



Plymouth City Council

Review of Arrangements for Complying with Age-related Equalities
Legislation

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1 Introduction and background

- 1.1 From 1st October 2006 the Employment Equality (Age) Regulations made it unlawful to discriminate against workers, employees, job seekers and trainees because of their age. This legislation complemented existing legislation against discrimination on the grounds of sex, race, disability, gender reassignment, sexual orientation and religion or belief.
- 1.2 However, the Government restricted the protection available to people over the age of 65 by creating a new "default retirement age" of 65 for both men and women. This permits employers to set a "mandatory retirement age" at or above the age of 65.
- 1.3 In practice this means that an employer can compel its employees to retire at or after 65 and can refuse to recruit anyone over the age of 65. It is lawful for employers to force employees age 65 and over to retire as long as they follow the correct procedure. However, employees have the right to request to continue working beyond the date when the employer wants them to retire but the employer can legitimately refuse the request and the law does not require them to give a reason for that decision.
- 1.4 Thus, employers need to be aware of their responsibilities and duties in respect of the recruitment and retention of staff and need to ensure that their policies and procedures are up to date, appropriate and applied properly.
- 1.5 Our review has sought to establish what local arrangements have been made by Plymouth City Council and how it has sought to minimise the risks, as well as how it ensures that appropriate internal control arrangements are in place.

2 Key findings

Policies and procedures

- 2.1 The Employment Equality Age Regulations 2006 ("the regulations") first came into prominence nationally in 2007 and made it unlawful to discriminate against workers, employees, job seekers and trainees because of their age.
- 2.2 The Council introduced a "Working Beyond Retirement Age" policy in 2005, underpinned by a corporate People Strategy, which sought to demonstrate the Council's commitment to being a good employer. The Policy defined its scope and its compliance with the regulations, as well as the Council's commitment to equality and diversity, including having a diverse workforce and the elimination of assumptions about, and discrimination amongst, its employees.
- 2.3 The Council started to consider the impact of the new regulations in 2006, and engaged service managers and trade unions, as well as undertaking some research into what other council's were doing. As a result, a revised corporate policy was developed which was deemed to comply with these new age-related regulations. This policy remains in place.
- 2.4 The Policy is aimed at employees who wished to work beyond the default retirement age and states that the Council's retirement age is in line with the statutory retirement age, though employees who wish to continue working beyond 65 may request to do so and should then follow the statutory "duty to consider" procedure. The Policy clearly lays out that procedure, including the right of appeal and also includes a schematic of the process to be followed.
- 2.5 We understand that implementation of the Policy has been supported by training for managers and HR operational advisors, as well as targeted communications with staff. The Council has also introduced a corporate employee handbook which includes a brief section on working beyond retirement age, and which refers to the Working Beyond Retirement Age Policy.
- 2.6 The Policy was implemented in October 2006, with a plan to review the policy in October 2008. However, a decision was made not to review the Policy until the "Heyday" decision was made. The outcome of the Heyday case is now known, and we understand that the Council is awaiting the publication of a consultation paper by the Government before commencing its review of the Policy.

The Equality Scheme

- 2.7 The Working Beyond Retirement Age Policy is set against a stated corporate commitment to equality and diversity, expressed in a range of documents, and encapsulated initially in the Corporate Equalities Policy (CEP). The CEP is now superseded by a corporate Equality scheme which is the focus for all corporate equality work. The Equality scheme is underpinned by the Corporate Equalities Group Work-plan 2009-12.

- 2.8 The Equality Scheme is wide-ranging in its commitments and principles, including a commitment to "valuing, promoting and celebrating equality, diversity and community cohesion", including fair and equal access to employment and equal pay practices. Within this stated commitment there is also a recognition that compliance with age-related legislation may have implications for the workforce and for business planning.
- 2.9 The Corporate Equalities Group (CEG) is responsible for the governance of the corporate equality schemes and generally meets on a quarterly basis (though it has met bi-monthly where necessary). The Group comprises representatives from each department, the trade unions, a councillor and a dedicated HR representative. The Group is led by the corporate Social Inclusion Unit. Each officer on the Group is responsible for cascading key messages throughout his or her department, as well as specific aspects of the work-plan. The Action Plan within the Equality Scheme is the subject of an annual review.
- 2.10 The corporate equality and diversity agenda is supported by the Council's Social Inclusion Unit, which has a broad-ranging involvement and impact in raising the profile of equality and diversity issues throughout the Council. This has been recognised by the Improvement and Development Agency (IDeA) in its Diversity Peer Challenge report (Nov 2008), in which it identified continued good progress at the Council. The Council had previously achieved level 3 of the Equality Standard for Local Government and, under the revised Equality Framework this now translates to "achieving".
- 2.11 The Equality Scheme states the scope and responsibilities of employees, managers and the Corporate Management Team, as well the role of elected members, in setting the equality policy and reviewing the policy for continuous relevance. The Council has nominated a councillor as portfolio holder with responsibility to champion equality and with an expectation of having a visible connection with diverse communities across the locality. The Council has also nominated a councillor as portfolio holder for HR issues.

Equality Impact Assessment

- 2.12 As part of its arrangements for ensuring equality and diversity, the Council has in place a process for undertaking equality impact assessments (EIA's), which are the means by which the Council can review what it is doing, to ensure that policies and actions take account of equality and diversity issues. This ensures that it is delivering outcomes for individuals and communities as well as meet the equality duties and regulations that are in place.
- 2.13 The Council is committed to a programme of EIAs, supported by its EIA Governance Group (which has representatives from each department) and which is overseen by the CEG. An EIA has been undertaken in respect of age-related employment.
- 2.14 The CEG has established equalities work-plans over the last few years, with key corporate actions and timings, as well as outputs/targets, for delivering the corporate equalities agenda. The CEG work-plan, covering the period 2009-12, includes a number of key targets, actions and outcomes based on the five key themes within the Equality Framework for Local Government, which are:

- Knowing your communities and equality mapping;
- Place shaping, leadership, partnership and organisational commitment;
- Community engagement and satisfaction;
- Responsive services and customer care; and
- A modern and diverse workforce.

- 2.15 The Council has also developed an Employee Handbook (dated 2007) which aims to provide employees with information about conditions of service and corporate policies, including reference to working beyond retirement age, where the Council states that it has adopted the statutory retirement age of 65 for all employees, though "employees have the right to request to work beyond that age and any request will be seriously considered". The Council plans to make amendments to the Employee Handbook during 2010, linked to proposed changes to the terms and conditions of employment.
- 2.16 Whilst recognising that the Council has undertaken an equalities impact assessment in respect of age-related employment, we **recommend** that the Council undertakes further equality impact assessments as the implications of impending organisational and legislative changes become clear.

Programme monitoring

- 2.17 The Council has developed new corporate equality and diversity targets, covering all aspects of equality and diversity, and include targets such as the percentage of women as top earners and reducing the proportion of employees over 50 retiring early. We understand that a number of these targets are to be reviewed during 2010, and will take account of organisational changes.
- 2.18 Our interviews have identified that the Council already accepts most requests to work past retirement age and that, at the date of this report, the Council has, since the age regulations were introduced, written to 196 employees under the statutory "duty to consider" process and that 132 staff are currently employed who are aged 65 or over. This represents 1.8% of the total workforce. The Council also currently employs 670 employees between the age of 60 and 65, which represents 6.52% of the workforce, and who will be written to under the statutory "duty to consider" process.

Risk management

- 2.19 As part of our review, we have also sought to establish the extent to which the Council has considered any risks associated with the age-related equalities issues and how such risks are to be managed.
- 2.20 Risk management in the public sector is generally focused in two key areas - strategic risks and operational risks. Strategic risks are those that may affect the Council across the broad range of its corporate responsibilities, and is likely to include, for example, the risks associated with key partners or risks associated with limited finance. Operational risks, however, are normally associated with the risks within individual departments or services, such as staffing or day-to-day issues.

- 2.21 As part of our 2009 Use of Resources review work, the Council provided a strategic risk register as part of its evidence base and we have used this to inform our review. We have identified that, in particular, risk number 23 (pay and reward strategy) includes the broad heading of "failure to comply with legislation", though without being specific about which particular legislation is referred to. In mitigation of the broad risk, a number of controls are noted, though, so far as we can establish, none is specifically concerned with age-related employment.
- 2.22 Our review has identified that the strategic risk of age-related employment issues currently falls specifically within the Corporate Improvement Priority (CIP) 13 (Supporting Council staff to perform better). As part of its workforce development the Council has a workforce plan, which is embedded across the organisation. The Council intends to review further the profile of its workforce (including staff numbers and age groups), and then to use this information to decide on any remaining risks as well as how any gaps will be addressed. Local workforce development will be heavily influenced by changing local economic conditions, a changing organisational structure and the developing shared service agenda.
- 2.23 We understand that data on local diversity has already identified that there is an ageing population, with 5% more people over the age of 50 than the national average, as well as the highest percentage of people of working age in the Southwest. We are also aware that officers are mindful of the number of current employees in the 60 to 65 age group, and there is a recognition of the impact that this might have on the future employment profile of the Council, and on business planning.
- 2.24 We therefore **recommend** that the Council undertakes specific risk assessments in respect of age-related employment issues relevant to impending organisational and legislative changes.

Overall conclusion

- 2.25 Our overall conclusion is that the Council appears committed to equality and diversity across the whole range of its services and in its dealings with the public and it has a number of policies and processes in place which promote that equality and diversity as well as an infrastructure that enables consideration of equality and diversity issues.
- 2.26 Our review has confirmed that, generally, there are sound arrangements in place and, though we have no significant recommendations to make on the issue of the Council's compliance with age-related equalities legislation, we consider that a review of the impact and risks relating to impending age-related employment changes would be beneficial.

A Action Plan

Recommendation	Priority	Management comment	Officer responsible	Implemented by:
The Council should undertake further equality impact assessments as the implications of impending organisational and legislative changes become clear.	High	HR to consider how this can be achieved as part of other EIAs being undertaken in future Director of Corporate Support, HR Organisational Development and DMT to consider the issues raised	To be considered by Director for Corporate Support.	Complete by Sept 2011 at the latest, to fit with corporate plans for the EFLG assessment
The Council should undertake specific risk assessments in respect of age-related employment issues relevant to impending organisational and legislative changes.	High	HR to consider how this can be achieved as part of other EIAs being undertaken in future Director of Corporate Support, HR Organisational Development and DMT to consider the issues raised	Eve Skuse (HR) with support of Mike Hocking (Risk Management)	To be undertaken as the implications of the new equalities bill become clear.



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