

## **Report to Appointments and Conditions of Service Committee**

**Subject: Local Pension Discretions**

**Date: 25 March 2015**

**Author: Service Manager- Organisational Development**

### **1. Purpose of the Report**

To make recommendation to this committee in respect to local policy discretions required for determination under the Local Government Pension Scheme (LGPS) Regulations.

### **2. Background**

The LGPS in England and Wales was amended from 1 April 2014 so that benefits accruing for service after 31 March 2014 will now accrue on a Career Average Revalued Earnings (CARE) basis, rather than on a final salary basis.

As a result of the changes, Scheme employers participating in the LGPS have to formulate, publish and keep under review a Statement of Policy on certain discretions which they have the power to exercise in relation to members of the CARE Scheme. Scheme employers are also required to (or where there is no requirement, are recommended to) formulate, publish and keep under review a Statement of Policy on certain other discretions they may exercise in relation to members of the LGPS.

A paper was put to the Joint Consultative and Safety Committee (JCSC) of 24 February to consult on management recommendations for these required local discretions. This paper is shown at Appendix A. The JCSC recommended that the proposed policy discretions be referred unchanged to this committee for approval and adoption as policy.

The paper also identifies local employer discretions made available under previous pension regulation for which revised wording is offered to improve clarity together with other existing local discretions that are identified for completeness and for which no change is proposed.

The council is also required to publish and keep under review a Statement of Policy on certain discretions relating to injury allowances under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011. To that end a revised Injury Allowance Policy is also proposed for implementation which again received support and recommendation for adoption from the JCSC.

### **3. Recommendation**

The Appointments and Conditions of Service Committee is **recommended** to:

3.1 support the policy statements proposed in respect to local pension discretions and authorise formal adoption as policy

3.2 support the revised Injury Allowance Policy as proposed and authorise formal adoption as policy

Both recommendations are proposed for implementation with immediate effect.



## **Report to Joint Consultative and Safety Committee**

**Subject: Discretions Policies required by the Local Government Pension Scheme Regulations 2013, the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 and others**

**Date: 24 February 2015**

**Author: Service Manager; Organisational Development**

### **1. Introduction**

1.1 The Local Government Pension Scheme (LGPS) in England and Wales was amended from 1 April 2014 so that benefits accruing for service after 31 March 2014 will now accrue on a Career Average Revalued Earnings (CARE) basis, rather than on a final salary basis.

1.2 The provisions of the CARE scheme, together with the protections for members' accrued pre 1 April 2014 final salary rights, are contained in the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

1.3 As a result of the changes, Scheme employers participating in the LGPS have to formulate, publish and keep under review a Statement of Policy on certain discretions which they have the power to exercise in relation to members of the CARE Scheme.

1.4 Scheme employers are also required to (or where there is no requirement, are recommended to) formulate, publish and keep under review a Statement of Policy on certain other discretions they may exercise in relation to members of the LGPS. This paper identifies the new discretions for which a policy statement is required to be published and new discretions that although do not require a published statement, may be particularly relevant to the council and as such a policy statement has been drafted.

The paper also identifies local employer discretions made available under previous pension regulation for which revised wording is offered to improve clarity together with other existing local discretions that are identified for completeness and for which no change is proposed.

1.5 The council is also required to publish and keep under review a Statement of Policy on certain discretions relating to injury allowances under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011.

## 2. Discretions

Although the total number of discretions under these regulations now amount to more than 100, the key discretions required or recommended for determination and publication by Gedling Borough Council are shown in the following tables together with a recommended policy statement.

In accordance with the legal requirement under Regulation 60(5) of the LGPS 2013 the policy statements have been drafted to balance financial, business and employee needs. Also, no policy statement can unduly fetter the employer's ability to make decisions. To reflect these needs, the proposed policy statements are intended to ensure that there is no serious loss of confidence in the public service as the Regulation demands.

Table 1a. These are the discretions subject to a written policy under the LGPS Regulations 2013 [prefix R] and the LGPS (transitional Provisions and Savings) Regulations 2014 [prefix TP]

<b>Regulation and Employer Discretion</b>	<b>Recommended Policy Statement</b>
<b>Regulation R16(2)(e) and R16(4)(d)</b> Whether, how much, and in what circumstances to contribute to a shared cost Additional Pension Contribution scheme. <i>(The council would pay towards additional pension contributions)</i>	The council will not exercise this discretion except where there is an overriding business case and there has been thorough consideration of financial impact. Cases will be considered by the Appeals and Retirement Committee.
<b>Regulation R30(6) and TP11(2)</b> Whether all or some benefits can be paid if an employee aged 55 reduces their hours or grade and continues to work (flexible retirement). <i>(The council would pay the cost of the pension strain cost that arises)</i>	The council will not exercise this discretion except where there is an overriding business case and there has been thorough consideration of financial impact. Cases will be considered by the Appeals and Retirement Committee.
<b>Regulation R30(8)</b> Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement. <i>(The council would pay the cost, or part cost of the benefit lost to the employee due to flexible retirement)</i>	The council will not exercise this discretion except where there is an overriding business case and there has been thorough consideration of financial impact. Cases will be considered by the Appeals and Retirement Committee.
<b>Regulation R30(8)</b> Whether to waive, in whole or in part, actuarial reduction on benefits paid on benefits which a member voluntarily draws before normal pension age. <i>(The council paying the cost, or part cost of the benefit lost to the employee due to early retirement)</i>	The council will not exercise this discretion except where there is an overriding business case and there has been thorough consideration of financial impact. Cases will be considered by the Appeals and Retirement Committee.
<b>TP(Schedule 2, para 2(2))</b> Whether to "switch on" the 85 Year Rule for an employee voluntarily drawing benefits on or after age 55 and before age 60. <i>(If "switched on" this would result in the council paying the cost of the pension strain for the period up to age 60)</i>	The council will not exercise this discretion except where there is an overriding business case and there has been thorough consideration of financial impact. Cases will be considered by the Appeals and Retirement Committee.

<p><b>TP(Schedule 2, para 2(3))</b>  Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits from pre 1/4/14 membership where the employer has “switched on” the 85 Year Rule for a member voluntarily drawing benefits on or after age 55 and before age 60.  <i>(This discretion is only relevant where the discretion above in para 2(2) of the transitional Provisions has been applied. If allowed the council would pay additional costs relating to the value of the actuarial reduction suffered by the employee)</i></p>	<p>The council will not exercise this discretion except where firstly the “switching on” of the 85 Year Rule (para 2(2) above) does not cause unreasonable or unmanageable operational or financial business impact and then secondly there is truly exceptional personal need for the reduction not to be made (examples might include extreme and proven hardship that may not have been anticipated at the point at which the employee took a decision to opt for “early retirement”).  Cases will be considered by the Appeals and Retirement Committee.</p>
<p><b>R31</b>  Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency (by up to £6,500 pa).  <i>(This would lead to a direct and ongoing cost to the council which would not be controlled as there can be no prediction for the length of time over which the benefit is made)</i></p>	<p>The council will not exercise this discretion except where there is an overriding business case and there has been thorough consideration of financial impact. Cases will be considered by the Appeals and Retirement Committee.</p>

Table 1b. These are the discretions for which a written policy statement is not required but has been produced due to anticipated importance or potential frequency of use. These discretions appear under the LGPS Regulations 2013 [prefix R] and the LGPS (transitional Provisions and Savings) Regulations 2014 [prefix TP]

<b>Regulation and Employer Discretion</b>	<b>Recommended Policy Statement</b>
<b>TP12(6)</b> Whether to use a certificate produced by an independent registered medical practitioner under the 2008 scheme for the purposes of making an ill health determination under the 2014 scheme. <i>(If applied, a separate review will not be required unless the council determine that it is necessary)</i>	The council will apply this discretion to allow the use of a certificate produced by an independent registered medical practitioner under the 2008 scheme for the purposes of making an ill health determination under the 2014 scheme.
<b>R37(3) &amp; (4)</b> Determine whether a person in receipt of Tier 3 ill-health pension has started gainful employment (that is likely to endure for at least 12 months).	The decision to determine whether or not gainful employment has commenced will be delegated to the Service Manager responsible for the Human Resources function for determination.
<b>R37(3)</b> Determine whether to recover any overpaid Tier 3 pension following commencement of gainful employment.	The council will make such recovery unless there are compelling business reasons. This will be determined by the council's Section 151 Officer (or deputy).
<b>R93(2)</b> Whether to recover from the Pension Fund any monetary obligation or, if less, the value of the value of the member's benefits (other than benefits from transferred-in pension rights or Additional Pension Contributions or Additional Voluntary Contributions) where the obligation was incurred as a result of a grave misconduct or a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left employment.	The council will make such recovery unless there are compelling business reasons. This will be determined by the council's Section 151 Officer (or deputy).
<b>Equality Act (Age Exceptions for Pension Schemes) Order 2010 Schedule 1(2)</b>  Although not a direct result of new pension regulations, indirectly the scheme changes introduce through a different legislative route, an opportunity for additional pension to be awarded at employer cost but funded through payments forgone by the employee.  <i>(The option to offer augmented pension is removed in the new pension regulations but is replaced by the opportunity for employers to offer additional pension (entirely as an employer cost but with provision to offset against non-statutory compensatory payments resulting through redundancy or efficiency retirements) through Additional Pension Contributions (as described in R16</i>	The council will support employee requests (prior to their employment ceasing) to ask that non-statutory compensatory payments due to them under the terms of their dismissal (retirement) be withheld and that the council in such circumstances will elect to make a payment to the Administering Authority to purchase additional pension through the Additional Pension Contribution scheme to this same value.

<p>above). In this way the employer can grant the member additional pension actuarially equivalent to the value of any lump sum termination payment (in excess of the statutory redundancy payment) the employer would otherwise have awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 i.e. 'additional pension by conversion'. 'Additional pension by conversion' would be justifiable on actuarial grounds, as permitted by paragraph 2 of Schedule 1 to the Equality Act (Age Exceptions for Pension Schemes) Order 2010 [SI 2010/2133 as amended]. Any extra annual pension granted by the employer would be subject to an actuarial reduction where, other than in a case of ill health retirement or retirement on redundancy or business efficiency grounds, that extra pension is drawn before the member's Normal Pension Age.)</p>	

Tables 2 and 3 below relate to existing regulations for which there should be a policy statement made. Currently there are no clear local policy statements made under these regulations other than a general "catch-all" statement that, "Discretionary decisions will be taken by the Appeals and Retirements Committee in all appropriate cases. A report setting out the business case will be needed." The proposals made below are designed to clarify the council's position.

Table 2. These are the discretions subject to a written policy under the LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended) [prefix B].

Regulation and Employer Discretion	Recommended Policy Statement
<p><b>B30(2)</b> Whether to grant application for early payment of deferred benefits on or after age 55 and before age 60. <i>(Deferred benefits will normally apply to people that have left employment with the council and who have not re-joined the LGPS with another employer. Allowing application would result in the pension strain cost being met by the council.)</i></p>	<p>The council will not exercise this discretion except where there has been thorough consideration of financial impact and that the detriment suffered by the council will not have an unreasonable adverse effect on budgets particularly those relating to current staffing. No case will be considered where the employee had been dismissed by the council for conduct reasons. Cases will be considered by the Appeals and Retirement Committee.</p>
<p><b>B30(5)</b> Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30. <i>(This discretion is only relevant where the discretion above in para 30(2) has been applied. If allowed the council would pay additional costs relating to the value of the actuarial reduction suffered by the employee)</i></p>	<p>The council will not exercise this discretion except where the criteria in the statement relating to Regulation B30(2) above are met and then that truly exceptional personal need can be demonstrated in order to release deferred benefits (examples might include extreme and proven hardship). Cases will be considered by the Appeals and Retirement Committee.</p>
<p><b>B30A(3)</b> Whether to grant an application for early payment of a suspended tier 3 ill health pension on or after age 55 and before age 60. <i>(If an employee is retired on health grounds at "tier 3" but fails to find work by the three-year pension cut-off, there will be a pension strain cost to the council if this discretion is exercised)</i></p>	<p>The council will not exercise this discretion except where there has been thorough consideration of financial impact and that the detriment suffered by the council will not have an unreasonable adverse effect on budgets particularly those relating to current staffing. Cases will be considered by the Appeals and Retirement Committee.</p>
<p><b>B30A(5)</b> Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30A</p>	<p>The council will not exercise this discretion except where the criteria in the statement relating to Regulation B30A(3) above are met and then that truly exceptional personal need can be demonstrated in order to release deferred benefits (examples might include extreme and proven hardship). Cases will be considered by the Appeals and Retirement Committee.</p>



Table 3. These are the discretions subject to a written policy under the LGPS Regulations 1997. [Prefix R]

Regulation and Employer Discretion	Recommended Policy Statement
<p><b>R31(2)</b> Whether to grant application from a post-31 March 1998/ pre-1 April 2008 leaver or from a councillor for early payment of benefits on or after age 50/ 55 and before age 60. <i>(The payment of such deferred benefits would result in the pension strain cost being met by the council.)</i></p>	<p>The council will not exercise this discretion except where there has been thorough consideration of financial impact and that the detriment suffered by the council will not have an unreasonable adverse effect on budgets particularly those relating to current staffing. No case will be considered where the employee had been dismissed by the council for conduct reasons. Cases will be considered by the Appeals and Retirement Committee.</p>
<p><b>R31(5)</b> Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early for a post-31 March 1998/ pre-1 April 2008 leaver or councillor leaver. <i>(This discretion is only relevant where the discretion above in para 31(2) has been applied. If allowed the council would pay additional costs relating to the value of the actuarial reduction suffered by the employee)</i></p>	<p>The council will not exercise this discretion except where the criteria in the statement relating to Regulation B31(2) above are met and then that truly exceptional personal need can be demonstrated in order to release deferred benefits (examples might include extreme and proven hardship). Cases will be considered by the Appeals and Retirement Committee.</p>
<p><b>R31(7A)</b> Councillor opts out and pre-1 April employee opts out only to get benefits paid from normal retirement date if employer agrees. <i>(Exercising this discretion should not result in additional cost to the council.)</i></p>	<p>The council will accept such requests subject there being no cost to the council arising. Should there be a cost to the council then permission would not be granted other than in cases of truly exceptional personal need that can be demonstrated (examples might include extreme and proven hardship). Cases will be considered by the Appeals and Retirement Committee.</p>

Table 4. The table is included for completeness and shows other existing discretions for which a written policy already exists and for which no change is proposed. These discretions apply to current employees. [Discretions applied under the Local Government (Early Termination Of Employment) (Discretionary Compensation) (England And Wales) Regulations 2006 are shown as prefix ET, those that are applied under the LGPS Regulations 2013 as prefix R]

<b>Regulation and Employer Discretion</b>	<b>Policy Statement</b>
<b>ET7</b> Calculation of a week's pay for the purpose of redundancy payments.  Whether to pay a lump sum compensation payment (of up to 104 weeks' pay)	Redundancy payments will be calculated on the employee's actual week's pay.  The council will pay up to 60 weeks' compensatory pay in cases of redundancy. (The council has adopted a full Early Retirement and redundancy Policy which sets out the schedule of payments which are limited to a maximum of 60 weeks' pay that include a statutory maximum payment of 30 weeks' pay.)
<b>ET8</b> Whether to allow a "contribution holiday" for scheme members reaching 40 years' service.	The Council no longer has discretion to waive or reduce contributions of employees who have completed 40 years' membership of the Scheme. No repayment of waived contribution will be required from current or ex-employees in cases where payment "holidays" were granted.
<b>R100 (Previously included under LGPS (Administration) Regulations 2008)</b> Whether to allow an employee to elect to transfer other employment pension benefits into the LGPS after the 12-month "decision window" period has elapsed. <i>(Allowing this commits the council to unforeseeable and uncontrolled financial risk as any future benefits and potential pension strain costs to the council will be based on a greater pension value)</i>	Other than in exceptional circumstances the council will not extend the 12-month time limit within which notice must be given requesting a transfer in of previous pension benefits to the Local Government Pension Scheme. Cases will be considered by the Appeals and Retirement Committee.
<b>R9(1) R9(3) (Previously included under LGPS (Benefits, Membership and Contributions) Regulations 2007)</b> Determination of rate of employees' contributions	The following pay elements will be included for the purpose of defining pensionable pay: <ul style="list-style-type: none"> <li>• Basic pay</li> <li>• Protected pay</li> <li>• Contractual stand-by</li> <li>• Personal (historic) allowances e.g. Tool Allowances</li> <li>• Special refuse service payments including Bank holiday/ Summer Service</li> <li>• Honoraria (for "acting up" to more</li> </ul>

	<p>senior duties)</p> <ul style="list-style-type: none"><li>• Contractual overtime</li><li>• Fees (Fees, as defined within the new LGPS Regulations, will be treated separately to other employments for which pension contributions are made. The assessment of bandings to be applied to fee payments will be based on the actual fees paid.)</li></ul> <p>The following pay elements will <i>not</i> be included for the purpose of defining pensionable pay:</p> <ul style="list-style-type: none"><li>• Emergency call-out allowance</li><li>• Non-contractual overtime</li><li>• Honoraria (additional hours payments)</li><li>• Travel and subsistence allowance</li><li>• Money value to the employee for the provision (or in lieu of) of a vehicle</li><li>• First Aid Allowance</li><li>• Pay in lieu of holiday</li><li>• Compensatory payments</li><li>• Redundancy payments</li><li>• Strike deductions</li><li>• Attendance Incentive Scheme payment</li><li>• Relocation and other re-imbursements</li></ul> <p>Assessment of Pension Banding: The effective date and method of calculation to be applied for assessment of pension bands will be determined as follows:</p> <ul style="list-style-type: none"><li>• Placement within pension bandings for employees new to the organisation will be based on their pensionable earnings on the date of their employment.</li></ul>
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	<ul style="list-style-type: none"> <li>• Placement for employees taking on <i>additional</i> and separate new employment with the Council will be based on their pensionable earnings for that additional job on the date of their employment to the new job.</li> <li>• For existing employees: <ul style="list-style-type: none"> <li>○ Placement within pension bandings will be based on their pensionable earnings at the 1<sup>st</sup> April each year.</li> <li>○ Assessment will take account of any incremental pay progressions within a pay band that apply from that date.</li> <li>○ Annual “cost of living” pay awards will only be taken into account for the coming year where the award for that year has been announced prior to 1<sup>st</sup> April.</li> <li>○ Changes in personal pay during a year including occurrences such as promotion (to a new post), re-grading (of existing post), downward pay grade changes, addition or removal of pensionable allowances and honoraria payments will not be taken into account until re-assessment of all employees at the next 1<sup>st</sup> April.</li> </ul> </li> </ul> <p>Assessment of <i>expected</i> pensionable earnings for the coming year will be applied at 1<sup>st</sup> April each year. This will be based on expected contractual pensionable earnings from 1<sup>st</sup> April together with an estimate of non-regular pensionable pay anticipated for the coming year, based on actual non-contractual pensionable earnings in the previous year.</p>
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The tables above have been constructed to recommend policy discretions where they do not currently exist, particularly for those that require a written statement to be published, and to confirm the most relevant council discretions that have already been determined. It is recommended that for other minor or infrequent decisions relating to local discretion that the default position of the council is that each case is considered on its own merit by the Appeals and Retirement Committee for determination and that decisions to positively apply any discretion are only made following thorough consideration of financial impact and evidence that there is an overriding business need to support such a decision.

### **3. Injury Allowance**

3.1 Injury Allowance provisions were originally found in the Local Government Superannuation Regulations (Discretionary Payments) 1996. More recently the provisions were moved to the Local Government (Discretionary Payment) (Injury Allowances) Regulations 2011.

Regulations demand that the council continues to keep its Injury Allowance Policy under review.

In terms of how a policy is formulated, the Local Government Association offers the following guidance, “In formulating a policy and reviewing its policy the employer must have regard to the extent to which the exercise of its discretionary powers (in accordance with the policy), unless properly limited, could lead to a serious loss of confidence in the public service; and be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs”.

3.2 Apart from very minor adjustments to the wording of the policy in 2012 to reflect the needs of revised Regulations issued in 2011, the policy has not been properly reviewed for many years. Since its adoption the pay and rewards of public sector employees has come under increasing scrutiny and higher levels of pay together with generous allowances are no longer palatable to the public. Any policy now formulated will need to reflect these changing views and have due regard to “the confidence in public service”. For this reason, a revised policy has been drafted.

3.3 The current Injury Allowance Policy is shown at Appendix 1.

3.4 A proposed revised policy is shown at Appendix 2. Other than a general re-casting of the policy to aid clarity, the main material revisions are:

#### **3.4.1 Loss of employment through permanent incapacity**

In order to control cost to the public purse, the allowance is now proposed as time-limited for a maximum period of five years for new claimants.

#### **3.4.2 Reduction in remuneration**

If redeployment to a lower-graded post occurs, the Council’s Pay Protection Policy will be applied. This protection will be applied for the period defined in the policy. Redeployment will only normally be considered as appropriate where there is a maximum of three grades difference.

#### **3.4.3 Death benefits**

In order to control cost to the public purse, the allowance is now proposed as a single, “one-off” award of £5,000 to an appropriate surviving relative or nominated cohabiting partner. This allowance will not be means-tested and will be paid at the first opportunity in addition to any other pension benefits or other such payments arising from the injury at work.

#### **3.4.4 Allowance for pensioners**

The potential for this allowance will be realised through the application of payments made through the Pay Protection Policy that will be applied at the time of any redeployment due to medical capability (section 3.4.2 above). Additional salary payment due to pay protection will also attract higher payments by the employer into the LGPS. Where pay protection ceases then no other additional payments will be made to increase a pension of an employee.

3.4.5 The policy relating to appeals and decision-making is clarified.

3.4.6 The application of the new policy to existing claimants is stated.

#### **4. Recommendations**

It is recommended that the JCSC:

4.1 Considers the draft policy statement

4.2 Makes recommendations to the Appointments and Conditions of Service Committee which will subsequently consider whether to adopt the policy statement.

## APPENDIX 21 - INJURY ALLOWANCE POLICY

### 1. Regulatory Framework

1.1 Entitlement to an award accrues where an employee sustains an injury or contracts a disease as a result of anything they were required to do in carrying out their work. The origin of the injury allowance scheme is contained in the Local Government (Discretionary Payments) (Injury Allowance) Regulations 2011 (“the Regulations”).

1.2 The scheme applies to all employees of the Council whether pensionable or not.

1.3 If as a result of permanent incapacity caused by the injury or disease suffered as a result of the person’s employment, a person ceases to be employed, they shall be entitled to an annual allowance.

1.4 The amount of the allowance shall be as determined from time to time by the employing authority subject to a maximum of 85% of the employee’s annual remuneration. The amount of any award is at the sole discretion of the Council.

1.5 In determining the amount of the allowance regard must be had to all the circumstances of the case which will include:-  
any right to benefit under part V of the Social Security contributions and Benefits Act 1992  
any other statutory or contractual right to benefit or compensation  
any right to receive superannuation benefit  
any damages recovered and any sum received under a contract of insurance the premiums for which were not met by the individual  
any earnings from other, new employment, secured after the job at Gedling BC for which the injury allowance is claimed has ceased  
any contributory negligence by the employee

1.6 Where, as a result of the injury or disease, a person suffers a reduction in pay due to a change in work (whether or not it is in the same employment) they shall be entitled to an annual allowance. In these circumstances, the amount of the allowance, together with the current pay, must not exceed the pay which would have been applicable if the injury or disease had not occurred. The amount of the award is at the sole discretion of the Council and will be determined in accordance with Section 2.

1.7 Where a person dies as a result of injury or disease, claims under appropriate insurance cover will be examined and any pension benefits will be paid through Nottinghamshire County Council, including any entitlement the person’s widow/widower may be eligible for.

1.8 The general intention behind the Regulations is that financial regard should be given where a person suffers an injury or disease, but on the other hand, the employer should not be expected to pay a substantial allowance in a case where it is

clear that the injury could have been avoided by sensible and obvious precautions.

1.9 There is an internal right of appeal to the Appeals and Retirements Committee against any decision taken in the first instance, or on review, by the Chief Executive.

## **2. Procedure for determining amount of allowance**

2.1 Any claim for an injury allowance should be made to the Corporate Director responsible for the Council's Personnel Service. In the first instance any claim should be considered and pursued under the Authority's insurance schemes. Only when any possibility of a claim under any insurance arrangements has been fully exhausted should a claim be considered under the injury allowance scheme. Even if an insurance claim is successful, the employee may still be entitled to some payment from the injury allowance scheme if the payments received plus other income is still below the parameters set for an appropriate award.

2.2 In all cases of accident or injury the employee should ensure that an entry is made in the 'accident book' and an accident report form completed.

2.3 Other Corporate Directors including those responsible for legal and financial functions will be consulted as to the application and funding of the claim.

2.4 If it is considered that the claim does not fall to be considered under the Regulations, the Director responsible for Personnel Services will, after consulting the Head of Paid Service and the Occupational Health Physician, if appropriate, issue a formal notice of refusal.

If it is considered that the claim is valid, the case will be referred to the independent Occupational Health Physician for a decision as to whether the person is permanently disabled from carrying out efficiently the duties of their employment. Also for an assessment of the degree to which their earning capacity has been affected as a result of the injury or disease. The final authority for payment of the claim will be given by the Chief Executive either at or after the time of retirement by the individual.



Having established the percentage degree of disablement, the annual allowance expressed as a percentage of annual remuneration will be determined by reference to the table below and not exceed the maximum stated percentage:

<b>Degree of Disablement</b>	<b>Annual Allowance as a % of annual remuneration</b>			
	<b>Less than 5 years service*</b>	<b>5 or more but less than 15*</b>	<b>15 or more but less than 25*</b>	<b>25 or more*</b>
Less than 25% (slight disablement)	up to 15%	up to 30%	up to 45%	up to 60%
25%-49% (minor disablement)	up to 40%	up to 50%	up to 60%	up to 70%
50%-74% (major disablement)	up to 65%	up to 70%	up to 75%	up to 80 %
75% and above (very severe disablement)	up to 85%	up to 85%	up to 85%	up to 85%

\* continuous service with Local Government

2.7 Each case will be referred in the first instance to the Chief Executive with written comments supplied by the appropriate Corporate Directors.

The individual (or their trade union representative) shall have the opportunity of making representations to the Chief Executive in support of any claim.

2.8 The Sub-Committee will have regard to the Table set out in 2.6 and take account of all the circumstances of the case including:

Entitlements under the pension scheme arising from the retirement or death of the employee.

Social Security benefits payable in respect of injury benefits, disablement pension, special hardship allowance, disablement gratuity and any increase in any of the foregoing relating to dependants.

Amounts payable under the Schemes of Conditions of Service for Local Government Employees.

Any damages recovered and any sum recovered under a contract of insurance the premiums for which were not met by the individual (subject to confirmation by the relevant Corporate Director it is anticipated at this stage that this will relate to loss of earnings).

Any contributory negligence by the employee.

In any event the allowance plus benefits detailed in paragraph 2.8 will not exceed the employees annual remuneration as defined in paragraph 34(3) of the regulations.

2.10 Where the claimant is dissatisfied with the level of award there shall be a right to appeal to the Appeals and Retirements Committee.

### **3. Payments to widows/widowers**

If an employee dies as a result of anything he was required to do in carrying out his work, there are provisions in paragraph 37 for an allowance or lump sum to be made to the surviving spouse or any dependants. Providing all the conditions in the regulations are met a payment will be determined by reference to paragraphs 2.6 and 2.8 and include consideration of that spouse's current and future earnings.

### **4. Review Arrangements**

4.1 Each award whether as a result of permanent incapacity or reduction in earnings will be subject to an annual review by, and at the discretion of, the Chief Executive to determine whether there has been a material change in the degree of disablement or the individual's financial situation. Where the recipient attains the age of 65, the annual allowance will normally cease. After this age an allowance will only be considered if it can be shown that the retirement benefits from the local government scheme have been reduced as a result of the injury or disease and the amount payable shall not exceed the amount of the reduction. Such allowance would only apply to employees who were members of the local government pension scheme at the time they ceased work due to the work-related accident or condition.

4.2 It is the responsibility of the individual to inform the Council of any changes or improvements to medical condition or of any additional income they may receive or of any change in circumstances which may affect the payment or calculation of the injury allowance. Notification of any such change should be made by the individual to the Council immediately at the time of change or prior to it if appropriate.

4.3 Any false or fraudulent claim or intentional omission of information regarding any change of circumstance will result in the cessation of payment of the allowance. In such situations the Council may seek, as it sees appropriate, to reclaim all or part of any allowance already paid. Also, if payments are made to the individual which are intended to be retrospective (for example, an insurance payment), the Council shall request a refund in payments already made under the Injury Allowance Scheme or will make appropriate deductions from any future payments due; the Council will determine which of these methods is to be adopted in such circumstances.

Similar review arrangements will take place with respect to allowances paid to spouses or dependants.

## **APPENDIX 21 - INJURY ALLOWANCE POLICY (Proposed)**

### **1. Regulatory Framework**

1.1 Entitlement to an annual allowance under this Policy accrues where an employee sustains an injury or contracts a disease as a result of anything they were required to do in carrying out their work. The origin of the injury allowance scheme is contained in the Local Government (Discretionary Payments) (Injury Allowance) Regulations 2011 (“the Regulations”). The Council may elect to pay such an annual allowance on a monthly basis.

1.2 The Regulations now make the use of an Independent Registered Medical Practitioner (“IRMP”) mandatory in establishing that the injury is consistent with being sustained or disease contracted “in the course of carrying out his or her work”.

### **2. Application of the Policy**

2.1 This policy applies to all employees of the Council whether pensionable or not. The application date is 1 April 2015. All previous versions of the Injury Allowance Policy will be superseded by this version.

2.2 The general intention behind the Regulations is that financial regard should be given where a person suffers an injury or disease, but on the other hand, the employer should not be expected to pay a substantial allowance in a case where it is clear that the injury could have been avoided by sensible and obvious precautions.

2.3 There are four prescribed areas to which the Regulations relating to Injury Allowance apply. These are:

#### **2.3.1 Loss of employment through permanent incapacity**

If as a result of permanent incapacity caused by the injury or disease suffered in the course of carrying out his/her work,, a person ceases to be employed, they shall be entitled to an annual allowance under this heading. An IRMP will determine if the injury/disease was sustained/contracted during the course of employment and whether this has resulted in incapacity which is likely to be permanent; the IRMP will issue a certificate with his/her decision. If the certificate advises that the injury/disease was not sustained/ contracted at work and/or the incapacity is not permanent, no allowance will be paid under this heading.

The amount of the annual allowance shall be as determined by the Council as employing authority subject to this not exceeding a maximum of 85% of the employee’s annual remuneration. The amount of any award is at the sole discretion of the Council.

In determining the amount of the annual allowance, regard must be had to all the circumstances of the case as described in Section 3 of this policy.

Annual allowances made under this heading will be paid for a maximum of five years at which point all payments will cease or, if earlier, the soonest of the following events:

- The employee reaches normal occupational pension age at which time all payments will cease
- The employee's personal circumstances change such that they are no longer eligible for payment of an annual allowance under this policy at which point all payments will cease.

Following determination of the extent of incapacity and the permanency through Certificate from the IRMP, the payment of an annual allowance under this heading will be calculated as follows:

Degree of Disablement	Annual Allowance as a % of gross annual remuneration			
	Less than 5 years' service*	5 or more but less than 15*	15 or more but less than 25*	25 or more*
Less than 25% (slight disablement)	up to 15%	up to 30%	up to 45%	up to 60%
25%-49% (minor disablement)	up to 40%	up to 50%	up to 60%	up to 70%
50%-74% (major disablement)	up to 65%	up to 70%	up to 75%	up to 80 %
75% and above (very severe disablement)	up to 85%	up to 85%	up to 85%	up to 85%

To calculate the annual allowance, the percentage reduction will be applied to normal gross salary to determine a potential maximum gross payment from which further reduction will be made to recognise:

- Any right to benefit under part 5 of the Social Security Contributions and Benefits Act 1992. (These are Social Security Benefits payable in respect of industrial injury and incapacity benefits, reduced earnings and severe disablement allowances and disablement gratuities, and include any increases relating to dependents. They include:-

- Industrial Injuries Benefit (s94) including:

Unemployment Supplement (Part 1 of Schedule 7)

Hospital Treatment increase (Part 3 of Schedule 7)

- Reduced Earnings Allowance (s94)

- Incapacity Benefit (s30A), *plus*

Dependency Increase (Part 4)

- Severe Disablement Allowance (s68 & 69), *plus*

Dependency Increase (Part 4)

- Disablement Gratuity (Part 2 of Schedule 7)

- Any other statutory or contractual right to benefit or compensation
- Any right to receive occupational or other pension benefit (Any lump sum payment will be assessed as an annualised value at the conversion rate of 12:1)
- Any damages recovered and any sum received under a contract of insurance
- Any earnings from other, new employment, secured after the job at the Council for which the injury allowance is claimed has ceased

Furthermore, any contributory negligence by the employee will also be considered when an award is to be made under the policy and where this is considered to have been the case, a reduction in any award shall reflect this. In the first instance, it is the Chief Executive that will determine if any such reduction should be applied, and if so, the value of this deduction. The application or degree of any such deduction can be challenged through the appeals process relating to this policy.

In any event the allowance plus allowances/benefits/damages/earnings detailed above will not exceed the employee's annual remuneration as defined in the Regulations.

### **2.3.2 Reduction in remuneration**

Regulations allow that where, as a result of the injury or disease sustained/contracted in the course of carrying out his/her, an employee suffers a reduction in pay due to a change in work (whether or not it is in the same employment) they shall be entitled to an annual allowance. In these circumstances, the amount of the allowance, together with the current pay, must not exceed the pay which would have been applicable if the injury or disease had not occurred.

It is the policy of the Council that, where the above criteria are met, should redeployment to a suitable alternative post (as determined by the council) be possible following the injury or disease, then the allowance will be equivalent to the value of pay protection described by the Pay Protection Policy that applies at the time of the claim. This allowance will continue for the same defined period as determined in the Pay Protection Policy.

Normally, and unless exceptional circumstances prevail, redeployment will not be made to a job of more than three grades difference (for example, for a Band 10 employee, no post below Band 7 will be considered). The Chief Executive will determine the suitability of any redeployment opportunity.

This award will diminish and cease either through the passage of time as reflected in the arrangements defined within the Pay Protection Policy or on the voluntary resignation from the protected post to undertake another higher-graded job with the Council or to move away from employment with the council.

### **2.3.3 Death benefits**

Where an employee dies as a result of injury or disease sustained/contracted in the course of carrying out his/her work, claims under appropriate employer insurance cover will be examined and any pension benefits through LGPS membership will be paid through Nottinghamshire County Council, including any entitlement for which the person's widow/widower may be eligible. In addition to payments that may be due through these other channels, an immediate one-off lump sum payment totalling £5,000 gross will be made to a widow/ widower/ civil partner/ nominated cohabiting partner (as described in the Regulations) (or in their absence, any dependent children in which case the benefit will be split equally between any children). No other lump sum or ongoing payment will be made.

### **2.3.4 Allowances for Pensioners**

Regulations allow that where an employee who was in receipt of an annual award in respect of a reduction in remuneration (para 2.3.2), subsequently ceases employment and becomes entitled to a local government pension, and the level of such pension falls short of what it would have been had the injury award payable been classed as pensionable remuneration, then the employer may pay an allowance up to the value of the shortfall.

This provision is satisfied by the application of pay protection through the Pay Protection Policy. For the period of higher protected pay, appropriate payments will be made into the LGPS by the council (which will be greater than would be made by the council for normal pay in the new substantive job). Once pay protection ceases no further enhancements into the pension scheme will be made either at that time or later.

## **3. Procedure for making a claim for an allowance**

3.1 Any claim for an injury allowance should be made to the Corporate Director responsible for the Council's Personnel Service. In the first instance any claim should be considered and pursued under the Council's insurance schemes. Only when any possibility of a claim under any insurance arrangements has been fully exhausted should a claim be considered under the injury allowance scheme. Even if an insurance claim is successful, the employee may still be entitled to some payment from the injury allowance scheme if the payments received plus other income is still below the parameters set for an appropriate award.

3.2 In all cases of accident or injury the employee should ensure that an entry is made in the 'accident book' and an accident report form completed. If a claim is made under this policy without such record having been made of an accident and injury at work without good reason then the claim will be struck out.

3.3 Other Corporate Directors including those responsible for legal and financial functions will be consulted as to the application of the claim.

3.4 If it is considered that the claim does not fall within the criteria to allow consideration under this Policy, the Director responsible for Personnel Services will, after taking into account any relevant medical advice and after consulting the Head of Paid Service, issue a formal notice of refusal which will include the grounds for the decision.

3.5 If it is considered that the claim is potentially valid, the case will be referred to the IRMP both for a decision as to whether the person is permanently disabled from carrying out efficiently the duties of their employment and also, if appropriate, for an assessment of the degree to which their earning capacity has been affected as a result of the injury or disease.

3.6 When a claim under the policy is first made, the final authority for payment of the claim rests with the Chief Executive. This applies to any of the four cases that are identified in Section 2.

3.7 Each case will be referred in the first instance to the Chief Executive with written comments supplied by the appropriate Corporate Directors.

The individual (or their trade union representative) shall have the opportunity of making representations to the Chief Executive in support of any claim.

3.8 Where an ex-employee already receives a payment under the policy due to loss of employment through permanent incapacity and their circumstances change in a way that will materially affect the payment of the allowance (through an increase, reduction or removal – see paragraph 5.3 and 5.4 below), then in the first instance this recalculation will be determined and authorised by the Director responsible for the service area of the ex-employee.

#### **4. Application to reconsider**

4.1 When a claim is dismissed by a Director due to it not satisfying the criteria of Regulation or local policy, the employee may make an application to the Appeals and Retirements Committee asking them to reconsider the decision. Such an application must be made within 6 months of the date that the employee is notified of the decision (see paragraph 3.4 above). The application for reconsideration must:

- i) Set out the employee's name, address, date of birth, and NI number;
- ii) Include a statement saying why the employee disagrees with the decision;
- iii) Be signed by the employee (or other person on his/her behalf if the claim is under paragraph above;
- iv) Include a copy of the decision notice.

In exceptional circumstances it is possible for someone other than the affected employee to submit the application for reconsideration; in that case, the person submitting the application must include in it, as well as the above information, their own name, address, date of birth, and their relationship to the employee.

The decision on the application will be made within 2 months of the Council receiving the application to reconsider, and once the decision has been made, the application will be notified in writing of the decision and the reasons.

If such an appeal is upheld in principle by the Committee, it is for the Chief Executive to determine the detail of any payment to be made under the policy.

4.2 At the point of first claim it is the Chief Executive that will authorise the payment under the terms of this policy. Should an employee be dissatisfied with the determination made by the Chief Executive, an appeal can be made to the Appeals and Retirements Committee.

4.3 Should a change in circumstance affect payments made to an ex-employee who is in receipt of an allowance due to loss of employment through permanent incapacity, any decision taken by a Director to vary the allowance (increase or decrease) can be appealed to the Chief Executive. Any decision by a Director to remove the allowance in its entirety may be appealed to the Appeals and Retirements Committee.

4.4 In addition to the right to have the decision reconsidered, there is also external recourse to the Pensions Advisory Service and to the Pensions Ombudsman, to whom a complaint may be made, and/or assistance sought in resolving any difficulties; however such rights cover arguments over entitlements only and do not extend to disagreement over the amount of any award.

4.5 Should an employee wish to challenge the opinion of the IRMP, they can ask for a second medical opinion. This request should be made to the Service Manager responsible for Human Resources who will arrange for a second certificate from a different practitioner to be provided. This will be at the cost of the Council. Once received, the Chief Executive will have authority to choose to act on either certificate when determining any award. This choice can be challenged by the employee through the Appeals and Retirements Committee.

## **5. Review Arrangements**

5.1 Any award under this policy other than a one-off payment due to death in service as a result of injury or disease will be subject to periodic review, the frequency of which will be determined by the Chief Executive. The purpose of such a review is to determine whether there has been a material change in the degree of disablement or the individual's financial situation. This review is particularly relevant in cases of loss of employment through permanent incapacity.

5.2 In cases of loss of employment through permanent incapacity any allowance still being paid will cease when the recipient of an award attains the age of 65 or normal pension age as described in the LGPS (whichever is the later).

5.3 It is the responsibility of the individual to inform the Council of any changes or improvements to medical condition or of any additional income they may receive or of any change in circumstances which may affect the payment or calculation of the injury allowance. Notification of any such change should be made by the individual to the Council immediately at the time of change or prior to it if appropriate.

5.4 Any false or fraudulent claim or intentional omission of information regarding any change of circumstance will result in the cessation of payment of the allowance. In such situations the Council may seek, as it sees appropriate and as determined by the Chief Executive, to reclaim all or part of any allowance already paid. Also, if payments are made to the individual which cover any period of the allowance claim retrospectively (for example, a later insurance claim and payment), the Council shall request a refund in payments already made under the Injury Allowance Scheme or will make appropriate deductions from any future payments due; the Council will



determine which of these methods is to be adopted in such circumstances. The recipient of the allowance may appeal any such decision taken by the Chief Executive through the Appeals and Retirements Committee.

## **6.0 Application to Current Recipients of an Award**

This revised policy will apply to all claims made on and after 1 April 2015.

Any employee/ex-employee in receipt of an allowance made under an Injury Allowance Policy in force prior to this one, will continue to receive the payment made under that policy and calculated under the terms of that policy with the only restriction that any and all payments will cease at age 65 or at normal pension age (as defined by the LGPS Regulations) whichever is the later. The five-year time limitations applying after 1 April 2015 for cases of loss of employment will not be applied to current recipients. Consequently, this should not create a material change to any employee/ex-employee who is a member of the LGPS and who has experienced loss of employment through permanent incapacity because a permanent "Tier 1" award under the LGPS makes pension payments as if someone has made full contribution up to their normal pension age.