? How will I know if my new role is deemed to be politically restricted?

It is your Manager's responsibility to identify if your post is deemed to be politically restricted. You should talk to him/her.

Qu. How often will my post be reviewed to ascertain whether it is politically restricted?

An annual review will be undertaken and you will be informed in writing whether your role is deemed to be politically restricted.

Qu. May I resign my post in order to undertake political activities and then subsequently be reemployed?

You may resign your post to take up outside political activity; however you may not be re-employed with Mendip District Council within a period of 12 months of the cessation of your political activity. Mendip District Council does not have an obligation to hold your post open nor to give you preferential treatment when applying for a new post.

Qu. May I view a list of posts deemed to be politically restricted?

Human Resources holds a list of such posts which are kept updated. You should contact your Human Resources Advisor for more information.

Legislation

- The Local Government Act 1972;
- The Local Government and Housing Act 1989;
- The Local Government (Political Restrictions) Regulations 1990 (S) 851.
- The Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 [SI 2237];
- The Local Democracy, Economic Development and Construction Act 2009.

Appendix A - Politically Restricted Posts

CERTIFICATE OF OPINION

MENDIP DISTRICT COUNCIL

LOCAL GOVERNMENT AND HOUSING ACT 1989

Section 2(3) of the Local Government and Housing Act 1989 states that political restriction applies where the postholder:

- (a) gives advice on a regular basis to the authority themselves, 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;
- (b) speaks on behalf of the authority on a regular basis to journalists or broadcasters.

Monitoring Officer

(*Please tick appropriate box)

Do fall within Section 2(3) of the Local Government and Housing Act 1989*

Do not fall within Section 2(3) of the Local Government and Housing Act 1989*

Post Title:

Full Name of Current Post holder:

Post holder's salary £

Grade:

Job Profile (Please attach)

It is a requirement that the job profile contains adequate information. For filled posts, the information provided needs to show what extent, over the past twelve months, the post holder has advised the Council/Cabinet, its committees or sub-committees, or joint committees or a Cabinet Member and/or spoken regularly for Mendip District Council, to journalists and broadcasters.

For new posts, it will be necessary to state to what degree it is anticipated the post holder will be carrying out the duties outlined above.

MONITORING OFFICER:

Name:

Signature

Date:

Appendix B – Politically Restricted Posts

Appeal to the Head of Paid Service

- (a) If the Monitoring Officer has decided that a post has been erroneously categorised as a politically sensitive or the categorisation has been wrongly removed the an appeal can be made to the Head of Paid Service within 21 days of the Monitoring Officer's decision.
- (b) The appeal must be in writing setting out details of why the Monitoring Officer's decision is incorrect.
- (c) The Head of Paid Service will review the decision and will either confirm the Monitoring Officer's decision or make a new decision.
- (d) The decision of the Head of Paid Service is final.