

Erewash Borough Council Retention & Disposal Policy APPENDIX 1

KEY DISPOSAL/RETENTION CONSIDERATIONS

1. HAS THE DOCUMENT BEEN APPRAISED?

As a first step, the nature/contents of any document being considered for disposal should be ascertained. No document(s) should be identified or designated for disposal unless this has been done. The process may only take a very short period of time; nonetheless, it can be a skilled task, depending on the complexity of the document(s) concerned and should only be undertaken by officers who possess sufficient operational knowledge to enable them to identify the document and its function within both the individual Service and corporate frameworks.

2. IS RETENTION REQUIRED TO FULFIL STATUTORY OR OTHER REGULATORY REQUIREMENTS?

There is very little specific legislation that stipulates mandatory retention periods for documents in local government. The following legislation, either directly or indirectly, imposes minimum retention periods as follows:

Tax Legislation: Minimum retention period for certain financial records are imposed by statutes such as the VAT Act 1994, and the Taxes Management Act 1970. These retention periods are identified in the retention schedules.

Statutory Registers: Various local government statutes require registers to be kept of certain events, notifications, or transactions. It is implicit within such legislative requirements that these records be maintained on a permanent basis, unless the legislation concerned stipulates otherwise. The Town and Country Planning legislation requires that a number of registers be kept (e.g. of enforcement notices issued) and these warrant special attention (they are dealt with in the Retention Schedule), as in some cases there is an obligation to include documentation.

The Audit Commission Act 1998: This provides auditors with a right of access to every document relating to the Council that appears necessary for the purposes of carrying out the auditor's functions under the Act.

The Local Government Act 1972, S.225: Any document deposited with "the proper officer" of the Council in accordance with Statute should be retained permanently. (This is comparable to the position regarding Statutory Registers, above).

Part VA of the Local Government Act 1972: This governs public access to certain documents relating to Council and Committee meetings. Certain documents that form part of the public section of the agenda are required

to be available for inspection by members of the public for a period of six years from the date of the meeting. These documents are:

- Minutes, or copy Minutes of the meeting
- A copy of the agenda of the meeting
- A copy of any reports discussed (except exempt items)
- Background documents, i.e. documents, other than published works, which have been relied on in preparing any report and which disclose facts or matters on which the report or an important part of it is based. The six-year requirement relating to background documents has implications for document retention that, potentially, are relevant to all Council Services.

3. IS RETENTION REQUIRED FOR EVIDENCE (LEGAL ADMISSIBILITY)?

The issue of Legal Admissibility is at the core of records management principles. An organisation may need to prove (to a court of law or some other statutory body) that the contents of a particular document or data file created or existing within an Electronic Document Management System (EDRM) have not changed since the time of storage. If the data file is an electronically stored image of an original paper document, an organisation must be able to prove that the electronic image is a true representation of the original. Proving the authenticity of electronically stored documents is crucial to their admissibility in a court. The Council increasingly finds itself moving towards the storage of documents electronically as exemplified by the introduction of EDRM. An EDRM procedure, setting out detailed arrangements for safeguarding the legal admissibility of electronically stored documents, forms Appendix 3 to this Policy.

On occasions, the Council becomes involved in disputes with third parties. Such disputes, if not satisfactorily resolved, can result in the dissatisfied party bringing legal proceedings against the Council, usually, but not always with a view to obtaining monetary compensation. Conversely, the Council may wish to institute legal proceedings against an individual or organisation, e.g. to recover an unpaid debt, or in respect of faulty workmanship. Where a dispute arises, or litigation has been commenced it is important that the Council has access to all correspondence and other documentation that is relevant to the matter. Without such, there is the danger that the Council's position will be compromised, and the very real possibility that an unmeritorious claim might succeed, or that the Council may be unable to assert its legal entitlements.

The Limitation Act 1980 specifies time limits for commencing litigation. The starting point therefore, is that the retention period is the length of time that has to elapse before a claim is barred. The main time limits that are directly relevant to local government are as follows:

- Claims founded on simple contract or tort (other than personal injury claims) cannot be brought after the expiration of **6 years** from the date on which the cause of action occurred. Most claims by or against the

Council come under this heading, and include debt recovery actions, and compensation claims in respect of sub-standard work, negligent advice, and damage to property.

- Compensation claims for personal injury are barred on expiry of **3 years** from the date on which the cause of action occurred (this will usually be the date when the incident causing the injury occurred; **or** the date when the injured person first had knowledge of the injury, its cause and the identity of the person responsible (some injuries are latent and do not manifest themselves for some period of time).
- Claims that are based on provisions contained in documents that are 'under seal' are barred after the expiration of **12 years** from the date on which the cause of the action occurred.

Limitation Act 1980 S.14A and S.14B: "Latent damage claims"

These provide a special time limit for negligence actions (excluding personal injury) where facts relevant to the cause of action were not known to the claimant at the date of the negligence of the person responsible. Notwithstanding these special provisions, S.14B goes on to provide an overriding time limit of **15 years** from the date of the defendant's negligence.

This provision has particular significance where building or engineering works, either carried out by or for the Council, are concerned.

4. IS RETENTION REQUIRED TO MEET THE OPERATIONAL NEEDS OF THE SERVICE?

In some cases retention may be desirable (whether permanent or otherwise) even though no minimum retention period applies, or has expired.

Documents or records might be useful for future reference purposes, e.g. training, as precedents, or for performance management (performance indicators, benchmarking and comparison exercises). A professional judgement needs to be made as to the usefulness of a particular document.

5. IS THE DOCUMENT OR RECORD OF HISTORIC INTEREST OR INTRINSIC VALUE?

In most cases this consideration will not be applicable. However, some documents currently in Council storage may be of historic interest and/or even have some monetary value.

Even if the document is of historical or monetary value, disposal, rather than retention by the Council, may well be the appropriate option, but in the form of transfer to, e.g. the County Archivist, or even sale to an external body.