

# RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PERSONNEL COMMITTEE

Agenda Item No.

meeting date: WEDNESDAY, 1 JUNE 2011  
title: DEFAULT RETIREMENT AGE  
submitted by: PERSONNEL OFFICER  
principal author: LIZ RAWSON

## 1 PURPOSE

1.1 To inform Members of the recent legislation which abolishes the default retirement age (DRA) with effect from October 2011.

1.2 Relevance to the Council's ambitions and priorities:

- Council Ambitions – Compliance with this legislation will allow us to achieve our ambitions through having skilled and experienced staff who can deliver the Council's services.
- Community Objectives – Compliance with this legislation will convey a positive message to staff about the retention of older workers and as one of the main employers in the area, demonstrate our commitment to value all our members of staff and that there is no discrimination on age or any other grounds.
- Corporate Priorities – In accordance with our commitment to invest in staff, this new legislation encourages the retention of older workers' skills and expertise to enable provision of efficient services and drive towards being a "well managed Council".
- Other Considerations – There is a legal requirement for this authority to comply with the new legislation. Failure to do so could result in adverse publicity and possible claims of unfair dismissal and discrimination.

## 2 BACKGROUND

2.1 The default retirement age will be abolished from 1 October 2011.

2.2 From April 2011 until 30 September 2011, there are transitional arrangements in place.

2.3 It is now accepted and supported by research that people are living longer and working longer. At the same time, the number of younger people joining the labour market is dropping. There is also evidence to suggest that by the early 2020s, people aged between 50 and 64 will comprise almost a third of the workforce. The number of workers under 35 is falling with the fastest decrease among the 18 - 24 age group. This provides the backdrop for the focus on age discrimination legislation during the past few years, and this new legislation abolishing the default retirement age that encourages staff to continue working should they wish to and for as long as they wish to.

2.4 The Employment Equality (Age) Regulations, which came into force on 1 October 2006, provided for a default retirement age of 65 that employers could rely on if they wish. The regulations made earlier retirement ages unlawful unless employers could objectively justify them. The regulations also introduced a statutory right for individuals to request postponement of retirement beyond the age of 65.

- 2.5 Since the introduction of the Employment Equality (Age) Regulations, we have received a number of requests from staff to continue working beyond age 65 and the majority of these requests have been approved.
- 2.6 However, this new legislation repeals the 2006 Employment Equality (Age) Regulations and removes the default retirement age altogether.
- 2.7 For those members of staff who reach their 65<sup>th</sup> birthday during the transitional period, notifications of retirement have already been issued. Staff have been made aware of their retirement date (normally the day before their 65<sup>th</sup> birthday for pension purposes), and of their right to request to continue working beyond age 65.
- 2.8 For those members of staff who reach their 65<sup>th</sup> birthday on or after 1 October 2011, no notifications have been issued and staff will continue in post, unless they request to retire ie resign from their post.
- 2.9 There are 5 permanent members of staff and 1 casual member of staff who will reach age 65 during 2011. 3 of these members of staff have already received retirement notifications and the remaining 2, who reach age 65 after 1 October 2011, will continue in employment unless they request to retire and submit their resignation.
- 2.10 Under the new legislation, staff will retire when they are ready to; enforced retirement will only be possible if it is objectively justified. If this authority wishes to compulsorily retire a member of staff, it would have to demonstrate that the retirement had been objectively justified and was a “proportionate means” of achieving a “legitimate aim”.
- 2.11 For the purposes of this piece of legislation, “proportionate” means:
- what the authority is doing is actually achieving its aim;
  - the discriminatory effect should be significantly outweighed by the importance and benefits of the legitimate aim; and
  - the employer should have no reasonable alternative to the action that it is taking.
- 2.12 For the purposes of this piece of legislation, “legitimate aim” means:
- economic factors such as the needs of and the efficiency of running an authority;
  - the health, welfare and safety of the individual (including protection of young people or older members of staff); or
  - the particular training requirements of the job.
- 2.13 As an authority, we must be seen not to be discriminating against any member of staff on the grounds of age. There are no exceptions; the legislation covers all members of staff in all organisations.
- 2.14 The removal of the default retirement age does not affect an employee's state pension age and entitlements, which may well be separate from the age at which they retire.

### 3 ISSUES

- 3.1 The removal of the DRA not only raises practical issues for the authority in managing the older workers, but also across the workforce more generally in areas such as succession and workforce planning, performance management and ensuring consistency and fairness in our policies and practices. It is important to remember that the removal of the DRA will have implications for all employees in terms of

career expectations and advancement. For this authority with a relatively flat structure, it will impact on opportunities for career development.

- 3.2 Organisations are recommended to have regular conversations with all employees, not just older members of staff. These conversations should make clear expectations of staff and include discussions on their performance and future plans. ACAS have produced guidance notes on how to manage this process. This authority already has formal and informal mechanisms in place to manage this. Annual appraisals are an opportunity for staff to consider and discuss their careers plans and aspirations and as a small authority, there are informal communications taking place between managers and staff all the time. Again providing an opportunity for staff to discuss their plans, however, there is no obligation on a member of staff to make us aware of their plans or to offer anything more than the contractual notice period.
- 3.3 ACAS have suggested that the introduction of this new legislation should be treated as an opportunity for authorities to review their practices and processes for managing employees and their performance.
- 3.4 Research done in organisations where there is a policy of employing older workers has shown that older workers (in general terms):
- have lower levels of staff turnover;
  - don't block opportunities for younger workers;
  - have a broad range of skills, experience and ideas to offer;
  - can be as productive as younger workers;
  - have fewer accidents and lower levels of short-term sickness;
  - are as successful in training as younger workers and can help to mentor new starters.
- 3.5 If this authority wished to retire an employee, we would have to demonstrate that we had followed a fair procedure under the ordinary "unfair dismissal" rules and be able to demonstrate that, whatever the reason for dismissal, our procedures had been followed and we had been fair and reasonable throughout the process.

## 4 CONCLUSION

- 4.1 To prepare for this new legislation, CMT have already been briefed on the new legislation (5 January 2011). Further information has already been circulated to heads of service who have staff reaching their 65<sup>th</sup> birthday after 1 October 2011.
- 4.2 In addition, we are:
- reviewing the age profile of our existing workforce and what impact this may have in each different service area;
  - continuing to encourage our experienced members of staff to share skills and knowledge and to involve them in training and mentoring new starters;
  - trying to ensure that all staff recognise that they are managed and valued for the work they do regardless of their age; and
  - considering savings which can be achieved by reducing staff turnover costs ie by helping skilled older workers to carry on working. This has already been achieved for some members of staff using part-time or flexible working.

## 5 RISK ASSESSMENT

- 5.1 The approval of this report may have the following implications:

- Resources – Preparations for the implementation of this new legislation will be carried out within existing resources. No additional costs to be incurred.
- Technical, Environmental and Legal – Compliance with this new legislation is a statutory requirement and if the authority does not comply with the legislation, it could face legal action resulting from claims of unfair dismissal and discrimination.
- Political – None.
- Reputation – The changes will have far reaching implications for this authority as we have an ageing staff profile. If we were to fail to make the necessary changes to managing retirement, the authority could face claims of unfair dismissal and discrimination.

## 6 **RECOMMENDED THAT COMMITTEE**

6.1 Note the report.

PERSONNEL OFFICER

For further information please ask for Liz Rawson, extension 4409.