

**To: The Chair of the Probation Board/Trust  
The Chief Officer of the Probation Board  
The Chief Executive of the Probation Trust  
(Copy enclosed for the Head of Human Resources)  
The Secretary of the Probation Board/Trust  
Members of the NNC**

1 July 2008

**NNC CIRCULAR NO.12/2008**

Dear Madam/Sir

**NNC Agreement on Pay and Conditions of Service  
New Section B20 - Model Retirement Policy**

Please find attached new Section B20 of the NNC Agreement on Pay and Conditions of Services.

The model Retirement Policy reflects the introduction of the statutory duty to consider requests from employees to work beyond the normal retirement age and the procedure which has to be followed in order to comply with the legislative requirement.

The policy was approved by the NNC at its May meeting. The NNC did ask however that attention be drawn to the case currently with the European Court of Justice, 'Heyday'. Heyday believes that the inclusion of the default retirement age, which allows employers to retire individuals at 65 or over, in the Employment Equality (Age) Regulations 2006 makes them incompatible with the Framework Directive. The European Court of Justice is hearing this challenge on 2 July 2008 but a decision is not expected until late 2008 at the earliest. Given this challenge, the President of Employment Tribunals has directed that all claims of age discriminations relating to the default retirement age are to be stayed.

It is recognised that there is currently a variety of local practice in this area. Until the outcome of the Heyday challenge is known Boards and Trusts should continue to operate within the current provisions.

A revised Index Page is also attached.

Any queries on the Scheme should be addressed to either the Joint Secretaries or to Nick Jones, PACU National HR Manager, Policy Development.

Yours faithfully

**Christine Lawrie  
Jonathan Ledger  
Joint Secretaries**

## NNC MODEL RETIREMENT POLICY

### Introduction

1. The [ ] Probation Board operates a contractual normal retirement age of 65 years for all its employees. Other than in wholly exceptional circumstances it is expected that all employees will retire at age 65 years.
2. In accordance with the Employment Equality (Age) Regulations 2006 the Board is required to have a mandatory procedure in place which operates in lieu of the statutory dismissal and disciplinary procedure. To comply with the above legislation the Board has a formal duty to notify employees of the date of retirement and a duty to consider requests to work beyond retirement age from employees. It is under no obligation to agree such requests.

### OR

1. The [ ] Probation Board operates a contractual normal retirement age of 65 years for all employees. However, it believes that employees should, wherever possible, be permitted to continue working for as long as they wish and are able to do so effectively. For this reason, [ ] Probation Board does not propose to impose a compulsory retirement age and will consider any requests to continue working beyond the normal retirement age on a case by case basis.
2. To that end the [ ] Probation Board will support employees, within financial, operational and planning constraints, who seek to choose their retirement date which may be before or after their normal retirement date. It also recognises the importance of a retirement policy which is not discriminatory on the grounds of age.
3. This policy has been written with a view to avoiding any adverse impact it may have on any individual by reason of their ethnic origin (in accordance with the Race Relations (Amendment) Act 2000), disability, gender, sexual orientation, age, religion and belief, marital status, caring responsibilities or chosen working pattern. It is not believed that this policy will have any such adverse impact on employees for any of these reasons. Future reviews of this policy will revisit this evaluation, and it may become subject to a full Impact Assessment examining workforce data and compliance information.
4. This policy complies with the Employment Equality (Age) Regulations 2006.

## Scope

5. This policy applies to all [ ] Board employees.
6. The normal retirement age for the purposes of this policy is governed by the contract of employment. In [ ], the normal retirement age is 65 years.

## Informal Stage

### [to be omitted where retirement at 65 years generally enforced]

7. HR will write to employees at least 12 months in advance of their 65<sup>th</sup> birthday to ask them to consider their retirement intentions and suggesting that they discuss these with their line manager. They will also be given details of their statutory right to request to continue working beyond their 65<sup>th</sup> birthday. The opportunity will also be provided for them to discuss the possibility of reducing their hours (and pay) or flexible working. Where the business need exists, this may be possible in their current post but that cannot be guaranteed. In addition pre-retirement information will be provided including details of pre-retirement courses where they are available.

## Formal 'Duty to Consider' Procedure

8. HR will write to employees *no earlier than* twelve months and *no later than* six months before their 65<sup>th</sup> birthday to give notice of the intended date of retirement and of the employee's right to request not to retire. This letter will advise employees to contact their pension provider if they want an estimate of their pension benefits.

## Application to work beyond the normal retirement age

9. Where an employee wishes to apply to work beyond the normal retirement age, an application to work beyond her/his 65<sup>th</sup> birthday should be submitted to her/his line manager between three and six months prior to the notified date of retirement. In accordance with the legislation, the employee's application should state whether the employee wishes to continue to work: (a) indefinitely (b) for a stated period or (c) until a stated date. The application will then be forwarded with line management's comments within five working days to the Head of HR. Only one request may be made in relation to each intended retirement date.
10. If necessary, for example where the request cannot be immediately agreed, the line manager, accompanied by HR, will meet the employee within ten working days to explain any concerns and to make it clear that [ ] Probation Board may wish to continue with the retirement. A decision will be made following the meeting, taking into account the employee's representations and the general needs of the organisation. The outcome of the request will be communicated to the employee in writing as soon as it is reasonably practicable to do so after the meeting.

11. The employee is entitled to be accompanied at this meeting by a trade union representative or workplace colleague. In order to comply with statutory requirements such a meeting will take place in all cases where the application to continue working is to be refused. Employees can request to postpone the meeting if their chosen companion is unable to attend on the original date and time suggested. The meeting can be postponed until a date that is within seven calendar days from the day after the original meeting was scheduled.
12. Subsequent applications should be made three months prior to the date of the agreed extension. Consideration of each application will be on the basis of individual and organisational circumstances at the time but will always include consideration of the employee's attendance record and conduct.
13. Employees who are over 65 years of age and who have applied successfully to remain in employment will be:
  - a. Subject to the same capability, conduct and attendance standards as those applying to other employees;
  - b. Subject to the same performance management and development procedures as other employees;
  - c. Provided with the same training and development opportunities as other employees (including the same considerations of value for money);
  - d. Considered for employment and promotion opportunities in the same way as other applicants (including the same considerations of length of service possible in any new post and value for money)
14. Employees should contact their local pension provider to obtain personal advice and assistance regarding their entitlements if they wish to apply to continue in employment beyond the normal retirement age.
15. Where employees have applied successfully to work beyond their 65<sup>th</sup> birthday, HR will confirm this in writing. As soon as HR are notified of the employee's intention to retire and the date, it will notify the pension provider and write to the employee three months before the actual date of retirement, confirming their last day of service. It is expected that any outstanding leave will normally be taken before the last day of service.

16. Where employees fail to respond to the correspondence sent by HR it will be assumed that they intend to retire on the day prior to their 65<sup>th</sup> birthday (subject to reasonable care being taken to ensure that the employee has actually received the correspondence).

### **Right of Appeal**

17. The [ ] Board is under no statutory obligation to agree an application to work beyond the normal retirement age nor, if such an application is rejected, to explain why. Where an application is rejected, this will be confirmed in writing, the date of retirement restated and details of the statutory right of appeal included.

Note: Whether to do so is entirely at the discretion of each individual Board although it is considered good practice to provide a reason.

18. An employee has the statutory right of appeal in respect of a decision not to agree the application or where the [ ] Board has proposed a new intended date of retirement which is less than that originally requested.
19. An employee wishing to appeal should write formally to the Head of HR, giving full details of the grounds of appeal, within 10 days of being notified of the decision not to agree the application or to amend the requested intended retirement date.
20. HR will arrange for the appeal to be heard by the relevant ACO/Director, or, where appropriate, the Chief Officer, within 15 working days of receipt of the appeal. The senior officer hearing the appeal will be advised by a representative of HR and the employee may be accompanied by a Trade Union representative or workplace colleague.
21. If the appeal is upheld, the employee should be notified of this in writing together with confirmation of how long the employee's employment will continue - indefinitely or for a stated period of time.
22. In compliance with the statutory provision, there is no further right of appeal.

### **Flexible Retirement**

23. The possibility of flexible retirement exists within the Local Government Pension Scheme. An employee who, rather than continuing to work full-time until the normal retirement age, wishes, for example, to move to part-time working or to a lower graded post, may, subject to the [ ] Probation Board's consent, elect to draw any pensions benefits already accrued whilst still receiving a salary in respect of the reduced hours or changed role.

24. Agreement by the [ ] Probation Board to an employee's request for flexible retirement will only be given where there is no cost to the Board i.e. there will be no pension enhancement.
25. Where an employee wishes to consider flexible retirement, an application should be submitted to her/his line manager at least six months' before the intended date. The application should state what option is being requested, from which date together with any other relevant details. The application will then be forwarded with any additional comments by the line manager to the Head of HR for a decision which will take account of the employee's circumstances and organisational needs.
26. It is the employee's responsibility to seek her/his own advice in respect of pension entitlements when considering making use of this provision.
27. If the application is agreed, HR will write formally to the employee and liaise as appropriate with the pensions office. It is expected that any annual leave entitlement, outstanding TOIL etc relating to the former role or hours will have been used prior to the new arrangements taking effect.
28. If it is not possible to agree an application for flexible retirement, clear reasons will be provided and these will be discussed with the individual. If the applicant is not satisfied with the decision, the provisions of the Grievance Procedure will apply.

### **Monitoring and Review**

29. This procedure will be reviewed at two-yearly intervals.
30. The Head of HR is responsible for monitoring and ensuring the effective use of this procedure and for identifying any organisational issues requiring attention. Information on applications to work beyond the normal retirement age will also be reviewed annually in accordance with legislative requirements including the Race Relations (Amendment) Act.