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To: County Council – 6 April 2011

Subject: Retirement Age Policy

Classification: Unrestricted

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**SUMMARY:** The UK's national default retirement age (65) will be withdrawn from 1 October 2011. Employers can opt to retain and operate an 'Employer Justified Retirement Age' provided there are sufficiently robust reasons for doing so. Personnel Committee has considered the issues and has recommended to the County Council that KCC should not seek to justify a mandatory retirement age for its employees.

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## **1. BACKGROUND**

- 1.1 The Government has confirmed its plan to abolish the national, default retirement age (DRA) of 65 from October 2011, with the accompanying statutory notification process ceasing from 5 April.
- 1.2 The DRA allowed employers to require employees to retire on their 65<sup>th</sup> birthday provided the statutory notification procedure was followed. With the removal of the DRA, retirement will no longer be 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.
- 1.3 Employers may opt to retain a retirement age, an 'Employer Justified Retirement Age' (EJRA), should it be deemed a proportionate means of achieving a legitimate aim.
- 1.4 In 2006, when the UK regulations on age, now subsumed with the Equalities Act 2010, were originally introduced, KCC opted to retain a retirement age of 65 for a number of reasons, not least because of the need to address the under-representation of younger workers at that time. Our policy to this point has been to consider requests to continue working past retirement age on an individual basis with yearly extensions to employment contracts when a request has been agreed.
- 1.5 The advent of the withdrawal of the DRA requires KCC to reconsider its position with respect to retirement.

## **2. General Context:**

- 2.1 The population of people 65 and over worldwide is expected to double from 523 million in 2010 to around 1.5 billion by 2050. This means that older people will soon outnumber children under 5 for the first time ever. In the UK,

by 2020, nearly a third of the workforce will be over 50 and currently there are around 1.4 million people over the current state pension age in work, including over 800,000 who are 65 and above. UK labour market statistics indicate that the numbers in work aged 65 and above has increased by 13.5% above last year's figures<sup>1</sup>. However, the number of those retiring before age 65 has also increased significantly.

- 2.2 The social policy objectives around removing the national retirement age include continuing concerns about the pressure on pensions, skills shortages and the increasing cost of state benefits.
- 2.3 At the same time the number of young people of working age is falling and unemployment amongst school leavers and graduates continues to rise<sup>2</sup>. It is important, therefore, that employers consider the employment needs and impact upon people at both ends of the age spectrum when determining employment policy. There are significantly larger numbers of older workers in the workforce who may need or wish for a short period to work past the traditional retirement age of 65. There is also a significant pressure to provide work opportunities for those starting their working life.

### **3. Indicators**

- 3.1 There have been a number of surveys indicating that many people approaching retirement age are considering continuing working beyond. A Equalities and Human Rights Commission (EHRC) survey in 2009<sup>3</sup> of people aged 50-75, detailed the primary reason for continuing working, i.e., beyond state retirement age, for a large proportion of respondents was affordability. Recent research from insurance company Prudential showed that the majority of those surveyed were considering or planning to defer their retirement which is arguably more likely to be a reflection of the current economic environment rather than a real preference for continuing to work.
- 3.2 However the EHRC survey saw around 20% of respondents indicating their reason for wanting to continue to work past 65 was their enjoyment of work although their preferences indicated a desire for more flexible and casual patterns of work.
- 3.3 It would appear that many older people are likely to want to continue<sup>2</sup> working past 65, at least for a short period of time albeit in a reduced capacity potentially.

### **4. KCC Context**

- 4.1 KCC opted to maintain a retirement age of 65, in common with most Local Authority employers in 2006 and currently staff aged 65-85 represent only 2.6% of our workforce. Of those, the majority are in part time, lower paid roles although a small minority are in professional roles<sup>4</sup>.

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<sup>1</sup> ONS Labour Market Statistics – Jan 2011

<sup>2</sup> as above

<sup>3</sup> Older Workers: employment preferences, barriers and solutions – Policy Studies Institute

<sup>4</sup> Data - Jan 2011

- 4.2 Around 14.5% of our staff is under 30 (just under 7% under 25) and we now have specific initiatives in place to encourage or facilitate the employment of younger workers including apprenticeships, our graduate programme, Grads Kent (internship, work experience and gap year placements). Apprentices also get priority, after redeployees, for vacancies graded between KR2 and KR4 which is part of the positive action in place to allow younger people access to our jobs.
- 4.3 Further positive action, e.g., as part of succession planning, is possible and potentially legally defensible, if KCC identifies the need to address the representation of younger workers. For example, to build capacity longer term in particular occupational groups it would be possible to justify recruitment campaigns specifically to attract younger people. Much of our diversity recruitment advertising in recent years has been directed at younger people.

## **5. Considerations for retaining an Employer Justified Retirement Age**

### **5.1 Legal Risks**

- 5.1.1 Legal commentators have suggested it will be very difficult for employers to justify maintaining a compulsory retirement age. Although technically feasible, the Government is likely to be opposed in all but exceptional circumstances and an EJRA would need to be, demonstrably, a proportionate means of achieving a legitimate aim, for example succession planning. Although there have been some judgements relating to age discrimination that have indicated the possibility of this being a defensible reason, the UK employment tribunals remain sceptical. There will be significant risks for those employers keeping a retirement age as this is an untested area of law.

### **5.2 Loss of Organisational Capacity**

- 5.2.1 The contraction of the public sector, including KCC, is likely to result in a loss of significant numbers of older workers with valuable skills and knowledge. Compulsory retirement would further reduce the capacity of the organisation in this sense.

### **5.3 Inhibiting Movement**

- 5.3.1 There is a perception that not having a retirement age will inhibit the opportunities for movement and progression within an organisation. The indicators from research amongst those approaching retirement suggests that most people will not necessarily continue to work past retirement age if their financial position allows it and the majority who do so aim only to continue working for a short period. Those wishing to continue working are interested in more flexible work patterns rather than a full time capacity. KCC's current older workforce is comprised people working in predominantly lower graded part time or casual posts and irrespective of an EJRA, an individual can opt to leave the organisation, to 'retire' at state pension age, whenever they wish. The case for the lack of a retirement age inhibiting movement around the organisation is not borne out by the indicators of people's preferences.

5.3.2 KCC has a mature approach to flexible working patterns which reflects the Government's stated intention to extend the statutory right to ask for flexible working to all. Local Government Pension Scheme flexible retirement also offers the opportunity for those achieving pensionable age to opt to continue working in a reduced capacity whilst with accessing or continuing to contribute to a pension. It would seem KCC is suitable equipped to accommodate the work preferences of those wishing to continue working.

## 5.4 Managing Performance

5.4.1 A commonly held and stereotypical view of older workers is that they may become less effective with age. Since its introduction, the DRA has allowed employers a way of avoiding performance management for those to whom this applies and with its removal that option will no longer be available. Whilst it is true that poor health is one of the key determinants of premature labour market exit, i.e. through early retirement, and this option will still be available, there is no evidence to suggest older people are any less effective than other parts of the workforce. Without a retirement age, employers will have to manage underperformance or ill health of older people in the same way as any other member of staff. Failure to do this, or to treat older workers in a different way, runs the risk of potential discrimination claims.

5.4.2 KCC has and continues to strengthen its performance management framework by reviewing its procedural approach and building line management capacity to handle performance issues. Retirement on ill health grounds remains possible within both the Local Government and Teachers Pension schemes. We are therefore well positioned to deal with any performance issues as they arise without the need to use a retirement age to mask them.

## 6. Costs

6.1 It is difficult to quantify the actual cost implications of having no retirement age. There are:

6.1.1 **Administrative costs** – those involved in delivering the statutory notification process currently and the management time involved in defending challenges to decisions. Were KCC to maintain a retirement age some those costs would remain.

6.1.2 **Pensions** – Approximately 80% of those currently contributing to the Local Government Pension are aged between 31 and 65<sup>3</sup>. Without a mandatory retirement age employees are likely to contribute for longer and draw down benefits later. Whilst this is not a major consideration, it is important to note the continuing pensions' contribution made by those continuing to work beyond 65.

6.1.3 **Discrimination** – There is no cap on the compensation for successful age discrimination claims. In the event KCC seeks to justify an employer retirement age it is highly likely to be challenged.

## **7. Consultation**

- 7.1 Consultation has taken place about both the removal of the DRA and a KCC retirement age with trades unions, external organisations, Headteachers, personnel professionals, directorate equality leads and champions and staff groups. In the main there is a strong view that KCC should not seek to retain a retirement age. UNISON, UNITE the Union and the teachers trade unions all indicated support for the removal of the DRA and further indicated their support for no mandatory retirement age for KCC.
- 7.2 Personnel professionals and managers, including Headteachers, have expressed some reservations based on two primary grounds: the pressures on staff budgets implicit in continuing to employ people who are likely to be at the top or towards the top of their grade; and the challenges of managing performance. Whilst there is some merit to both points there are alternative ways of managing these challenges without resorting to a mandatory retirement age.
- 7.3 At its meeting on 28 March, 2011, the Personnel Committee considered this report and stated its endorsement of the recommendation not to seek to retain an employer justified retirement age.

## **8. CONCLUSION**

- 8.1 As an organisation, KCC is well equipped to manage the challenges identified in this report and to respond to the needs of those wishing to extend their working lives.

## **9. RECOMMENDATIONS:**

The County Council is invited to:

- 9.1 agree not to seek to justify a mandatory retirement age for KCC employees; and
- 9.2 ask the Personnel Committee to review this policy annually in the light of evolving organisational needs, workforce composition and developments in the labour market.

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