

EMPLOYMENT MATTERS COMMITTEE

29 JUNE 2011

AGE DISCRIMINATION POLICY STATEMENT

Report from: Tricia Palmer, Assistant Director, Organisational Services

Author: Sandra Steel, Corporate Employee Relations Officer

Summary

The report seeks agreement to the revised Age Discrimination Policy Statement and removal of the council's Normal Retirement Age of 65.

1. Budget and Policy Framework

1.1 The Policy lies within the Council's policy and budget framework and the Committee's terms of reference. Therefore, this is a matter for the Employment Matters Committee.

2. Background

2.1 On 9 September 2009, Employment Matters Committee agreed the Age Discrimination Policy Statement (minute no. 251/9/2009 refers). This included reference to the council's normal retirement age of 65 years and also included the national Default Retirement Age (DRA) statutory notification process which allowed employees to request to work beyond age 65.

2.2 The council at this time agreed to review the policy in two years time.

2.3 The review has come at an opportune time as there have been significant changes relating to certain aspects of age discrimination legislation recently.

2.4 On 6 April 2011 the Government abolished the DRA of 65 from October 2011 under The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011, with the accompanying statutory notification process ceasing from 5 April 2011.

2.5 The DRA allowed employers to require employees to retire on their 65th birthday provided the statutory notification procedure was followed. With the removal of the DRA, retirement is no longer a potentially fair reason for dismissal within the Employment Rights Act 1996 and employers retaining a retirement age are likely to be challenged on the grounds of age discrimination.

- 2.6 Employers may opt to retain a retirement age, and “Employer Justified Retirement Age” (EJRA) should it be deemed a proportionate means of achieving a legitimate aim.
- 2.7 In 2006, when the UK regulations on age, now subsumed with the Equalities Act 2010, were originally introduced, Medway Council retained a normal retirement age of 65, in common with most Local Authority employers. The Council’s policy at this point has been to consider requests to continue working past retirement age on an individual basis with extensions to employment contracts when a request has been agreed.
- 2.8 The introduction of the Equality Act 2010 together with the subsequent withdrawal of the DRA requires Medway Council to review the position in relation to retirement and as a result review the Age Discrimination Policy.

3. Advice and analysis

- 3.1 The proposed changes that have been made to the current Age Discrimination Policy Statement are to:
- (i) provide more detailed reference to the Equality Act 2010, making the necessary changes to ensure that the councils obligations as an employer are included and highlighting the responsibilities of both line managers and employees to make themselves aware of their obligations in relation to age discrimination.
 - (ii) the changes made as a result of the Equality Act 2010 are listed below:
 - highlighting the fact that age discrimination legislation prohibits direct and indirect discrimination, harassment and victimisation in the areas of employment and vocational training, although accepting that in some circumstances direct and indirect discrimination may be justifiable;
 - ensuring that within the policy direct age discrimination extends to “associative” discrimination; and
 - removing the statutory DRA process but having in place transitional arrangements in accordance with the regulations.
 - (iii) remove the council’s normal retirement age. The decision to remove the normal retirement age supports the council’s approach to treating employees equally and reduces the possibility of the council being open to legal challenge. It also promotes the council’s objective of being an Employer of Choice within the local community.

- 3.2 HR Services will communicate the policy changes to the workforce and ensure that managers are appropriately briefed and trained in the revised arrangements.

4. Consultation

- 4.1 Consultation on this policy statement has been limited because the changes made are mostly in response to statutory changes.

5. Risk Management

- 5.1 The risk of not implementing and promoting an Age Discrimination Policy Statement could lead to allegations of both direct and indirect discrimination, harassment or victimization.
- 5.2 There is a high risk that the Council would be liable for discriminatory actions perpetrated by their staff or agents which is found to be unjustified and not a proportionate means of achieving a legitimate aim.
- 5.3 The individual who carries out the act could also be personally liable and could be required to pay compensation to the victim.
- 5.4 There is no limit on the amount of compensation that can be awarded by tribunals in discrimination claims.

6. Diversity Impact Assessment (DIA)

- 6.1 A Diversity Impact Assessment has been undertaken and is attached as appendix 2. From this it can be determined that apart from the positive action to be taken to recruit younger workers in the age range 16-24 which may impact on older job applicants there are no concerns that any other minority group(s) will be marginalised due to the implementation of this policy.

7. Financial and legal implications

- 7.1 There are no financial implications apart from those mentioned in paragraph 5.
- 7.2 The Council has a duty to ensure that discrimination on the grounds of age is eliminated both in employment and service delivery.
- 7.3 In addition to the above, the Council also has the following additional Public Sector duties under The Equality Act 2010, which requires public authorities to have due regard to:
- Eliminate discrimination, harassment and victimisation
 - Advance equality of opportunity of those who share a Protected Characteristic and those who do not share it and
 - Foster good relations between persons who share a Protected Characteristic and those who do not share it.

7.4 Implementation and compliance with this policy statement will serve to minimise the risks of successful legal challenges against the council.

7.5 Age Discrimination is covered by the Equality Act 2010.

8. Recommendation

8.1 That the Employment Matters Committee agree to:

- a) the adoption of the revised Age Discrimination Policy Statement including the removal of the normal retirement age of 65 as set out at Appendix 1 to the report; and
- b) officers reviewing the Age Discrimination Policy Statement bi-annually and report to Members when necessary with any changes.

Lead officer contact

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Background Papers:

Employment Act 2010 Code of Practice – Employment Statutory Code of Practice

**Medway Council
Age Discrimination Policy Statement
(June 2011)**



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1.0 Introduction

1.1 Medway Council demonstrates through its Equal Opportunities Policy its commitment to ensure that all staff are treated fairly. The implementation of this policy statement will support and strengthen this commitment.

2.0 Equalities Statement

2.1 Medway Council is committed to providing equal opportunities and access to all. This policy statement embraces the spirit of managing a diverse workforce and those responsible for managing others must ensure that no employee is discriminated against either directly or indirectly or victimised on the grounds of their race, disability, sex, sexual orientation, religion or belief, age, marital or civil partnership status or any stage of gender reassignment.

3.0 Core Values and council objectives

3.1 This policy statement supports the council's Core Values. The council believes that a consistent approach to employee management and well-being is fundamental to the delivery of quality services to the public.

4.0 Scope

4.1 This policy statement applies to all staff.

5.0 The Equality Act 2010

5.1 The council will comply to the Equality Act 2010 and by implementing this policy statement will aim to ensure that no employee will:

- discriminate directly, including discrimination by association and discrimination by perception i.e. treat someone less favourably than another because of their age or perceived age unless such treatment can be objectively justified.
- discriminate indirectly i.e. to apply a criterion provision or practice which disadvantages people of a particular age unless it can be objectively justified.
- subject someone to harassment i.e. unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.
- victimise someone because they have or intend to make a complaint or allegation or have given or intend to give evidence in relation to a complaint of discrimination on the grounds of age.
- discriminate against someone in certain circumstances after the working relationship has ended e.g. references.

5.2 The council will treat as serious any employee who knowingly fails to observe the requirements of the Equality Act 2010.

6.0 Roles and responsibilities

6.1 Employee responsibilities

Employees are responsible for familiarising themselves with this policy, in particular the requirements of the Equality Act 2010 (as stated in paragraph 5.0) by treating colleagues and others with dignity and respect at all times.

6.2 Line manager responsibilities

Line managers are responsible for familiarising themselves with this policy statement and its content, ensuring that it is applied and brought to the attention of their staff on a regular basis.

6.3 HR Services responsibilities

HR Services are responsible for implementing this policy statement, monitoring its application and review.

7.0 Principles

The main principle of this policy statement follow the requirements as set out within the Equality Act 2010. The council's policy is that age will not be a factor in any decisions made concerning recruitment & selection, access to employee benefits, opportunities for promotion or training, dismissal, performance management, application of discipline or capability procedures or selection for redundancy.

7.1 Advertising

Wherever possible references to age in recruitment adverts will not be made unless it is a genuine occupational requirement, the advertisement relates to positive action or the advertisement complies with a statutory requirement.

7.2 Recruitment and Selection

The recruitment and selection process will be based on the skills and ability of the individual applicant to do the job and not their age. All staff involved in recruitment and selection will receive training to ensure compliance and must have achieved a satisfactory awareness of related equality and diversity legislation requirements.

7.3 Benefits

The council recognises that incremental pay progression and other service-based rewards are an acknowledgement of the increasing experience and loyalty of staff. Any such rewards will be in line with the requirements of the Equality Act 2010.

7.4 Training and promotion

Training and promotion opportunities are available to all staff and in selecting individuals for training or promotion. It is expected that managers will ensure that individuals are not excluded as a result of being too young or too old. Direct or indirect references to age in Performance and Development Reviews will not be used.

7.5 Redundancy selection and payments

Any redundancy selection policy used will be based on objective criteria.

7.6 Harassment and victimisation

The council's Dignity at Work Policy clearly states that any form of harassment or victimisation on any grounds will not be tolerated.

8.0 Positive action

8.1 The Council has an aging workforce and reserves the right to take positive action measures to assist with its workforce planning to attract into its service younger people. It has regard to the age profile of its current staff and the under-representation of those within the 16-24 age range.

9.0 Monitoring and review

9.1 The council has made a commitment to monitor recruitment and selection, promotion and training and the use of procedures to ensure that no particular age group is being unfairly treated on the grounds of their age.

10.0 Diversity Impact Assessment

10.1 Any new or reviewed policy or procedure will be Diversity Impact Assessed.

11.0 Relevant legislation

11.1 Equality Act 2010

12.0 Table

Subject/Title	
Date agreed by Employment Matters Committee:	
Team responsible for policy	Employee Relations Team
Date of Review:	June 2013
Toolkit updated by:	N/A

Appendix 2 – Diversity Impact Assessment: Screening Form

Age Discrimination Policy Statement

Directorate		Name of Policy	
Business Support Department		Age Discrimination Policy Statement including the removal of the normal retirement age of 65.	
Officer responsible for assessment		Date of assessment	New or existing?
Tricia Palmer, Assistant Director, Organisational Services		23 May 2011	Existing
Defining what is being assessed			
1. Briefly describe the purpose and objectives		Review the Age Discrimination Policy Statement to include the removal of the council's normal retirement age and update following the implementation of the Equality Act 2010.	
2. Who is intended to benefit, and in what way?		Both the council, staff and job applicants will benefit. The council will benefit as all employees will be aware of the behaviour expected of them in relation to age discrimination. Older workers will benefit by being allowed to work beyond 65 following the removal of the council's normal retirement age.	
3. What outcomes are wanted?		No discriminatory practices are undertaken in relation to age.	
4. What factors/forces could contribute to or detract from the outcomes?		Contribute - Commitment to the policy from everyone at all levels of the organisation. - Staff and managers being aware of their responsibilities as outlined within the policy. - Good communication of the new policy to all employees. - Effective monitoring data.	Detract Failure to communicate the policy effectively could lead to: - managers and staff acting in a discriminatory way on the grounds of age; - employees not being aware of their rights; - unlimited costs at Employment Tribunal.
5. Who are the main stakeholders?		Medway Council employees, Members, Trade Union officials and job applicants.	
6. Who implements this and who is responsible?		HR Services implements this policy, Tricia Palmer, Assistant Director, Organisational Services.	

Appendix 2 – Diversity Impact Assessment: Screening Form

Age Discrimination Policy Statement

Assessing impact	
7. Are there concerns that there <u>could</u> be a differential impact due to <i>ethnicity/ racial groups</i> ?	
	No
What evidence exists for this?	The policy provides a positive framework within which all employees from minority ethnic communities can be employed and access their rights in relation to the Equality Act 2010 in a non-discriminatory manner.
8. Are there concerns that there <u>could</u> be a differential impact due to <i>disability</i> ?	Yes
	Those with disabilities may find it more problematic to work beyond the age of 65 depending on their physical disability and whether the organisation is able to make reasonable adjustments.
What evidence exists for this?	There is a need for the organisation to be able to manage and support staff with disabilities or ill-health problems as they get older. This can be done by placing greater emphasis on health promotion to encourage staff to adopt healthy lifestyles so they enjoy better health as they get older. The council has an on-site occupational health adviser who will be available to provide health promotion activities and would also be available at short-notice to deal with any work related health issues should they arise.
9. Are there concerns that there <u>could</u> be a differential impact due to <i>gender</i> ?	
	No
What evidence exists for this?	The policy provides a positive framework within which any gender can be employed and access their rights in relation to the Equality Act 2010 in a non-discriminatory manner.
10. Are there concerns there <u>could</u> be a differential impact due to <i>sexual orientation</i> ?	
	No
What evidence exists for this?	The policy provides a positive framework within which lesbian, gay and bisexual people can be employed and access their rights in relation to the Equality Act 2010 in a non-discriminatory manner.
11. Are there concerns there <u>could</u> be a have a differential impact due to <i>religion/belief</i> ?	
	NO
What evidence exists for this?	The policy provides a positive framework within which people observing particular religions or beliefs (Including none) can be employed and access their rights in relation to the Equality Act 2010 in a non-discriminatory manner.
12. Are there concerns there <u>could</u> be a differential impact	Yes
	The council has an ageing workforce and reserves the right to take positive action measures

Appendix 2 – Diversity Impact Assessment: Screening Form

Age Discrimination Policy Statement

due to <i>age</i> ?		to assist with its workforce planning to attract into its service younger people. It has regard to the age profile of its current staff and the under-representation of those within the 16-24 age range. There is therefore potential for marginalising older age groups of job applicants in some circumstances.
What evidence exists for this?	Apart from the exception as highlighted above the policy provides a positive framework within which people of all ages can be employed and access their rights in relation to the Equality Act 2010 in a non-discriminatory manner	
13. Are there concerns that there could be a differential impact due to <i>being transgendered or transsexual</i> ?	No	
What evidence exists for this?	The policy provides a positive framework within which men, women, and transgender people can be employed and access their rights in relation to the Equality Act 2010 in a non-discriminatory manner.	
14. Are there any <i>other groups</i> that would find it difficult to access/make use of the policy, or who might experience unfavourable treatment (eg people with caring responsibilities or dependants, those with an offending past, or people living in rural areas)?	No	
What evidence exists for this?	The policy provides a positive framework within which men, women, and transgender people can be employed and access their rights in relation to the Equality Act 2010 in a non-discriminatory manner.	
15. Are there concerns there could be a differential impact due to <i>multiple discriminations</i> (eg disability <u>and</u> age)?	No	
What evidence exists for this?	The policy provides a positive framework within which men, women, and transgender people can be employed and access their rights in relation to the Equality Act 2010 in a non-discriminatory manner.	

Conclusions & recommendation		
16. Could the differential impacts identified in questions 7-15 amount to there being the potential for adverse impact?	YES	Yes in terms of taking positive action in recruitment for the 16-24 age group. This may have an adverse impact on other age groups in terms of job applicants.
17. Can the adverse impact be justified on the grounds of promoting equality of opportunity for one group? Or another reason?	YES	Yes, in order to enable the councils workforce to reflect better the age spread of the local community.

Appendix 2 – Diversity Impact Assessment: Screening Form

Age Discrimination Policy Statement

Recommendation to proceed to a full impact assessment?		
No	This policy complies with the requirements of the legislation and there is evidence to show this is the case.	
NO, BUT ...	What is required to ensure this complies with the requirements of the legislation? (see DIA Guidance Notes)	The Age Discrimination Policy Statement has been produced in line with the requirements of the Equality Act 2010.
YES	Give details of key person responsible and target date for carrying out full impact assessment (see DIA Guidance Notes)	N/A

Action plan to make minor modifications		
Outcome	Actions (with date of completion)	Officer responsible
Staff involved in reviewing the policy	Promotion to encourage staff to adopt healthy lifestyles so they enjoy better health as they get older.	HR Services

Planning ahead: Reminders for the next review		
Date of next review	2013	
Areas to check at next review (eg new census information, new legislation due)		
Is there <i>another group</i> (eg new communities) that is relevant and ought to be considered next time?	Check that the policy continues to be accessible and fairly applied to existing and potential members of the Council's workforce, including any additional demographic groups.	
Signed (completing officer/service manager)	Date	
Signed (service manager/Assistant Director)	Date	

Related documents