

CITY OF YORK COUNCIL

**GUIDELINES ON THE EMPLOYMENT
OF PEOPLE OVER THE AGE OF 65**

OVERVIEW

These guidelines set out the Council's position with regard to the employment of over 65s and provides guidance on the procedure which allows employees to request to work past their notified retirement age.

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1.0 INTRODUCTION

1.1 City of York Council recognises the importance of employing a workforce that has the skills and experience needed to deliver excellent services.

1.2 The Council's Comprehensive Equalities Policy aims:

“to ensure that no one who deals with the Council receives less favourable treatment on the grounds of age.”

Guidance on how to avoid age discrimination is included in the relevant HR process, for instance the Recruitment and Selection Policy, Bullying, Harassment and Discrimination Policy etc. These guidelines provide details of the specific provisions that apply to the employment of over 65s.

1.3 Normal retirement age for Council employees is 65. This is applied equally, regardless of gender, post or directorate.

2.0 SCOPE

2.1 These guidelines apply to all City of York Council employees. They also apply to casual and relief workers (for the purposes of these guidelines the term “employee” should also be read to mean “worker” in this regard).

2.2 The Director of Learning Culture and Children's Services will adapt these guidelines for use by schools with delegated powers and recommend it to Governing Bodies.

3.0 IMPLEMENTATION DATE

3.1 These guidelines will apply from the 1st October 2006.

4.0 REPRESENTATION

4.1 An employee can choose to be accompanied by a trade union representative or colleague at meetings to discuss their request not to be retired.

4.2 Meetings will normally be arranged at mutually convenient times. However if the employee's companion is not available at the proposed

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time for the meeting, the employee can propose an alternative time. If the time is convenient for all parties and is within seven days from the day after that which the employee suggested, the meeting must be rescheduled.

5.0 PERFORMANCE MANAGEMENT AND HEALTH AND SAFETY

5.1 The Council has established performance management processes, for instance the capability, disciplinary and sickness absence management procedures, and health and safety processes, for instance risk assessment. These processes should be applied as stipulated in the relevant process and applied regardless of a person's age. For instance referrals to the Council's occupational health provider should be undertaken based on the Council's sickness absence process i.e. if the person has hit a trigger point etc., or based on a risk assessment of the job in the case of health surveillance.

5.2 These guidelines should therefore be read and applied concurrently with the aforementioned processes and employees must not be subject to these processes based on a stereotyped perception, for instance, that an older person is likely to be ill more often than a younger person. The same applies to health and safety considerations which should be based on the relevant risk assessment identifying risks, not an assumption about the risks based on a person age.

6.0 INFORMING AN EMPLOYEE OF THEIR DATE OF RETIREMENT

6.1 City of York Council operates a normal retirement age of 65. The Council is legally obliged to inform an employee of their date of retirement between six and 12 months before their intended retirement date. This applies each time an individual nears a retirement date, including dates that has been set as a result of extending an employee's retirement over the age of 65.

6.2 The letter informing the employee of their date of retirement must also advise them of their right to request not to be retired.

6.3 Every quarter HR will supply local line managers with a list of employees who are due to retire in the next six months in order that line managers can advise the employee accordingly, using the standard letter that is contained in appendix A. At the same time HR will also supply a list of those employees within a year of normal retirement age in order to help the planning process.

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7.0 EXCEPTIONS TO RETIREMENT

7.1 Employees have the right to request not to be retired. If an employee wishes to continue working past their notified date of retirement they must write to their line manager. The letter must state whether they propose that the employment should continue indefinitely, for a stated period or until a stated date. Only one request can be made in relation to any one intended date of retirement.

7.2 The Council is committed to considering the employee's request not to be retired. In order to do so, upon receipt of such a request the employee's line manager will hold a meeting with the employee to discuss their request. Appendix B contains a standard letter informing an employee of a meeting to discuss a request not to retire.

7.3 After the meeting the line manager will write to the employee stating:

- If the request is accepted, that the request has been accepted and whether the employment will continue indefinitely or for a stated period*;
- If the request is refused, that the Council still wishes to retire the employee, together with the date when the dismissal will occur.

* If the employee has requested to stay for a stated period.

7.4 This procedure must be repeated each time an individual nears an extended point for retirement as well as when they are nearing 65.

8.0 REASONS FOR REFUSAL

8.1 In the majority of cases there will be no reason to refuse a request from an employee to continue working past their notified date of retirement and the general assumption should be to agree a request unless there is a genuine and non-discriminatory reason not to do so.

8.2 Any reason to refuse a request based on the employee's age is likely to be discriminatory, for instance if there is a stereo-type based perception that someone over the age of 65 will not be able to continue to perform in the job, or if there is a perception that it may not be safe for them to do so that is not supported by objective risk assessment and medical evidence.

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8.3 Provided that the above procedure has been followed, legally a retirement at the notified date of retirement will be an automatically fair dismissal. However in order for this to be the case, retirement must be the genuine reason for the dismissal and it can not be used as an excuse to dismiss an employee who may not be performing adequately, even if that employee has reached their notified date of retirement. Matters of under performance are dealt with using for instance, the sickness absence procedure, capability procedure, disciplinary procedure etc. and these processes apply to all employees regardless of age. This policy is not to be used in place of good performance management practice and managers should be aware that they may be required to demonstrate to an Employment Tribunal that the retirement of the employee was the only reason for their dismissal, if challenged.

9.0 APPEAL

9.1 Employees can appeal against the decision to refuse a request to continue working. Appeals must be made to the Chief Officer responsible for the service, must be in writing, setting out the grounds of appeal, be dated and be submitted as soon as is reasonably practicable after the line manager's original decision.

9.2 Upon receipt of an appeal the Chief Officer will hold a meeting within a reasonable period after the date of the notice of appeal at which their request will be discussed.

9.3 After the meeting the Chief Officer will write to the employee stating:

- If the request is accepted, that the request has been accepted and whether the employment will continue indefinitely or for a stated period;
- If the request is refused, that the Council still wishes to retire the employee, together with the date when the dismissal will occur.

9.5 In the case of a request to continue working being made by a Chief Officer, appeals will be heard by the Chief Executive.

9.6 No further right of appeal exists. Complaints or grievances submitted will not be progressed, investigated or considered.

10.0 RECORDS

Procedure	HRP11.3
Revision Number	0
Date of Issue	September 2006
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10.1 Records and associated documentary evidence and correspondence, will be held on the employee's personnel file.

11.0 MONITORING AND REVIEW

11.1 These guidelines will be monitored on an on-going basis through the operation of a database held by the Head of Human Resources.

11.2 These guidelines will be reviewed periodically as necessary.

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Appendix A

Standard letter informing an employee of their retirement

<<date>>

Dear XXX

Notification of retirement

I am writing to inform you that you will retire from the Council on the <<insert date>>. However you have the right to request not to be retired at this time.

If you wish to continue working past the above date you must write to me stating that you do not wish to retire on this date and if you are proposing that your employment should continue indefinitely, for a stated period or until a stated date.

If you require any further information on this matter please do not hesitate to contact me or refer to the Council's guidelines on the employment of people over 65 which can be found in the Human Resources Manual of Policies and Procedures on CouncilNet or are available from me.

Yours sincerely

<<line manager>>

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Appendix B

Standard letter informing an employee of a meeting to discuss a request not to retire

<<date>>

Dear XXX

Request not to retire

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

The meeting will be held on *[insert date]* at *[insert time]* at *[insert location]*.

You have a right to be accompanied at the meeting by a fellow worker or a trade union representative. Your companion may be someone that you have chosen, but they must work for City of York 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 to appeal.

Yours sincerely

<<line manager>>