

TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

22 August 2006

Report of the Central Services Director

Part 1- Public

Matters for Recommendation to Council

1 AGE DISCRIMINATION REGULATIONS

Summary

A report to inform Members of the implementation of the Age Discrimination Regulations and to make recommendations regarding policies required as a result of the Regulations.

1.1 Background

1.1.1 The Employment Equality (Age) Regulations 2006 come into force on 1st October 2006. Their purpose is to implement the age related provisions of the European Employment Directive (2000). The regulations follow a similar pattern to the other strands of anti-discrimination legislation and in the field of employment cover recruitment and selection, promotion, terms and conditions, training, pay and dismissal, including retirement. They also prevent discrimination in vocational training. Any Member who requires further details of the regulations is very welcome to contact me.

1.1.2 Whilst employers have become accustomed to operating within the requirements of discrimination law there are nevertheless significant new challenges within the age rules. Experience overseas, where such legislation already exists, has shown significant levels of litigation with many claims being lodged against practices which until recently employers would have found quite normal and acceptable. It will therefore be essential for us to review our employment procedures to ensure that, as far as possible, we are "equality proofed" and to ensure that all managers making employment decisions are aware of the new regulations. In addition to these general needs there are two specific areas upon which Council decisions are required. These are to do with a standard retirement age and determining a compensation policy under revised national Compensation Regulations.

1.2 Retirement Age

1.2.1 Until now the Council's staff have had an assumed retirement age of 65 as that is the normal retirement age in the Local Government Pension Regulations, albeit that some staff have retired earlier where their particular pension position allowed

and some later at their request. Under the Age Discrimination Regulations a national “default retirement age” of 65 has been established. This means, firstly, that it will be difficult for employers to objectively justify a normal retirement age of less than 65 and, secondly, that employers who wish to do so can determine that 65 is their employees’ retirement age and, provided they follow the procedures set out in the Regulations, will be protected against unfair dismissal claims from employees who are dismissed by reason of retirement at age 65. The alternative, which is being promoted by some as being more fully in the spirit of anti age discrimination policy, is not to set a retirement age at all, but to allow staff to carry on working until they retire of their own volition or their contracts are terminated with good cause by their employer.

- 1.2.2 The Management Team has considered these alternatives and has taken the view, like we believe most other local government employers, that at least for the immediate future the Council should set its retirement age at 65. This would provide higher levels of certainty about future resource and succession planning and avoid the potential for time consuming procedures and possible litigation should we need to terminate an employee’s contract under the “no retirement age” option. Additionally, should an employee wish to continue working beyond 65, that would be possible even if the retirement age were set at 65, if it were agreed by his/her manager against a set of criteria designed for such cases. For the sake of complete clarity it should also be noted that what is being considered here is the age at which the Council can retire an employee. Employees wishing to leave earlier than 65 will continue to have that right with access to their pensions determined by pension scheme rules which are quite separate to age discrimination rules.
- 1.2.3 We have drafted a policy on this matter in line with the requirements of the regulations which is attached at Annex 1. It is recommended that this policy be adopted by the Council.

1.3 Compensation Policy

- 1.3.1 Since 1976 there have been special provisions available to local government employers to make discretionary payments to employees whose employment has been terminated by reason of redundancy or the efficiency of the service. The current set of regulations giving effect to these powers are The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000. One of the features of these regulations is the power to award a one-off lump sum payment of up to 66 weeks’ pay, based on a service and age-related formula. Because one of the determinants of the size of the lump sum is age the Government takes the view that the regulations must be revoked and replaced by a non-discriminatory alternative.
- 1.3.2 A draft of this alternative has been circulated and it is expected to come into force on 1st October in line with the Age Discrimination Regulations. Its key feature is

the power to award a one-off lump sum payment of up to 104 weeks' pay to employees dismissed by reason of redundancy or in the interests of the service.

- 1.3.3 A further feature of the draft regulations is the requirement that each employing authority must formulate, publish and keep under review its policy on compensation. We are advised that this needs to be done before the 1st October even though we only have the new regulations in draft at the moment. We shall therefore be proposing that the policy proposed later in this report be adopted subject to there being no significant changes to the substantive regulations when they emerge.
- 1.3.4 Turning to the actual formulation of our policy, Members will be aware from the report to the last meeting of your Committee, entitled Calculation of Costs and Terms for Early Retirement, of the importance placed by our external auditors on the Authority taking full heed of the financial consequences of dismissal settlements, of any policy not fettering the Authority's discretion and of any termination settlement being calculated with regard to the circumstances of the case and in particular an assessment of the employee's loss of income as a result of his/her dismissal. It was on the basis of these factors that a revised section 6 of the Employment Stability Policy was commended to you and subsequently agreed by the Council. This is reproduced below.

6. TERMS FOR EARLY RETIREMENT OR REDUNDANCY

6.1 Subject to:-

- (i) there being no redeployment opportunities which the employee could be reasonably required to take up;
- (ii) the employee agreeing that his/her termination settlement is in full and final settlement of any potential claims against the Council in respect of the termination;
- (iii) the termination rendering sufficient revenue savings that, using the Council's approved formula, its capital cost has been restored, at the latest, during the year in which the employee's sixty fifth birthday falls; and
- (iv) the Management Team and consultee members / member bodies agreeing that the proposed staff structure and termination settlement are reasonable in all the circumstances of the case and particularly service provision and the employee's individual circumstances, including loss of income, as a result of termination;

the Council will pay redundancy and pension benefits to the employee up to the maximum level allowed by the regulations in force at the date of the termination, subject:

- (i) to no more than 6 2/3 years augmentation being awarded to employees qualifying for this form of augmentation; and
- (ii) to no augmented service being awarded that would have the effect of providing the employee with in excess of 40 years pensionable service.

6.2 Should any of the conditions set out above not be satisfied, and there being no exceptional circumstances warranting a departure from these conditions, a settlement will be determined by the Council, in consultation with the employee and his/her representative.

6.3 Paragraphs 6.1 and 6.2 apply to any employees who are dismissed / retired by reason of redundancy or in the interest of the efficiency of the Service.

1.3.5 Having considered the requirement to establish a policy on compensation under the new regulations and the factors set out in paragraph 1.3.4 above relating to the formulation of such a policy, it is felt that the recently agreed revised section 6 of the Employment Stability Policy is fit for purpose as the Authority's policy on Compensation. Whilst some, particularly larger, authorities feel the need to establish a formula that will pre-determine amounts of compensation, we consider that this would only be necessary where the employer is likely to encounter large scale or frequent redundancies. That is not the case in Tonbridge and Malling and we therefore believe that the proposal above forms a very practical solution for our circumstances. In applying this policy we would, of course, need to remain heedful of not infringing the Age Discrimination Regulations but we are satisfied that there is nothing within the policy that is intrinsically discriminatory. It is therefore recommended that Section 6 of the Employment Stability Policy be amended by the addition of a new paragraph 6.1 as follows:-

"The provisions set out in the remainder of Section 6 form the Council's Policy on Compensation for the purposes of the Local Government (Early termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 and the Local Government Pension Scheme Regulations 1997."

with subsequent paragraphs appropriately renumbered; and that the clause immediately below sub sections (i) – (iv) of paragraph 6.1 (now 6.2), be amended as follows:-

"the Council will pay redundancy and pension benefits to the employee up to the maximum level allowed by the regulations in force at the date of the termination, *currently the regulations specified in 6.1 above*, subject..."

1.4 Legal Implications

1.4.1 The recommendations in this report are proposed partly to ensure that the Authority complies with its legal obligations with respect to the Employment Equality (Age) Regulations.

1.5 Financial and Value for Money Considerations

- 1.5.1 The flexibility and financial test built into the proposed Compensation Policy are intended to ensure that appropriate and prudent termination settlements are made on occasions of employee redundancy or efficiency dismissal.

1.6 Risk Assessment

- 1.6.1 The recommendations in this report are proposed partly to mitigate against the risk of the Council being accused of age discrimination.

1.7 Consultation

- 1.7.1 I have consulted Unison and staff representatives on the proposals in this report and have received no adverse comments.

1.8 Recommendations

- 1.8.1 It is recommended that Section 6 of the Employment Stability Policy as amended above be adopted by the Council, subject to the final version of the Regulations not requiring it to be further amended.

Background papers:

contact: Richard Jefferys

Nil

Richard Jefferys
Central Services Director