

PART II

The report on the following item is **not for publication** by virtue of exempt information of the description contained in Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the [Local Government \(Access to Information\)\(Variation\) Order 2006](#). [Rule 9.10.4 of the Constitution also refers](#).

Title of Report:	Employment of staff aged over 65 – implications of the ending of the default retirement age on 31st October 2011. <i>(Paragraph 1 – information relating to an individual)</i>
Report to be considered by:	Personnel
Date of Meeting:	4 th February 2011
Forward Plan Ref:	N/a

Purpose of Report:

To seek a decision on one of three options concerning the employment of staff aged over 65 after 31st August 2011.

Recommended Action:

Personnel Committee to consider the pros and cons and decide on its preferred option.

Reason for decision to be taken:

The legislative window for choosing one of three options will close on 1st April 2011. There will be only one option available then (to retain the employees aged over 65)

Statutory:
Other:

Non-Statutory:

Other options considered:

not applicable

Key background documentation:

None

The proposals contained in this report will help to achieve the following Council Plan Priority:

- CPP1 – Support our communities through the economic downturn** – to alleviate the impact on different communities and individuals who find themselves out of work and/or disadvantaged

The proposals will also help achieve the following Council Plan Themes:

- CPT13 - Value for Money**
 CPT14 - Effective People

The proposals contained in this report will help to achieve the above Council Plan Priorities and Themes by:

ensuring consideration is given to possible value for money issues arising from the abolition of the Default Retirement Age (DRA)

Portfolio Member Details	
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Date Portfolio Member agreed report:	20 January 2011
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Implications

- Policy:** Depending on which option the Personnel Committee choose, the policy of the Council on employing staff aged 65 and over might change for the period up to 1st October 2011 when new legislation will abolish the concept of a Default Retirement Age (DRA) of 65.
- Financial:** There are no direct financial implications, but if the employees aged over 65 are retained there is a possible redundancy liability of £902,254 for the Council.
- Personnel:** Dealt with in the report
- Legal/Procurement:** The issues in this report arise from new legislation which will abolish the DRA on 1st October 2011.
- Property:** none
- Risk Management:** none
- Equalities Impact Assessment:** EIA completed.

Is this item subject to call-in?	Yes: <input checked="" type="checkbox"/>	No: <input type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input type="checkbox"/>
Delays in implementation could have serious financial implications for the Council		<input type="checkbox"/>
Delays in implementation could compromise the Council's position		<input type="checkbox"/>
Considered or reviewed by Overview & Scrutiny Commission or associated Task Groups within preceding six months		<input type="checkbox"/>
Item is Urgent Key Decision		<input type="checkbox"/>

Executive Summary

1. Introduction

- 1.1 This report explains that the government intends to abolish the Default Retirement Age (DRA) of 65 on 1st October 2011 and that there is a window of opportunity for the Council to end the employment of staff aged over 65 by reason of retirement which will close on 1st April 2011 (as employees must be given a minimum of six months notice of retirement).
- 1.2 On current staffing information there will be a maximum of 66 employees over age 65 on 31st August 2011. However a number of the 66 employees will retire by choice before 31st August 2011 as they will have reached age 65.

2. Proposals

- 2.1 The report sets out three options for Personnel Committee (PC) to consider. Each option has advantages and disadvantages which are discussed in the main report.
- 2.2 Option One – do nothing and allow all employees over 65s to gain the right to a redundancy payment with effect from 1st October 2011 and miss a redeployment opportunity.
- 2.3 Option Two – dismiss all employees aged 65 or over on 31st August 2011 and avoid a potential redundancy liability of over £900k, and possibility assist with redeployment of staff in Adult Social Care (ASC).
- 2.4 Option Three – as for option two, but with an ‘exemption clause’ to allow the Corporate Director and Head of HR to exempt a post where an employee is over 65 where it is judged that no replacement could be found (for example, this might be the case for of some School Crossing Patroller posts). The exemption will apply to the recruitment position affecting the post, not the personal attributes of the employee.

3. Conclusion

- 3.1 Personnel Committee needs to make a decision on which option to choose. If no decision is taken Option One will apply be default after 1st April (the employees aged over 65 will be retained).
- 3.2 This is a one off chance of reducing the potential redundancy liability by over £900k (for a maximum of 66 employees), and providing possible redeployment opportunities for staff in ASC.
- 3.3 Corporate Board and Management Board have recommended Option Three.

Executive Report

1. Introduction

- 1.1 This report explains that the government intends to abolish the Default Retirement Age (DRA) of 65 on 1st October 2011 and that there is a window of opportunity for the Council to end the employment of staff aged over 65 by reason of retirement. The window will close on 1st April 2011.
- 1.2 The report explains what currently happens with the employment of staff aged over 65. There will be a maximum 66 employees aged over age 65 on 31st August 2011 (some will retire by choice before this date). This report does not include employees based in schools where employment matters rest with the governing body.
- 1.3 This report uses the date of 31st August 2011 to give a month's gap between the proposed date for dismissal by reason of retirement and the change in the DRA. This gap of a month will make no difference to the figures as no member of staff turns 65 between 1st September and 30th September 2011. However it gives room to deal with any last minute issues that may arise (such as a grievance) without being overtaken by the change in the DRA on 1st October 2011.
- 1.4 The report sets out three options for Personnel Committee (PC) to consider. Each option has advantages and disadvantages which are discussed.
- 1.5 PC needs to make a decision on which option to choose. If no decision is taken Option One will apply by default after 1st April 2011 (the employees aged over 65 will be retained).
- 1.6 Corporate Board and Management Board recommend Option Three because this is a one off chance to reduce the Council's potential redundancy liabilities which is important in light of the current financial position facing the Council; and it will provide redeployment opportunities to staff in ASC.

2. The current position

- 2.1 When the last government made discrimination in employment on the grounds of age unlawful in 2006 it exempted the normal retirement age of 65 from challenge. Thus 65 has been the default retirement age for organisations who have not specified a different normal retirement age. To implement this anomaly to its age discrimination legislation, the government added a new potentially fair reason for dismissal: '*retirement*'. This means that employers can insist that their employees retire at 65 and if challenged by the employee will be able to rely on retirement as the fair reason for dismissal. The employee needs to be warned not less than six months before he or she is aged 65 that the employer proposes to dismiss him/her on the grounds of retirement. The six month rule also applies to retirement of employees who are already over 65.
- 2.2 The employee can reply to the notification from the employer (in WBC this comes from HR) to ask for an extension of the contract of employment beyond the notified date of retirement, either for a fixed or indefinite period. The employer must consider the request and reply in writing. However there is no obligation to give a reason for saying no to such a request. There is a right of appeal.

- 2.3 Line managers decide whether to agree to requests for extensions of employment beyond 65. At the same time some employees are recruited to the Council who are already over 65. The current position has led to the employment of a maximum 66 of employees who will be aged over 65 on 31st August 2011 (although some will retire by choice before that date).
- 2.4 A list of the 66 posts occupied by employees aged over 65 on 31st August 2011 is shown at Appendix A. The dates of birth are shown but not the names of the employees. This report uses a notional date of 31st August 2011 to illustrate the redundancy liability costs. There are no plans to actually make these employees redundant on 31st August 2011. However if they were all made redundant on that notional date the total costs to the Council would be £902,254. The average cost would be £13,670 (highest: £51,805; lowest £259).

3. Change to the current position

- 3.1 The current position will cease on 1st April 2011 as it will no longer be lawful to write to employees to inform them that they will retire on or after their 65th birthday. 1st April 2011 is six months before the government will abolish the normal retirement age of 65, and this is the minimum notice that has to be given to employees. From 1st October the potentially fair reason for dismissal of 'retirement' will be abolished. This means that after 1st April 2011 employees aged 65 or over can only be dismissed for the same reasons as employees aged under 65 (redundancy; capability - health or capability - performance; misconduct; statutory prohibition; or 'some other substantial reason').
- 3.2 Some employers are acting before 1st April 2011 to dismiss all employees aged 65 or over while retirement remains a potentially fair reason for dismissal. Some age discrimination charities have protested about this in the media. MB needs to decide how to react to the change in the current situation. Three options are given below with the advantages and disadvantages discussed.
- 3.3 The trade unions have been consulted. The unions accept that there are pros and cons and would support Option Three or Option One. They oppose Option Two as too inflexible.

4. The three options

4.1 Option One – do nothing.

4.2 Advantages: This option retains employees who were judged valuable enough to be allowed to work beyond 65; or it retains employees who were employed when already aged over 65 because of difficulties in recruitment. These employees may be doing a very good job and they may have had expensive training. They are likely to be de-motivated during the six months leading up to their enforced retirement on 31st August 2011. Dismissing them will cause a lot of work for managers and HR in finding replacements. The 'do nothing' option anticipates the thinking of government in disregarding a person's age as a reason for dismissing him or her. This option avoids any negative publicity which might arise if this issue is picked up by local age charities.

4.3 Disadvantages: This option allows a potential redundancy liability of £902,254 to be retained in the Council's risks (albeit there is no reason to assume all the

employees would in fact be made redundant). This option misses a one off opportunity to create up to 66 vacancies which could be of value to employees who are facing redundancy in Adult Social Care. These vacancies could be filled by redeployees. If they are not filled by redeployees this option misses a chance to address the issue of local youth unemployment as the vacancies not filled by redeployees could be converted into modern apprentice posts where possible. The chance to use the vacancies created to allow internal promotions which are currently 'blocked' by staff aged over 65 would be lost.

4.4 Option Two – dismiss all employees aged 65 or over on 31st August 2011

Advantages: This option avoids a potential redundancy liability of £902,254 to be retained in the Council's risks (albeit there is no reason to assume all the employees would in fact be made redundant). The highest potential redundancy payment is £51,805. The lowest potential redundancy payment is £259. The average payment is £13,670. This option creates a one off opportunity to create up to 66 vacancies which could be of value to other employees who are facing redundancy in ASC. These vacancies could be filled by redeployees. This option also creates a chance to address the issue of youth unemployment as the vacancies not filled by redeployees could be converted into modern apprentice posts where possible. In other cases the vacancies may allow internal promotions which are currently 'blocked' by staff aged over 65.

4.5 Disadvantages: This option will lose employees who were judged valuable enough to be allowed to work beyond 65; or it will lose employees who were employed when already aged over 65 because of difficulties in recruitment. These employees may be doing a very good job and they may have had expensive training. These employees are likely to be de-motivated during the six months leading up to their enforced retirements. Dismissing them will cause a lot of work for managers and HR in finding replacements. This option is at odds with the government thinking which has led to a position where, with effect from 1st October 2011, the fact that an employee is over 65 will no longer be a fair reason for dismissal. This option might attract adverse media publicity from age charities.

4.6 Option Three – create an exemption clause for Option Two.

4.7 Advantages: This option has the same advantages as Option Two but has the added advantage of allowing a mechanism to avoid an 'own goal' such as dismissing a popular School Crossing Patroller and not being able to replace him/her. The decision on exempting individuals from dismissal by reason of retirement could be taken by the relevant Corporate Director and the Head of HR. The decision will be taken based on recruitment difficulties affecting the post not based on the personal attributes of the post-holder.

4.8 Disadvantages: This option has the same disadvantages as Option Two but has the added disadvantage that the operation of the exemption clause may be challenged through the grievance procedure. However if the exemptions can be justified on a "case by case" basis based on the recruitment issues affecting the post (not the personal attributes of the post-holder) this disadvantage can be overcome.

5. Issues to consider

5.1 The Council has a public duty to promote equalities and it could be argued that using this window of opportunity to dismiss employees on the grounds of age just

before such an action becomes unlawful undermines confidence in the Council's commitment to equality. However this can be balanced against the economic benefit to the Council of divesting itself of redundancy liabilities of £902,254 in difficult financial circumstances.

- 5.2 The proposed action will obviously have a disproportionate impact on employees over 65 (age discrimination); but this is currently not unlawful as discussed above.
- 5.3 If all the employees aged over 65 are dismissed on 31st August 2011 there may be advantages for younger employees including young unemployed people.
- 5.4 Option Three would be a proportionate means of achieving the legitimate aim of avoiding a redundancy liability for the Council and freeing up posts for potential redeployment.

6. Conclusion

- 6.1 Personnel Committee is requested to choose one of the three options shown above.
- 6.2 Corporate Board and Management Board recommend Option Three.
- 6.3 HR will write to the employees affected to inform them of the decision taken by PC on this issue.

Appendices

Appendix A – List of all the posts occupied by employees who will be over 65 on 31st August 2011. Note: some of these employees will retire by choice before 31st August 2011.

Consultees

Local Stakeholders: None consulted.

Officers Consulted: CMT on 06/01/11; MB consulted on 27/01/11

Trade Union: Consulted on 27th January 2011

Appendix A:**List of all the posts occupied by employees who will be over 65 on 31st August 2011 (including their dates of birth).**

Directorate	Service Unit	Post Title	Post No	Date of Birth	FTE
Chief Executive	Benefits & Exchequer	Senior Cashier	00262	21/08/1944	1.00
Chief Executive	Benefits & Exchequer	Senior Account Management Assistant	03121	04/07/1946	0.81
Chief Executive	Finance	Waste PFI Accountant	02504	12/08/1943	0.61
Chief Executive	Policy & Communication	Courier	00048	01/08/1940	0.38
Chief Executive	Policy & Communication	Postal Services Clerk	00055	08/06/1943	0.57
Chief Executive	Policy & Communication	Information Assistant	00053	15/04/1946	1.00
Chief Executive	Policy & Communication	Postal Services Clerk	00055	08/06/1943	0.57
Children & Young People	Children's Services	Children's Services Admin Assistant	01875	27/06/1943	0.32
Children & Young People	Children's Services	Residential Child Care Officer	03278	13/02/1945	0.41
Children & Young People	Children's Services	Family Support Worker	03290	04/06/1946	0.50
Children & Young People	Education Services	School Crossing Patroller	00474	27/08/1940	0.20
Children & Young People	Education Services	School Crossing Patroller	00474	04/12/1945	0.11
Children & Young People	Education Services	Teacher	00505	12/07/1945	0.50
Children & Young People	Education Services	School Crossing Patroller	00474	09/07/1946	0.12
Children & Young People	Education Services	Teacher	00505	12/07/1945	0.50
Children & Young People	Education Services	Primary Strategy Consultant	02906	31/03/1946	1.00

Directorate	Service Unit	Post Title	Post No	Date of Birth	FTE
Children & Young People	Youth Services and Commissioning	Duke of Edinburgh Field Worker	00365	06/12/1936	0.27
Children & Young People	Youth Services and Commissioning	Administrative Assistant	01257	05/01/1944	0.81
Children & Young People	Youth Services and Commissioning	Education Visits Adviser	02606	07/04/1945	0.50
Children & Young People	Youth Services and Commissioning	Duke of Edinburgh Field Worker	01771	16/07/1946	0.15
Community Services	Adult Social Care	Day Centre Driver	00697	22/01/1942	1.00
Community Services	Adult Social Care	Laundry Assistant	00727	24/05/1943	0.41
Community Services	Adult Social Care	Day Centre Assistant	00741	08/12/1941	0.41
Community Services	Adult Social Care	Day Centre Administrator	00743	13/07/1943	0.41
Community Services	Adult Social Care	Support Services Officer	01386	02/11/1943	0.68
Community Services	Adult Social Care	Care Assistant	01482	25/01/1946	0.65
Community Services	Adult Social Care	Team Leader	01719	23/11/1944	1.00
Community Services	Adult Social Care	Care Manager / Social Worker	02917	11/06/1945	0.61
Community Services	Adult Social Care	Day Centre Administrator	02939	19/07/1945	0.14
Community Services	Adult Social Care	Support Services Assistant	03183	29/11/1945	0.32
Community Services	Adult Social Care	Home Care Assistant	03408	03/06/1942	0.57
Community Services	Adult Social Care	Home Care Assistant	03408	21/10/1940	0.92

Directorate	Service Unit	Post Title	Post No	Date of Birth	FTE
Community Services	Adult Social Care	Home Care Assistant	03408	04/09/1944	0.92
Community Services	Adult Social Care	Home Care Assistant	03408	18/02/1945	0.91
Community Services	Adult Social Care	Home Care Assistant	03410	25/07/1943	0.99
Community Services	Adult Social Care	Home Care Assistant	03410	27/06/1943	0.61
Community Services	Adult Social Care	Home Care Assistant	03411	14/12/1942	0.99
Community Services	Adult Social Care	Day Services Team Leader	03437	10/03/1945	0.81
Community Services	Adult Social Care	Community Support Worker	01379	20/07/1946	1.00
Community Services	Adult Social Care	Driver	02977	16/04/1946	1.00
Community Services	Adult Social Care	Home Care Assistant	03408	09/06/1946	0.61
Community Services	Cultural Services	Driver/Handyman	01036	10/02/1944	1.00
Community Services	Cultural Services	Bookstart Co-ordinator	02747	01/04/1945	0.41
Community Services	Cultural Services	Thatcham Branch Supervisor	00170	09/03/1946	0.95
Community Services	Cultural Services	Support Services Officer	00395	17/07/1946	1.00
Community Services	Housing & Performance	Records Officer	02123	18/08/1944	0.50
Community Services	Housing & Performance	Contracts & Commissioning Admin Assist.	02560	22/07/1942	0.41
Community Services	Housing & Performance	NVQ Assessor / Trainer	02029	30/04/1946	1.00
Community Services	Housing & Performance	Contracts & Commissioning Admin Assist.	02560	12/08/1946	0.61
Environment	Highways & Transport	Civil Enforcement Officer	00296	03/09/1944	1.00

Directorate	Service Unit	Post Title	Post No	Date of Birth	FTE
Environment	Highways & Transport	Civil Enforcement Officer	00296	06/03/1943	1.00
Environment	Highways & Transport	Civil Enforcement Officer	00296	11/11/1941	0.54
Environment	Highways & Transport	Civil Enforcement Officer	00296	06/11/1941	1.00
Environment	Highways & Transport	Transport Services Manager	01751	16/08/1943	1.00
Environment	Highways & Transport	Speed Management Coordinator	02087	18/07/1943	0.60
Environment	Highways & Transport	Transport Services Driver	03265	21/07/1942	1.00
Environment	Highways & Transport	Community Bus Driver	03360	01/09/1943	0.54
Environment	Highways & Transport	Community Bus Driver	03362	17/08/1943	0.54
Environment	Highways & Transport	Speed Management Assistant	02437	29/03/1946	1.00
Environment	Highways & Transport	Civil Enforcement Officer	03240	22/05/1946	0.50
Environment	Planning and Countryside	Rights Of Way Officer (Capital Projects)	02924	12/12/1939	0.50
Environment	Planning and Countryside	Assistant Planning Officer	00807	27/05/1946	0.40
Environment	Property and Public Protection	Senior Trading Standards Officer	00868	28/06/1945	0.22
Environment	Property and Public Protection	Enforcement Officer - Road Traffic	02196	02/11/1941	0.37
Environment	Property and Public Protection	Facilities Assistant	00568	04/04/1946	1.00