



EAST HERTS COUNCIL

**DUTY TO CONSIDER EXTENDING EMPLOYMENT BEYOND NORMAL
RETIREMENT AGE POLICY & PROCEDURE**

HUMAN RESOURCES

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1. Purpose

- 1.1 East Herts is committed to creating an environment in which there is respect for individuals irrespective of their gender, race, ethnicity, colour, marital status, disability, age, sexuality, family responsibilities, religion, trade union involvement or political beliefs.
- 1.2 This document has been developed as an acknowledgement of the value of our older employees, to retain their skills and knowledge and to enable those who wish to retire to do so with dignity by giving them time to consider their options.
- 1.3 Those approaching 65 and considering their options may wish to read The Council's Flexible Working Scheme and the section on Flexible retirement which enables employees to move towards retirement gradually (if they have not already done so) and provides a further option of being able to work while accessing Local Government pension (for those in the scheme).
- 1.4 The Procedure has been produced in line with the Employment Equality (Age) Regulations 2006. Effective from 1st October 2006 if an employee does not want to retire at normal retirement age compulsory retirement will constitute a dismissal.
- 1.5 The regulations place a duty on employers to consider all requests from employees to extend employment beyond normal retirement age and thereafter. Failure to do so will result in automatic unfair dismissal.

2. Principles of the Procedure

- 2.1 The Council is committed to employing and retaining the best people for the job. This document provides a framework for the retention of skills beyond the Council's normal retirement age which has been set at 65.
- 2.2 The procedure ensures the right of employees to request to continue working after they reach the age of 65 should they so wish.

- 2.3 The procedure will ensure that an employee is able to make formal representations to continue working which the Council has a statutory duty to consider.
- 2.4 Managers should consult Human Resources for guidance on the use of this procedure to ensure that requests are given careful consideration on a case by case basis.
- 2.5 The Council is not required under the law to give a reason for a refusal to a request to continue working beyond normal retirement age.

3. Scope of the Procedure

3.1 The procedure will apply to:

3.1.1 employees who are approaching the Council's normal retirement age of 65.

3.1.2 Employees who are over 65 and whose further period of employment is under review.

3.2 The procedure will not apply;

3.2.1 to conduct or capability issues where other procedures are in place.

3.2.2 in redundancy situations.

4. Record Keeping

4.1 HR will be responsible for advising managers when an employee is within one year of normal retirement age and for retaining the paperwork surrounding this process.

5. The Procedure

5.1 Stage 1

- 5.1.1 No more than 12 months before and at least six months in advance of reaching 65, the Head of Service will write to the employee to notify them of their right to request to go on working beyond their 65th birthday using the model letter and Expression of Interest form set out in Appendices 2 and 3.
- 5.1.2 The employee must return their form to the Head of Service within 3 months to allow time for consideration of their request or for pension arrangements to be made.
- 5.1.3 The employee should state whether they wish to continue working indefinitely; for a set period, for example, one or two years; or until a stated date. They should also make any requests regarding alterations to their current working hours or duties in accordance with the Flexible Working Scheme.
- 5.1.4 If the Head of Service agrees to the request to continue working, then confirmation should be sent to the employee setting out: how long they can continue to work and if either party wishes to vary hours or duties, a meeting may be required to discuss and agree new arrangements. A copy of this letter must be sent to HR to make the necessary arrangements (Appendix 4).

5.2 Stage 2

- 5.2.1 If the request cannot simply be agreed the Head of Service concerned must write to the employee offering a date to meet to discuss the matter. (Appendix 5.)
- 5.2.2 The meeting could also discuss continuation in work with suggested change/s to the working arrangements put forward by either manager or employee.

5.2.3 The employee must be advised of the right to be accompanied by a colleague they should be an employee of East Herts, or a Union Representative.

5.2.4 The employee's companion can address the meeting but cannot answer questions on behalf of the employee (i.e. cannot speak for).

5.2.5 An H R Officer may also attend the meeting to provide advice to the manager and ensure due process. If it is felt appropriate, a note-taker may also attend to record the main points of the meeting.

5.3 Stage 3

5.3.1 The employee has the right of appeal against the decision made at the meeting set out in 5.2 above. (Appendix 6).

5.3.2 The Appeal will be heard by the Departmental Director (or Chief Executive for Heads of Service and above).

5.3.3 Paragraphs 5.2.3, 5.2.4, 5.2.5 will also apply at stage 3.

5.3.4 The decision may be given verbally at the end of the appeal or in writing afterwards. In either case written confirmation must be sent to the appellant within 5 working days of the appeal.

6. Hearing Officers

6.1 Normally the Head of Service will be responsible for the initial letter to the employee and the meeting stage of the process, unless it is the Head of Service or a more senior employee, in which case the next tier up will begin the process and take the meeting.

6.2 Appeals will normally be heard by the Department Director or, if the employee is a Head of Service or above, then the appeal will be heard by the Chief Executive.

7. Timescales

7.1 It is important that these timescales are observed when dealing with this situation because they are a statutory requirement and failure to do so will leave the authority open to claims of unfair dismissal.

7.2 Timescales in Brief

1.	Letter to employee advising of right to consider working beyond 65 if desired.	12 – 6 months before 65 th Birthday
2.	Employee must request in writing that consideration be given to working past the normal retirement age.	At least 3 months prior to 65 th Birthday
3.	Write confirming agreement to the request or setting up a meeting giving 10 working days notice.	ASAP after receipt of request to consider
4.	Set up a second date if the employee is unable to attend first date.	ASAP - no requirement to give a further 10 days notice.
	Write to employee with decision following meeting.	Within 5 working days of meeting date.
5.	Employee invokes their right of appeal.	Within 7 working days of date of decision letter.
6.	Appeal date set ASAP	Giving 10 working days notice of the date.
7.	Set up a second date if the employee is unable to attend the first appeal date.	ASAP - no requirement to give a further 10 days notice.
8.	Appeal decision given in writing following the meeting.	Within 5 working days of date of hearing.

7.3 If the proposals require discussion a letter should be sent inviting the employee to attend a meeting (Appendix 5.) giving 10 working days notice of the meeting. It is important that this meeting is arranged upon receipt of such a request so that the matter can be resolved speedily. If the employee is unable to attend then a further date should be set as soon as practical. The letter advising of the decision of the meeting should be sent to the employee within 5 working days.

- 7.4 If the employee cannot attend the second meeting for any reason, the Head of Service may, after consultation with HR, set out counter proposals or the confirm the intention to retire the employee on his/her normal retirement date. The letter must also inform the employee of his/her right of appeal and that should they wish to exercise this right they should respond in writing within 7 working days of receipt of the letter.
- 7.5 The Appeal should be arranged as quickly as possible, giving the employee 10 working days notice in writing. Exceptionally, an appeal may be heard after the employee has retired. If the employee is unable to attend on the first occasion, a second date should be offered and if the employee does not have a valid reason for absence, the appeal may be heard in his/her absence with all relevant details made available for consideration. A letter setting out the decision following the appeal should be despatched within 5 working days.

8. Employing Staff age 64.5 years and above

- 8.1 As the Council's retirement age is normally 65, managers should bear this in mind if they receive application from individuals of 64.5 years and over.
- 8.2 On receipt of such applications managers should include the applicant in the normal way to assess whether the applicant meets the requirements of the post.
- 8.3 HR will advise the recruiting manager if an applicant is 64.5 years or over and, if successful, the manager should decide on the length of contract he/she is prepared to offer (normally of between 6 and 18 months duration).
- 8.4 Recruitment process should then be undertaken in the normal way and at the end of the interview the applicant advised that, if successful, the post will be offered for the fixed duration (with the opportunity to extend if agreed by both parties).

- 8.5 Further extensions to retirement will subsequently be considered under the duty to consider procedure.

9. Pension Arrangements

- 9.1 Employees contributing to the Local Government Pension Scheme will qualify under the pension scheme regulations for a pension once they reach retirement age. The normal retirement age under the LGPS is 65 and if the employee retires at that age an unreduced pension can be taken based on years of scheme membership.
- 9.2 Scheme members can choose to retire at or after the age of 60 on a voluntary basis or on or after age 50 and before age 60 with the employer's consent.

10.Flexible Retirement

- 10.1 Employees aged 50 or over who, with the consent of the employer, reduce their hours or grade can elect to take their accrued pension benefits whilst continuing in employment.
- 10.2 For a more comprehensive view of flexible retirement please refer to the Flexible Working Scheme page 43 – 45.

Further details of the pension scheme may be obtained from Serco at Hertfordshire County Council on 01992 555467 or LGE's website www.lgps.org.uk.

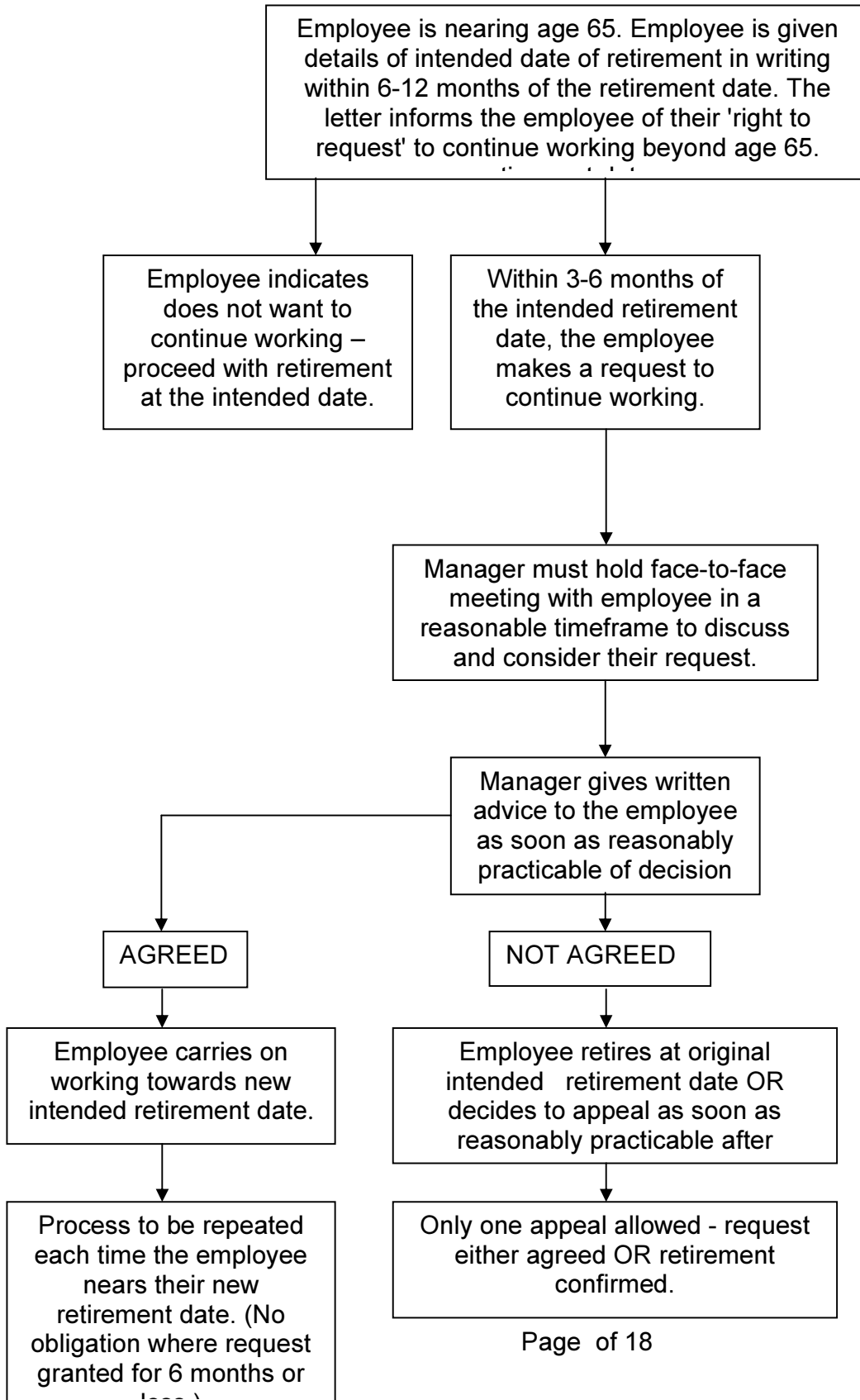
11.Other Considerations

- 11.1 Managers should take into account the needs of their service when considering requests from their staff to continue working.
- 11.2 Each case should be considered on its individual merits as a "one size fits all" approach would not meet the needs of every service.
- 11.3 Managers should bear in mind the following in agreeing to continuing employment:-

- 11.3.1 Extending employment for up to 6 months to complete a specific project of work will not require a further duty to consider process.
- 11.3.2 As a general rule a time span of one or two years should be given if a manager intends to agree to a request to continue working after 65 so that the matter can be considered again, using this procedure.
- 11.3.3 If the agreement to continuation of employment after 65 is unconditional, the capability procedure for performance or ill health or disciplinary policy for conduct issues will have to be activated to effect a dismissal.
- 11.4 An employee can make only one request to carry on working in relation to an intended retirement date. However, if the request is granted and a new intended retirement date is established it will be possible to make a further request to carry on working beyond that revised date.
- 11.5 Retirement is a fair reason for dismissal. However, dismissals could be unfair and practices could give rise to claims of discrimination, such as sex, race, and disability, if this procedure is not followed.
- 11.6 This procedure will be reviewed every 2 years, or sooner if there are any changes in legislation requiring amendments to be made.

Appendix 1

Flowchart for the process of intended retirement and extended working



Appendix 2

Template Letter to advise Employee about their Retirement

Dear

From our records we note that your retirement date will be [*date of retirement n.b. day before 65th birthday*] which is the retirement age for employees of East Herts Council.

You may also be aware that in line with the Council's retirement procedures you can request to continue working beyond 65 if you wish.

I enclose a copy of the Council's Duty to Consider Working Beyond Normal Retirement Age Procedure which outlines the process if you wish to seek to continue carry on working.

If you want to apply to work beyond 65 you will need to submit your request in writing to me (see appendix 2). Any request should be submitted by... [*at least 3 months before the intended retirement date*]. Within the application you should indicate how long you might want the extension to last.

If you wish to retire on your intended retirement date as detailed above, please complete and return the attached form (see appendix2). In order to allow sufficient time to be available to arrange your pension you must return the form by[*suggest 3 months before the intended retirement date*] to allow sufficient time to be available to arrange your pension.

If you have any queries regarding your retirement or the contents of this letter please do not hesitate to contact me.

Yours sincerely

Head of Service

Expression of Interest to be considered for employment beyond the age of 65

Section 1 – To be completed by the employee

(Please tick ONE below and complete the details requested before discussions with your line manager)

- I wish to proceed with my intended retirement date at age 65
- I wish to request, as under paragraph 5 of schedule 6 of the Employment Equality (Age) Regulations, that I continue to work beyond the age of 65
- Indefinitely
- For a stated period
- or
- Until a certain date
- (exact period need not be specified at this stage)

Employee signature	Name in block capitals

Section/Dept	Date

Section 2 – To be completed by the Line Manager

- I support this application to work beyond the age of 65
- I do not support this application to work beyond the age of 65
- I confirm that name does not wish to work beyond the intended retirement date and we should proceed with the retirement date as planned

Head of Service signature	Service Area

Date

Please return this slip no later than 3 months before your 65th birthday/retirement date

Appendix 4

Template letter to employee agreeing to working beyond the age of 65 and above. NB This letter should only be used if the proposed extension period is agreeable to both parties. If the Head of Service is intending to offer a different time limited extension of employment then a meeting must be convened to discuss and allow a right of appeal.

Dear

Further to my letter of [*letter informing of retirement date*] I write to confirm that I agree to your request to continue working beyond the age of 65 [*or 6X*] for a [*state period*] commencing on [*date of the employee's 65th birthday or after revised retirement date*].

This means that your current contractual arrangements will continue and between 12 months and 6 months before your [*age at end of agreed period*] birthday you will again receive a letter advising you of your right to request to continue working if you wish to do so. If you do not wish to exercise this option then you will retire on [*date on day before birthday*]. Should you decide at any time during the next [*state period*] that you wish to retire you can tender your resignation in the normal way.

If you contribute to the LGPS and have any queries, then please contact CERCO on 01992 555467. who will be able to provide advice.

Yours sincerely

Head of Service

CC: HR and Payroll

Template letter informing employee of a meeting to discuss a request not to retire

Dear

I am writing to inform you that after receiving your request not to be retired that there will be a meeting to discuss the matter.

The meeting will be held on *[insert date]* at *[insert time]* at *[insert location]*. I shall be accompanied by *[insert HR officer name]*

You have a right to be accompanied at the meeting by a work colleague or a trade union representative. Your companion may be someone you have chosen, but they must work for East Herts Council. Your companion can address the meeting but not answer questions on your behalf although you may confer with your companion during the meeting.

After the meeting if it is decided to continue your employment beyond the intended retirement date of *[insert date]*, you will receive written notification reflecting these agreed changes to your contract.

If no agreement is reached, you will receive further notification confirming your intended retirement date and informing you of your right of appeal.

Yours sincerely

Head of Service

Template letter following meeting confirming retirement on the intended date

Dear

Following our meeting held on *[insert date]* to discuss your request not to be retired, I am writing to inform you that East Herts Council still intends to retire you *[insert intended retirement date]*.

You have a right to appeal against this decision. If you wish to appeal you must inform me within 7 working days of the date of this letter. Failure to do so may mean that you lose the right to an appeal meeting and East Herts Council may consider your appeal without holding a meeting but they will consider any previous representations that you have made.

Yours sincerely

Head of Service

Template letter notifying employee of the outcome of their appeal

Dear

I am writing to inform you that after our meeting held on [*insert date*] to discuss your appeal not to be retired.

I have carefully considered your arguments and my decision is:

That East Herts Council still intends to retire you on [*insert intended date*]

Or

[Appeal chair should set out the arrangements for the employee to carry on working]

Please be aware that your right to appeal this decision is now exhausted.

Yours sincerely

Chief Executive/Director