

EAST HERTS COUNCIL

HUMAN RESOURCES COMMITTEE – 31 AUGUST 2006

REPORT BY INTERIM DIRECTOR OF ORGANISATIONAL DEVELOPMENT

9. AGE DISCRIMINATION LEGISLATION OVERVIEW

WARD(S) AFFECTED: NONE

'D' RECOMMENDATION – that a default retirement age for employees of 65 years of age be adopted.

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1.0 Purpose/Summary of Report

1.1 To update Members on progress on implementing the Employment Equality (Age) Regulations 2006, which will become law on 1 October 2006.

1.2 Members are asked to agree to adopt the default retirement age of 65.

2.0 The Report

2.1 From 1st October 2006 Employers must ensure that they do not discriminate against employees or potential employees on the grounds of age. This will impact on the following areas

- Recruitment
- Benefits
- Other policies during employment
- Redundancy
- Retirement
- Culture and Communications

2.2 The Impact of this Legislation

It is worth noting that the legislation applies to 'workers' rather than the more limited term 'employees'. There is a wide definition of worker although there are some exemptions in the legislation, for example volunteers. In some instances the definition of workers includes 'casuals' (e.g. Playscheme staff). Legal advice in this

regard is that it is foolish to assume that this category of workers will not be covered so East Herts need to consider this group of workers as they are involved in some services.

2.3 The legislation will require case law to test what is considered lawful and what is not.

2.4 It is predicted that this legislation will spark a rush of claims because it affects everyone. The UK Government anticipate 8 times as many claims on age compared to sexual orientation or religion. There will be many angry and articulate workers who feel they have nothing to lose in lodging an employment tribunal claim. So it is important that East Herts take appropriate steps to address this legislation.

Under the law as with other anti-discrimination legislation, direct and indirect discrimination are addressed along with harassment and victimisation.

### 3.0 Contribution to the Council's Corporate Objectives

Improve the health and sustainability of the organization – check new objectives.

### 4.0 The Report

Human Resources (HR) is reviewing its policies and procedures to ensure we are in line with the new legislation. It is a large piece of work because it impacts on every area of employment (see paragraph 12 below).

### 5.0 Recruitment

5.1 For recruitment, HR will review applications forms to ensure that we do not discriminate against those applying, the issues we need to address are:

- Do we need to ask applicants to complete a full chronological history or education and employment?
- Should we move to more competency based person specs?
- Any recruitment advertising must send out age neutral messages – number of years experience will not only be bad practice but unlawful if it appears in adverts.
- We need to ensure our selection process is age neutral.

5.2 We will need to work with managers to assist them with this change

in management style and process, for example, we need to give consideration to what it is we actually need experience in rather than just asking for 'X' years experience.

## 6.0 Pay

Our current pay scales are based on the broad banding model and in some grades if the post holder were to be appointed on the bottom point of the grade it could take 8 years to reach the total of the scale. This could be deemed to be discriminatory and break the 5 years allowable under the legislation for increasing pay and benefits. It has been agreed to continue with these pay scales on the basis that such bands can be objectively justified on the grounds of rewarding loyalty and service. But HR does intend to look at whether this position will be sustainable longer term.

## 7.0 Benefits

We need to ensure that our benefits package is not discriminatory. The law allows for service up to 5 years to be taken into account to awarding increased benefits but no more. Nevertheless, Council will need ensure that all benefits on offer are age neutral.

## 8.0 Redundancy

Under the legislation the lower age limit of 18 and the upper age limit of 65 have been removed for statutory redundancy compensation. Employers can no longer select on age grounds so the old Last In First Out (LIFO) criteria will be deemed unlawful. HR is currently working to ensure that its new policies relating to redundancy are lawful. HR has developed a new redundancy policy, which is still at the consultation stage, to ensure that the new statutory entitlements are incorporated along with our duty as an employer to ensure no age bias in decision making in this area.

## 9.0 Retirement

- 9.1 The statutory retirement age has been set at 65 and will be reviewed in 4 years. Normal local government retirement age is 65 and currently the Local Government Pension Scheme has a normal retirement age of 65. CMT recently agreed that the normal retirement age for East Herts Council would remain 65. This is the default retirement age stated within the legislation. HR recommend that Council adopt this default retirement age. An alternative retirement age would need to be justified. An alternative would be

not to have a retirement age, however this has implications for succession planning and would also mean that we would need to go through a formal dismissal for anyone leaving the organization after they were 65.

- 9.2 Employers have been given a specific duty to consider requests from employees to continue working after the age of 65. The law provides for a process to cover dismissal on grounds of retirement which is prescriptive with timescales to adhere to and ensure fair dismissal. Briefly this means that between 12 and up to 6 months prior to each employee's 65th birthday, the manager must write to the individual advising them of the right to request to continue working. If the employee does not wish to take up this right, then they will retire at 65 as in the past. However, if they wish to continue to work they need to write back requesting their right to do so.
- 9.3 The law has been framed so that the employee can refuse the request without giving a reason.
- 9.4 This is an important point because it enables the employer to retire those who, for reasons of failing performance or poor health, are no longer able to work as effectively as required without having to explain this to someone at the an important milestone in their life. HR have started to draft a policy and procedure to incorporate this statutory provision and it will be discussed with UNISON and staff affected by the pending restructure shortly before being put before the HR Committee for agreement.
- 9.5 Currently we have two employees who will be reaching retirement in the next 6 months. They are being advised of their rights in this area. In one case the decision has been made to continue employing for a further 2 years.
- 10.0 Other policies during employment
- 10.1 The areas of training, management development and performance management will need to be scrutinised. A manager can no longer ignore poor performance because the employee will shortly be retiring. He/she may not want to retire at, say, 65 and it will be unlawful to decide to retire someone because of their poor performance.
- 10.2 Similarly managers will no longer be able to refuse training on the grounds that someone may be retiring in 2 years.

10.3 In some areas East Herts is busy growing its own and promoting them. The process must be age neutral.

10.4 Work-life balance policies such as flexible working will now need to be open to all.

#### 11.0 Communicating the Changes

11.1 We will need to inform all employees of the ramifications of the law because as with other legislation affecting people at work, an employer is vicariously liable for negligent acts or omissions by his employee in the course of employment whether or not such an act or omission was specifically authorised by the employer.

11.2 So if an East Herts employee, in the course of his/her work, commits an act for which another employee can claim discrimination, then East Herts as well as the employee would be liable. Awards for such cases are unlimited. Where girly calendars were deemed discriminatory under sex discrimination, age related birthday cards may also be a thing of the past in the work place.

11.3 Advice on this is exercise a 'zero tolerance' approach.

#### 12.0 Action Plan for Preparing for Age Discrimination Legislation

<b>Area of Responsibility</b>	<b>Lead Officer</b>	<b>Complete by Date</b>
Recruitment	RAJ	
• Application Form – do we need whole employment history?		1 <sup>st</sup> October 2006
• PS v Competencies	RAJ	1 <sup>st</sup> March 2007
• JD and JE check to ensure no age bias e.g. experience and qualifications	RAJ/MH/RG	Immediately and on-going
• Recruitment Advertising – ensure suitability of content	MH/RG	Immediately and on-going

language		
• Selection process – ensure questions and tests do not show bias	ALL	Immediately and on-going
• Pre-employment Health screening – check forms	RAJ	30 <sup>th</sup> June 2006
• Graduate Trainees – ensure process unbiased. Review age limits on this	HF	
Employee Relations	RAJ	
• Communication Strategy to ensure staff awareness of legislation and responsibilities	RAJ/TN	1 <sup>st</sup> September 2006
• Absence Management Policy	RAJ	12 <sup>th</sup> June 2006
• Redundancy Policy	RAJ	30 <sup>th</sup> June 2006
• Redeployment Policy	RAJ	30 <sup>th</sup> June 2006
• Grievance Policy	RAJ	12 <sup>th</sup> June 2006
• Disciplinary Policy	RAJ	12 <sup>th</sup> June 2006
• Capability Policy	RAJ	12 <sup>th</sup> June 2006
• Bullying & Harassment Policy	RAJ	11 <sup>th</sup> August 2006
• Flexible Working Policy	TN	
• Long Service Award. Pros and cons of continuing	RAJ	1 <sup>st</sup> August 2006
Pay & Benefits		
• Pay Audit analyse how pay is applied in relation to age and flag up trends	MR	Asap and annually

• Hay Job Evaluation – review experience requirements and remove	RAJ/MH/HF/BH	1 <sup>st</sup> August 2006
• Review current grade banding	RAJ	1 <sup>st</sup> August 2006
• Review enhanced benefits due to age to ensure compliance.	RAJ	1 <sup>st</sup> August 2006
• Ensure non-pay benefits to ensure age compliance	RAJ	1 <sup>st</sup> August 2006
Learning & Development	HF	
• Training Courses – monitor access and attendance	HF/MR	
• Management Development	HF	
• PDRS ensure managers application is not age bias.	HF	
Retirement		
• Report to CMT on retirement age for Council Staff	RAJ RAJ	18 <sup>th</sup> July 2006 1 <sup>st</sup> October 2006
• Policy on Retirement		

### 13.0 Conclusion

East Herts is already beginning to experience problems in attracting and retaining workers. It is important that we ensure the legislation is incorporated into our employment practice, that it is communicated to staff and that it is transparently fair so that it is seen to be fair.

### 14.0 Consultation

As they are ready for consultation, policies will be given to CMT for consideration and discussed with Unison. All Policies for

consideration at the 31<sup>st</sup> August 2006 HR Committee have been reviewed to ensure they are age neutral.

#### 15.0 Legal Implications

15.1 East Herts must have the policies in place to conform to the requirements of the Act. Additionally, as with other Anti-Discrimination Acts, the Government is bringing the requirements into line and requiring Public Bodies to carry out monitoring to ensure they meet their obligations.

15.2 Currently for unfair dismissal awards may range from £8,400 to £65,200. Additionally, for refusal to comply with a reinstatement order, a further award of between £7,280 and £15,680 can be made. Awards against unlawful discrimination can be unlimited.

#### 16.0 Financial Implications

16.1 During the completion of the action plan, which includes a full review of HR policies and processes, financial implications may be identified. Should this be the case, the Committee will be advised accordingly. With any budget implications being subject to growth bids.

#### 17.0 Human Resource Implications

This is a very large piece of work that will require considerable time and effort to ensure compliance.

#### 18.0 Risk Management Implications

Failure to update HR procedures to comply with latest Employment Law will leave the Authority open to challenge at Employment Tribunals which may be costly and damaging to our reputation.

#### Background Papers

None

Contact Officer: Rosemary Jones – Human Resources Officer - ext 1630.