

LONDON BOROUGH OF MERTON

REPORT AND RECOMMENDATIONS ARISING FROM

A SCRUTINY REVIEW OF

IMPLICATIONS OF THE AGE DISCRIMINATION ACT FOR
MERTON AS AN EMPLOYER ORGANISATION

NOVEMBER 2006



FOREWORD BY REVIEW CHAIR

Following on from a recent review on Merton Council as an employer of disabled people, the Way We Work Panel agreed to undertake a review on the implications of the age discrimination regulations in the period up to and immediately after the implementation date of 1st October 2006.

I have chaired the review through a task group of Way We Work Panel members and our work has focused on whether the Council is fully compliant with the new legislation, particularly as it is the largest employer in Merton.

Our task group has concluded that Merton's procedures fully meet the requirements of the employment regulations and the Authority is well placed to deal positively and responsibly with requests to continue work from those employees reaching retirement age. Nevertheless, as a task group, we consider it essential for Merton as a major employer to continue to be proactive and encouraging in its approach to staff needs and wishes in relation to working, as far as the efficiency of the service and resources will allow. We cannot underestimate the extent and value of the skills and experience which dedicated staff can bring to the workplace.

A small number of recommendations are contained in the report, which will be presented to Cabinet for formal approval and which will be monitored by the Way We Work Panel, through identification of a member report champion to lead on overseeing progress with implementation. This monitoring process will serve to ensure that there is no discrimination against staff on the grounds of age.

Finally, I would like to thank my task group colleagues, Councillors Brian Lewis-Lavender, Rod Scott and Martin Whelton, our Scrutiny Officer Barbara Jarvis for her efficiency and patience, as well as the witnesses from Corporate Human Resources, Staffside and Age Concern Merton, who have willingly given their time and input to the review in what has been a challenging reporting timeframe.

**Councillor Mark Allison ,
Review Task Group Chair and Member of The Way We Work Scrutiny Panel**

TASK GROUP MEMBERSHIP (drawn from The Way We Work Scrutiny Panel)

Councillor Mark Allison (Review Chair)
Councillor Brian Lewis-Lavender
Councillor Martin Whelton
Councillor Rod Scott

Scrutiny Officer:

Barbara Jarvis, Scrutiny Officer, Policy and Performance Division

Acknowledgements:

The Panel would like to express its thanks and appreciation to all those who contributed to this review, through preparing reports and attending meetings to answer questions.

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A	Review scope including terms of reference.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Way We Work Scrutiny Panel agreed that it should undertake a review on the implications of the Employment Equality (Age) Regulations 2006, known as the Age Discrimination Act, as this logically follows on from previous scrutiny reviews relating to equality issues around the implications for Merton following the MacPherson Inquiry into the death of Stephen Lawrence, on Merton Council as an employer of disabled people.

The review Task Group commenced the review in July 2006 and completed it in November 2006, so that any recommendations could be taken on board as soon as possible after the regulations were implemented on 1st October 2006. The review scope and terms of reference were drawn up to allow this timeframe to be achieved.

Members have concluded that Merton Council's employment procedures are fully compliant with the requirements of the legislation and welcome the fact that Merton's approach to employment of older staff does in fact exceed the minimum requirement as laid down in the regulations.

The recommendations below relate to areas and actions which members consider essential in order for Merton Council to lead the way in terms of demonstrating a positive approach to employing staff across the whole age range, and in particular where staff wish to work beyond the statutory retirement age.

Recommendation 1: There is a need to monitor formal staff requests for training and requests refused, to ensure that there is no discrimination on the grounds of age.

Recommendation 2: It is vital to conduct exit interviews, to determine reasons for employees leaving the Authority (although it accepted that whilst these are offered, they are not compulsory)

Recommendation 3: Merton should actively encourage people who do express a desire to continue working after 65, rather than applying the regulations to a minimum standard only, subject to overriding responsibilities to provide good, efficient services to residents at an appropriate level of cost.

Recommendation 4: Merton should lead the way through employing older people who are seeking to join the workforce from elsewhere and be flexible in terms of offering part-time/job share etc., subject to overriding responsibilities to provide good, efficient services to residents at an appropriate level of cost.

Recommendation 5: As the regulations apply to any age, promoting employment of other age groups and particularly young people is also an issue that the Authority should bear in mind, so that the workforce can evolve to reflect more closely the profile of the wider community.

1. INTRODUCTION

- 1.1 At the first meeting of the 2006/7 Municipal Year, the Way We Work Overview & Scrutiny Panel agreed to undertake a short review to look at the implications of the Employment Equality (Age) Regulations 2006, commonly referred to as the Age Discrimination Act. This review logically follows on from previous scrutiny work which has examined the issue of discrimination through determining Merton Council's response to the Stephen Lawrence Inquiry and the Macpherson Report; examination of the implementation of the Disability Discrimination Act and scrutiny of Merton Council as an employer of Disabled People.
- 1.2 The Panel set up a member task group to lead the review and approved the membership as:-
- Councillor Mark Allison, Review Task Group Chair
Councillor Mark Betteridge
Councillor Brian Lewis-Lavender
- 1.3 A scope and timeframe was set for the review and a date was set for the first meeting of the Task Group on 31st July 2006. At this point, Councillor Betteridge declared a prejudicial interest, due to the nature of his employment. Consequently, Councillor Martin Whelton agreed to replace Councillor Betteridge on the Task Group. Councillor Rod Scott also joined the Task Group as a substitute Member.

2. THE PROCEDURE FOR UNDERTAKING THE REVIEW

- 2.1 The Task Group agreed to meet with Corporate Human Resources (HR) in the first instance, to learn what mechanisms had been put into place to ensure that Merton met the requirements of the legislation by the statutory deadline of 1st October 2006. Members met HR representatives on 31st August 2006.
- 2.2 Members also decided to timetable a meeting with Staff Side and with Age Concern Merton, being an organisation which had expressed the wish for an opportunity to raise some points about older people and employment. A meeting was held on 24th October 2006 to hear from these witnesses.
- 2.3 Following the above meetings, the Task Group members approved a set of recommendations for taking forward and monitoring through the Way We Work Panel. These are shown throughout the report and are also included in the Executive Summary on page 5.

3. CORPORATE HUMAN RESOURCES (HR)

3.1 At a Task Group meeting on 31st August 2006, members considered the work programme and associated actions drawn up by HR, to ensure that Merton would be able to implement procedures to meet the regulations deadline of 1st October 2006.

3.2 Under the new regulations, employers may retire employees compulsorily at the age of 65 or over without justifying their decision. Employees however may request to work beyond retirement. Employers must consider such requests seriously. The Task Group considered the HR work programme in detail and the following key points were made:-

□ Recruitment

- The task group raised the issue of needing to review the publications used for advertising posts.
- It was confirmed that there is no requirement for applicant's age to be revealed on application forms, although it may be possible to work out a person's age by qualification dates etc.
- HR acknowledged that there is room for improvement with online application forms.

□ Learning & Development

- HR monitors who attends training and there are mechanisms to ensure that staff aged 50+ and 60+ years are not discriminated against when training is approved, for reasons of age.
- The PAHRIS (Payroll and Human Resources Information System) system can provide profile data according to race, gender, disability and age.
- Members suggested that there should be data on who has requested training and this has been flagged up in HR – however it should be remembered that some staff aged 50+ may not want to be trained, but it would amount to discrimination if they were not to be offered the opportunity for training. Members were informed that there is currently no data analysis on this, but it is linked to the appraisal system. The data on actual take-up of training is monitored quarterly, both corporately and departmentally. However, HR advised that monitoring the number of staff training requests and the number of requests turned down would have resource implications which would need to be taken into account. Nevertheless, the Task Group considered that there needs to be such monitoring, to determine that discrimination on the grounds of age is not a factor.

Review Recommendation 1: There is a need to monitor formal staff requests for training and requests refused, to ensure that there is no discrimination on the grounds of age.

- The issue of increased training costs was raised, both in terms of increased take-up of training, including for the pre-retirement course, and in terms of pressure on other staff to cover work while colleagues are on training courses. HR advised that there are currently no additional monies for increasing training budgets and that the numbers are not yet known. The cost will therefore need to be met from within existing budgets. Opportunities for training are always prioritised and offered according to relevance to the employee and their job, but age must not be used as a criteria for prioritising. Members were concerned that no additional funding may therefore mean that there is less opportunities for training across the board. HR advised that they do not yet know what the demand will be and a high demand may mean that resourcing will need to be reviewed.
- There is access to the pre-retirement course for anyone coming up to retirement and there is awareness training set up for managers (in-house) through a number of managers' briefing sessions held in October 2006.

□ Terms & Conditions/ Policies & Procedures

- Wording is being revised in these to take account of the new age discrimination regulations, including the Employee Handbook.
- Much of this has been dealt with as part of the work to introduce Single Status.
- Corporate Management Team at Merton will consider a paper on redundancy procedure in light of the new regulations.
- The HR letter to staff due to reach 65 years, explaining the right to continue to work etc, was due to go out to staff on 1st September 2006.
- It was confirmed that the standard retirement age remains at 65 years.
- Annual medicals are required for staff over 65 years who continue working, or more frequently for those doing physical work.
- Employees have a right of appeal where requests to continue working are refused.

□ Employment & Reward

- Members raised the issue of whether, if an employee wants to continue to work, but whose job is no longer suitable because it is physical work, the Authority is required to find an alternative post. Their view was that redeployment should be an option. HR advised that this might relate to an acquired disability and therefore cases would need to be looked at on an individual basis, in terms of making reasonable adjustments to the working environment.

□ Workforce Profile

- Members noted the policy on encouraging applications from under-represented age groups in the workforce. HR advised that an age positive approach would include looking at advertising media used, the language used in advertising posts, interviewing methods etc.
- Appointment to posts must always be on merit alone, but the Authority can use mechanisms to ensure there is no discrimination and under-represented groups are positively encouraged. Also, work experience and graduate training programmes are used, as well as apprenticeships, to contribute to replacing people coming up to retirement.
- Members agreed that the issue of under-representation in the workforce needs to be addressed through the recruitment process. However, there could be issues around culture in relation to this. For example, in Environment & Regeneration Department, the workforce is predominantly white male and although appointments are made from bme applicants, they tend to leave within the first year.

Review Recommendation 2 : It is vital to conduct exit interviews, to determine reasons for employees leaving the Authority (although it accepted that whilst these are offered, they are not compulsory)

- The Task Group requested to see the workforce age profile data and this was supplied by HR. An age profile for recruitment was also requested, however HR advised that data on this was not yet available.

□ Audit

- The workforce profile would be used to undertake an audit on an annual basis.

□ Grievances/Employment Tribunals

- There will be monthly assessment of casework.

□ Consultation on Changes

- HR advised that there has been no consultation with Staff Side as yet, but that this would take place during September 2006.

□ Staff Communication

- Staff about to reach the age of 65 years would receive an HR letter by 1st September 2006 and copies of standard letters were supplied to Task Group members as requested.

- Review of HR Service Provision
- Members were informed that this review is ongoing.
 - Staff Forums
- The Task Group was advised that Merton currently has 4 staff forums:-
 1. Lesbian and Gay Forum
 2. BME Forum
 3. Disability Forum
 4. Carers Forum

With the introduction of the new age employment regulations, it was suggested that an Age Forum will also possibly be needed.

4. AGE CONCERN

- 4.1 The Task Group met with Lynne Bainbridge from Age Concern Merton on 24th October 2006. Lynne circulated two leaflets to members containing guidance on age discrimination in the workplace which Age Concern has produced. She advised that Age Concern feels let down by the new legislation, as the organisation has been campaigning for a more positive approach to employing older people, which benefits health and helps retain skills in the workplace. Many older people have financial responsibilities to meet and work helps them do this.
- 4.2 Retirement at age 65 is a somewhat archaic number and is outdated in relation to modern life expectancy which has increased considerably. There should be positive encouragement to employees who do want to continue working after 65 and options such as redeployment and adaptations should be considered. Age Concern feels the legislation does not go far enough and does not favour employees. Age Concern has requested a judicial review of the legislation and a date has been set for December 2006. The view is that the Government has not met the standards of the EU directive in the legislation, as employers can still discharge employees at 65, which discriminates against older active employees.
- 4.3 Age Concern undertook a consultation of 56k people nationally on the issue of modern retirement and 80% said the Government was wrong to keep the retirement age as 65 years. Some professions allow work to continue after 65 years, e.g. judiciary and parliament. Retaining older staff also saves on recruitment costs and this should be taken into account.
- 4.4 The key issue is the need for employers to consider favourably requests for continued working after 65 years (although the regulations do not require this), and to explain fully the reasons when requests have to be turned down. Employers should actually want to retain

people of all ages in the workforce (as Age Concern does) – it should really be a positive focus on electing to continue working, not just making a request to do so. HR advised that Merton Council's policy is to give reasons for turning down a request to work beyond statutory retirement age and therefore Merton's approach does in fact exceed the basic legal requirement.

- 4.5 A key question posed by the Task Group was what Merton can do as an employer. Notwithstanding Age Concern's request for judicial review, it is not possible to change the law. However, members agreed that Merton can apply it in a way which assists employees and makes them feel valued. The key issue is to work with the individual to get the best out of them and to assess their needs to help them continue working if they wish to.
- 4.6 The Task Group agreed that the way the procedures have been written gives the message that the legislation has to be complied with, rather than expressing a positive and encouraging signing up to the principle of older employees in the workplace. Members acknowledged that Merton's approach to requests goes beyond the legal requirement, but there was some concern that barriers might be put forward, such as the cost of insurance liability etc, This could be used as a reason to turn down a request to continue working after 65. Members considered that efforts should be made to work around these and resolve any problems which might present themselves. Also, some roles are physically demanding and this needs to be taken into account in recruitment and retention procedures, in so far as resources and service delivery considerations allow.

Review Recommendation 3: Merton should actively encourage people who do express a desire to continue working after 65, rather than applying the regulations to a minimum standard only, subject to overriding responsibilities to provide good, efficient services to residents at an appropriate level of cost.

- 4.7 Apart from existing workers being supported to continue working after 65, members considered that Merton Council should act as an example of good practice and employ older people who are seeking work as new staff, maybe as part-time to supplement pensions from elsewhere etc. (Asda, B&Q employ older workers in this way), or to provide work for people who are unemployed. Merton Council could therefore lead the way locally as a major employer in the borough.

Review Recommendation 4: Merton should lead the way through employing older people who are seeking to join the workforce from elsewhere and be flexible in terms of offering part-time/job share etc., subject to overriding responsibilities to provide good, efficient services to residents at an appropriate level of cost.

- 4.8 The point was made that even people aged 45 or 50+ may experience difficulties with gaining employment and the assumption at Job Centres for example is that people do not wish to work after 65, which is not the case for everyone. So there is an issue of a cultural change required. Work provides more than just a salary – it keeps a person active, mobile and provides a social environment and responsibility and promotes a feeling of self-worth.
- 4.9 Age Concern Merton has agreed to stay in touch with members through the Scrutiny Team and advise on the outcome of the judicial review in due course and on the wider perception of Merton as a fully inclusive employer.

5. STAFFSIDE

- 5.1 The Task Group also met with Iyabode Animashaun, a representative from Merton Council's Staffside Committee. Members were advised that Staffside had been consulted by Corporate HR on Merton's revised retirement policy (copies of which were circulated to the Task Group).
- 5.2 The union view is that any employee of any age who is in a vulnerable position requires proper support from an employer, in just the same way as for a disabled employee requiring adjustments/adaptations to the workplace. These might include requiring larger computer screens, or thermal clothing for outside work etc. Members agreed that, if the workforce is older, there might be more needs of this nature to be taken into account. Members considered that the Authority should be prepared to provide this support and not use it as an excuse not to continue employing a person after 65. The Task Group's view is that the regulations require positive interpretation by managers, to demonstrate a valuing of older staff and an appreciation of skills. Employer action can therefore enhance the principles of the legislation.
- 5.3 The point was put that, through the applying of the regulations, an employee's particular relationship with a manager who is taking a decision about whether he or she can continue to work after 65 might be an issue in some cases – there might not be total objectivity in any decision. Staffside would have preferred to see an independent panel set up to take decisions on whether to agree to employees continuing to work. However, the Task Group's view was that, management of variation in hours and in providing job share opportunities may present logistical challenges for managers. Whilst as far as is possible there should be flexibility when considering requests to continue working after the age of 65 year, nevertheless, members were concerned to ensure that the regulations should not have a dramatic effect on manager's workloads, although the benefits of having experienced, reliable staff should not be underestimated. Managers have a duty to consider efficiency and the best use of resources in the workplace.

- 5.4 People tend to want to stay in work that they know, but some jobs might not remain suitable as a worker gets older, e.g. if there is lifting involved or adverse weather conditions etc. There may also need to be an adjustment to hours worked. Phasing changes to work patterns rather than just stopping work on one day is less traumatic and allows for adjustment. However, the unemployed will have different goals and may need full time hours. So the requirements will always be related to individual circumstances.
- 5.5 As already highlighted, older employees must not be denied training where appropriate to their role on the grounds of age - and the issue of resource implications if training budgets are not enhanced had already been raised with HR at an earlier meeting. However, members were informed that Unison is able to offer training in some key areas and this would help to cover extra training demand. Members therefore hoped that HR would liaise with Staffside on the possibilities for training provision through this means.

6. RESOURCE IMPLICATIONS

- 6.1 Members consider that the majority of the recommendations contained in this report do not represent any major resource implications for the Authority, as Merton is already actively taking forward a positive approach to promoting an inclusive and diverse workforce.
- 6.2 In terms of additional monitoring of training requests and requests refused, it is acknowledged that this would have some resource implications for the Authority, whether the monitoring was done departmentally or corporately. Nevertheless, the Task Group considers this monitoring to be essential to demonstrate that age discrimination does not in fact take place when training requests are considered. Other recommendations in this report essentially involve a continuing positive approach to be applied to the needs and wishes of older staff reaching retirement age, in so far as effective management and delivery of services allows.

7. CONCLUSIONS

- 7.1 The overall conclusions in relation to Corporate HR's processes were that, for the 1st October 2006 age regulations deadline, Merton was fully compliant with the requirements. Members acknowledged that amendments to processes for compensation/redundancy/pensions will be considered in the near future by Corporate Management Team. Members also welcome the fact that Merton's approach to employment of older staff does in fact exceed the minimum requirement as laid down in the regulations.

- 7.2 From the meeting with Age Concern Merton, members agreed that it was important to recognise that older staff are a valuable and skilled resource and they should therefore be positively encouraged if they wish to continue working after the age of 65, in so far as the efficiency and resources of the workplace allow.
- 7.3 The capability for Staffside/Unison to deliver some elements of staff training was welcomed and this resource should be utilised.
- 7.4 The Task Group thought that there was unlikely to be a large number of people aged 65 requesting to continue working and, with time, the changes will come to be seen as the norm. Also, the profile of the workforce (Merton Council has an ageing workforce profile) can be altered through continuing to encourage young people to apply for posts. It was agreed that ideally Merton Council's workforce should reflect the character and profile of the local population as a whole.

Review Recommendation 5 : As the regulations apply to any age, promoting employment of other age groups and particularly young people is also an issue that the Authority should bear in mind, so that the workforce can evolve to reflect more closely the profile of the wider community.

Appendix A

**OVERVIEW AND SCRUTINY
REVIEW SCOPING TEMPLATE**

Review Body: Way We Work Overview & Scrutiny Panel

Task Group Members : Councillors Mark Allison, Brian Lewis-Lavender, Martin Whelton (replacing Mark Betteridge), Rod Scott (substitute member)

<u>Title of Review</u>	Implications of the Age Discrimination Act (Employment Equality (Age) Regulations 2006)
Outline purpose of Review	To scrutinise the actions currently being taken to enable Merton Council to comply with the Age Discrimination Act which comes into force on 1 st October 2006, in relation to corporate employment. To determine whether there are any gaps to be addressed.
Expected Timescale (possible no of meetings?)	A 'mini' review to produce an interim report to September 2006 Way We Work Panel, with a final report to November 2006 Way We Work Panel. Initial task group meeting to be held in July, with two task group meetings per month during September and October likely to be the minimum requirement.
Terms of Reference	To determine what the key requirements of the Age Discrimination Act are in relation to corporate employment and to review how well Merton as a major employer in the borough is prepared for meeting these requirements, which come into force on 1 st October 2006. In particular:- a) What initiatives are already in place for meeting the Act's requirements for employing people of all ages; b) What work is on-going/needs to be done to meet the requirements of the Act in terms of staff recruitment and retention processes;
Key areas of enquiry	<ul style="list-style-type: none"> • The Corporate HR Work Programme already in place to address the implications of the Act; • Implications of the Act for relevant departmental strategies in relation to older people (and young people) • Local organisations' views on age discrimination (e.g. Age Concern Merton)
How review could be publicised	<ul style="list-style-type: none"> • Scheduled Panel meetings and agendas are public and advertised as part of the Council's Corporate Calendar. • Task Groups are informal meetings, but are not closed to the public. • Advertising in the local paper/<i>My Merton</i>, • Merton Council's website. • Staff Bulletins • Xchange magazine
Possible witnesses (for written or oral evidence) e.g. council officers, individual residents, community groups, partner organisations, other interested stakeholders, other external organisations	<ul style="list-style-type: none"> • Head of Human Resources • Diversity and Community Engagement Manager • Trade Unions/Staff representatives • Local voluntary organisations (e.g. Age Concern Merton; Merton Association of Pensioners)

<p>Potential barriers</p>	<ul style="list-style-type: none"> • Review needs to be tightly focused in order to report sufficiently early to make recommendations as soon as possible after the 1st October 2006 deadline. • Timescales are very tight to meet the deadline.
<p>Expected Outcomes (all linked to Merton's vision and strategic objectives)</p>	<p>It is anticipated that review recommendations will lead to clearer understanding of the implications of the Age Discrimination Act in terms of recruitment and retention of staff.</p> <p><u>Outcomes for Residents:</u></p> <ul style="list-style-type: none"> • Contributes to reducing inequalities in the workplace for local residents; <p><u>Outcomes for Merton Council:</u></p> <ul style="list-style-type: none"> • Provides staff with greater understanding of employment rights; • Links to local strategic partnership objectives; • Contributes to Community Plan objectives; • Contributes to tackling the key issues of inclusion and inequalities and to reducing discrimination.
<p>Possible Sources of Information</p>	<ul style="list-style-type: none"> • Employment Equality (Age) Regulations 2006 • Department for Education and Employment • Department for Work and Pensions • Department of Trade and Industry • Centre for Public Scrutiny • Improvement and Development Agency • Best practice from other authorities
<p>Scrutiny Officer (Policy, Partnerships & Performance)</p>	<p>Barbara Jarvis 020 8545 3390 Barbara.jarvis@merton.gov.uk</p>
<p>Relevant Review Officer(s)</p>	<p>Head of Human Resources HR Diversity Manager</p>