

Personnel Committee

Age Retirement Policy Update

7 July 2011

Report of Head of People and Improvement

PURPOSE OF REPORT

To consider the Council's policy in relation to age retirement.

This report is public

Recommendations

The Personnel Committee is recommended:

- (1) To approve the withdrawal of the Council's age retirement policy.

Executive Summary

Introduction

The Council introduced an age discrimination and age retirement policy in October 2006 as a consequence of the introduction of the Employment Equality (Age) Regulations 2006. This policy follows the statutory retirement procedures and includes provisions for the individual employee to request continued employment beyond the age of 65. At present an employee's contract is ended on the day before their 65th birthday, the default retirement age (DRA), unless their request for continued employment is approved, and an extension of up to one year is given.

Since 1 October 2006 when the Age Regulations were introduced, retirement has been included in the Employment Rights Act 1996 (ERA) as the sixth potentially fair reason for dismissal. Schedule 8 of the Age Regulations also amends the ERA to say that if the employer has followed the 'duty to consider' employment beyond age 65 at the employee's request to work and the contract of employment terminates on the notified intended date of retirement then retirement will be the reason for dismissal by the employer and any other reason shall be disregarded.

From April 2011 transitional arrangements will be in place for the removal of the default retirement age of 65. These changes include the removal of the

associated statutory retirement processes, including the employer's duty to provide notice of retirement and the employee's right to request to work beyond normal retirement age.

These changes mean that from 1 October 2011, employers will no longer be able to rely on the default retirement age to justify a dismissal for a compulsory retirement.

Employers who wish to dismiss older workers after the 1 October 2011 will have to do so in line with the requirements of section 98 of the Employment Rights Act 1996 (i.e. a fair procedure for dismissal for capability, conduct, illegality or some other substantial reason).

Proposals

Current Practice

The Government has confirmed that the Default Retirement Age (DRA) will be abolished with effect from 1 October 2011. The current DRA procedures allow employers to retire employees without fear of litigation provided they follow the statutory retirement procedure, the first step of which is to give the employee between six and twelve months' notice of the intended retirement date. This procedure will remain in effect until 6 April 2011.

Chronology of Changes

- **30 March 2011.** This will be the last date on which employers will be able to issue notice of retirement under the current DRA procedures to employees they wish to retire by 30 September 2011.
- **1-5 April 2011.** Transitional arrangements will be in place enabling employers to issue notices of retirement under the current DRA procedures.
- **6 April - 30 September 2011.** Between 6 April and 30 September 2011, only those employees who were told before 6 April, and who are due to retire before 1 October, can be compulsorily retired using DRA.
- **1 October 2011.** From 1 October 2011 employers will not be able to use the DRA to retire employees compulsorily.

Conclusion

Currently, retirement is regarded as a potentially fair reason to dismiss as long as the statutory retirement procedure is followed as within the Council's Age Retirement Policy. From 1 October 2011, as the DRA and from the 6 April 2011 when the statutory retirement procedure is withdrawn this Council will no longer be able to apply the Age Retirement Policy.

On this basis the Age Retirement Policy and the Age Discrimination Policy (that it exists within) need to be withdrawn with effect from the 6 April 2011.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 The Council has an obligation to ensure its policies and procedures remain up to date in relation to employment law

There is no option but to withdraw the policy as the legislation and procedures will cease to exist with effect from the 6 April 2011.

Implications

Financial: There are no financial implications in agreeing this policy.

Comments checked by Denise Taylor, Service Accountant, 01295 221982

Legal: The policy must be updated to reflect the new legislation to avoid challenge.

Comments checked by Nigel Bell, Interim Monitoring Officer, 01295 221687

Wards Affected

None

Document Information

Appendix No	Title
Appendix 1	CDC Age Discrimination Policy
Background Papers	
None	
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