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## RETIREMENT AGE

### 1 SUMMARY

- 1.1 This report seeks to revise the Council's policy on compulsory retirement at 65 as a move to best practice and to help alleviate recruitment and retention issues in some areas.

### 2 INTRODUCTION

- 2.1 On 8 February 2005 the Policy and Finance Committee agreed that in respect of retirement age the principle of policy revision could be endorsed but requested a further report on:-

- The factors that could be associated with introducing twelve month contracts;
- The application of the Performance Development Review process;
- The type of scenarios that could arise

- 2.2 It was originally proposed that the Council should allow staff to continue working at the discretion of the Head of Service and subject to satisfactory annual Performance Development Review. In considering matters arising out of the debate at the above meeting, it is proposed that this now be on the basis that the retirement age remains at 65 but may be extended on an annual basis up to age 70 subject to the existence of a satisfactory business case.

### 3 DETAILED CONSIDERATIONS

#### **The factors that could be associated with introducing twelve month contracts**

- 3.1 Under proposed legislation, staff reaching the age of 65 will have the right to request to continue working. The 'right to request model' will be similar to flexible working requests, where employers must respond in writing and can refuse only for valid business reasons. Under current proposals individuals will not be able to challenge a refusal but may be able to challenge the process. It is likely financial sanctions for 'process' failure will be small.
- 3.2 Full consultation on the specifics of the legislation is expected to take place in the summer of 2005 and the regulations will come into effect from 1 October 2006.

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- 3.3 It is not clear yet whether an employer can ‘retire’ an employee after the default age without being vulnerable to a claim of age discrimination. It would be prudent, therefore, to operate a default retirement age of 65. This could include an option on request to continue working up to age 70 on an annual review basis.
- 3.4 The statutory process employers must follow in making a decision on a request to work beyond 65 and the rights employees will have with regard to terms, conditions and unfair dismissal have yet to be determined. It is, therefore, possible under current legislation to consider each request on an individual basis and, therefore, to offer 12-month contracts. This policy, if adopted, will need to be reviewed in the light of developing legislation.
- 3.5 The Council is obliged to inform employees that they have a right of appeal against the termination of their contract even where it has come to a natural end. Although those over the age of 65 cannot currently claim unfair dismissal this may change as a result of the proposed legislation. This situation will also require review once the proposed legislation has been approved.

#### **The application of the Performance Development Review process**

- 3.6 Performance development review (PDR) sets objectives for staff that are specific, measurable, achievable, realistic and timed. This ensures that employees are aware of what is required of them in their role within the organisation and enables the manager to monitor performance against agreed criteria. It also enables staff to receive the support and training required to help them achieve their objectives.
- 3.7 In the case of an employee on an annual contract, the PDR can set out criteria for maintaining a required level of performance. This may include specific issues with regard to attendance and engagement in the role expected of the post. The PDR is a bench-mark and development tool and although poor performance may be raised within the PDR process, any issue with regard to performance must be tackled immediately rather than left for the next PDR.
- 3.8 In the management of performance, older staff must be treated no differently than other employees and should be subject to exactly the same processes. The PDR process enables clear performance criteria to be set so there are no grey areas and everyone knows what is expected of them.

#### **The type of scenarios that could arise**

- 3.9 Care must be taken not to confuse capability and performance issues. For example if someone develops a medical condition it cannot be treated as a performance related problem. The capability procedure would be used and occupational health involved to advise whether the person was ‘fit’ for work.

- 3.10 Discussions around poor performance need to be open and direct at whatever age a person is. Staff will have different reasons for wanting to work. If someone needs to continue working for financial reasons but they don't really want to be at work issues may arise in terms of attitude and performance. These must be tackled. In the past organisations may have waited out the problem. The organisation must be active in tackling poor performance, which includes personal commitment, attitude, behaviour, delivery and quality.
- 3.11 If someone was medically unfit to continue work or their performance was not acceptable, the person concerned could be given the required notice of termination of their contract – usually 1 month. At present those over 65 do not have unfair dismissal rights. Again this would need to be reviewed in light of the impending legislation. It would be humane to treat staff over 65 as we would any other staff and explain the reasons for poor performance and offer the opportunity for improvement.
- 3.12 Examples of where we may wish to retain staff post 65 include:
- Areas where there is a regional or national skills shortage
  - Where we want to retain corporate knowledge
  - Where we wish to reduce recruitment costs and activities
  - Where it assists us to maintain a representative workforce in terms of gender, ethnicity and disability
- 3.13 Where redundancies are required we would look for natural wastage from those over 65.

## **4 RISK IMPLICATIONS**

### **4.1 Strategic Risk**

Where we have able employees who want to continue working we need to utilise their skills to enable us to meet future service needs.

### **4.2 Resource Risk**

Rising costs of recruiting staff may not be sustainable. We need to look at alternative ways of ensuring we have the skills and knowledge required in the organisation.

### **4.3 Operational Risk**

Managers need to assess staff capability through the Performance Development Review process to ensure we manage the performance of all workers.

As both health and physical strength can decline with age, it is essential that this forms part of the review for older workers. Referral to occupational health before agreeing to a 12- month contract post 65 may be advisable in some circumstances, especially in physically demanding roles.

#### 4.4 Reputation Risk

Implementation should help the Council to be an employer of choice.

### RECOMMENDATION

5.1 It is proposed that the Committee **RESOLVES** that

- (1) The retirement age for employees remains at 65 years.
- (2) Staff are permitted to work beyond the age of 65 (on an annual fixed-term basis) up to the age of 70 where a business case for this exists and subject to annual Performance Development Review.
- (3) This policy is kept under review in the light of changing legislation.

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### Background Papers:

None.

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