

**Cheltenham Borough Council**  
**Council – 6 December 2021**

**Injury Allowances – Report on Policy Statement and Procedure  
for dealing with applications and internal appeals**

<b>Accountable member</b>	<b>Leader of the Council, Councillor Rowena Hay</b>
<b>Accountable officer</b>	<b>Chief Executive, Gareth Edmundson</b>
<b>Ward(s) affected</b>	<b>N/A</b>
<b>Key Decision</b>	<b>No</b>
<b>Executive summary</b>	<p>Employees and former employees can make applications to the Council (as their employer) for the payment of allowances under the Local Government (Discretionary Payments) Regulations 1996 (“the 1996 Regulations”) and/or The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 (“the 2011 Regulations”).</p> <p>This report is brought to Council to approve the delegated authority for determining the applications and internal appeals under either the 1996 Regulations and/or the 2011 Regulations.</p>
<b>Recommendations</b>	<p><b>It is recommended that Council:-</b></p> <ol style="list-style-type: none"><li><b>1. Delegates authority to Directors (in consultation with Human Resources) with to determine applications (including any review of the amount payable) under the 1996 Regulations and/or 2011 Regulations (or subsequent regulations) made by those employees on NJC terms and conditions</b></li><li><b>2. Delegates authority to Executive Directors and/or the Head of Paid Service, Monitoring Officer or Section 151 Officer (in consultation with Human Resources) to determine internal appeals under the 2011 Regulations (or subsequent regulations) made by employees on the NJC terms and conditions</b></li><li><b>3. Delegates authority to Executive Directors and/or the Head of Paid Service, Monitoring Officer or Section 151 Officer (in consultation with Human Resources) to determine applications (including any review of the amount payable) under the 1996 Regulations and/or 2011 Regulations (or subsequent regulations) made by employees on JNC terms and conditions</b></li></ol>

4. Delegates authority to Executive Directors and/or the Head of Paid Service, Monitoring Officer or Section 151 Officer (in consultation with Human Resources) to determine internal appeals under the 2011 Regulations (or subsequent regulations) made by employees on the JNC terms and conditions
5. In the case of an internal appeal under the 2011 Regulations (or subsequent regulations) where there is no officer who is able to determine an internal appeal, the Appeals Committee determine the internal appeal
6. Approve the Policy Statement as set out in Appendix 1 and authorises the Chief Executive, in consultation with the Leader, the authority to make any minor amendments to the Policy Statement

<b>Financial implications</b>	<p>There are no immediate financial implications arising from the content of this report. Any future financial implications will be addressed through the procedure outlined in the attached policy.</p> <p><b>Contact Officer-Gemma Bell, Head of Property, Finance and Assets (Deputy Section 151 Officer)</b></p>
<b>Legal implications</b>	<p>The legal implications are contained in the body of the report.</p> <p><b>Contact Officer – One Legal - <a href="mailto:legalservices@onelegal.org.uk">legalservices@onelegal.org.uk</a> Tel no: 01684 272012</b></p>
<b>HR implications (including learning and organisational development)</b>	<p>There are no immediate HR implications arising from the content of this report. Any future HR implications will be addressed through the procedure outlined in the attached policy.</p> <p><b>Contact Officer – Julie McCarthy HR Manager – Operations <a href="mailto:Julie.mccarthy@publicagroup.uk">Julie.mccarthy@publicagroup.uk</a> Tel no 01242 264355</b></p>
<b>Key risks</b>	See Appendix 1
<b>Corporate and community plan Implications</b>	N/A
<b>Environmental and climate change implications</b>	N/A

## **1. Background**

- 1.1** The 1996 Regulations and the 2011 Regulations allow for the payment of discretionary awards to persons employed by a Local Government Pension Scheme employer (“LGPS employer”) who while carrying out their work sustain an injury or contract a disease. This can include where the development of either an injury or illness has come about through any work-related factors and the Regulations make no distinction between physical and mental injury.
- 1.2** This can include where the development of either an injury or illness has come about through any work-related factors and the Regulations make no distinction between physical and mental injury.
- 1.3** Although the 1996 Regulations have been largely repealed and recast in the 2011 Regulations, the 1996 Regulations are still relevant to cases where there the event that leads to the injury or disease occurred prior to the 2011 Regulations coming into force.
- 1.4** Although there are some differences in the precise wording and requirements of the 1996 and 2011 Regulations broadly speaking under either Regulation a payment either of an allowance can be sought where a person suffers a reduction in remuneration as a result of the injury or disease, or an annual allowance where the person ceases employment because of permanent incapacity as a result of the injury or disease.
- 1.5** The Regulations also require an LGPS employer to have a policy statement that it applies in the exercise of its discretionary powers to make any award under these Regulations. The LGPS employer must publish its policy regarding the exercise of powers under the Regulations to make discretionary awards and to keep that policy under review. A draft Policy Statement is attached at Appendix 1.
- 1.6** The process of determining an application is a two-stage process.
- 1.7** The first stage will involve the LGPS employer determining if the employee is eligible under the Regulations i.e. has the employee sustained an injury or illness while carrying out their work.
- 1.8** Under the Regulations there is a requirement for an LGPS employer to obtain a certificate from an Independent Registered Medical Practitioner (“IRMP”) qualified in occupational health medicine to provide an opinion on whether a person has sustained an injury or contracted a disease in the course of carrying out their work.
- 1.9** If the LGPS employer determines that the employee is eligible for an allowance, the second stage is triggered and, the LGPS employer will determine the level (whether it is a lump sum payment or an annual allowance) of the allowance.
- 1.10** When determining the level of the allowance or lump sum the LGPS employer will have regard to the degree of injury or severity of disease as assessed by the IRMP.
- 1.11** Under the Regulations the LGPS employer can also take into account, when determining the level of the allowance, factors such as the receipt of other benefits, compensation and any damages recovered, and any sum received by virtue of a contract of insurance.
- 1.12** The amount cannot exceed 85% of the employee’s salary when they ceased to be employed.
- 1.13** Under the Regulations the allowance paid, where the employee suffers a reduction in remuneration, shall not in any year exceed the shortfall between (a) the person’s

remuneration in the relevant employment; and (b) the remuneration the person would have been paid if he or she had not sustained the injury or, as the case may be, contracted the disease.

- 1.14 The LGPS employer under either Regulation may from time to time review the amount of allowance that is payable to the employee.
- 1.15 Payments under these Regulations must not be met out of any pension fund.
- 1.16 Under the 1996 Regulations whilst any initial determination was made by the LGPS employer, any appeal against the determination of the LGPS employer was to the Secretary of State.
- 1.17 The 2011 Regulations introduced an internal appeals procedure. As the injury allowance scheme is operated by employers rather than pension funds and runs independently from the LGPS scheme, it is necessary to have a process in place for determining applications and any appeals against initial determinations.

## **2. Reasons for recommendations**

- 2.1 Although it is hoped that employees never suffer from an injury at work the Council is required to consider applications, should they arise, for allowances under the Regulations and to have a Policy Statement in place to assist with the determination of any applications and/or internal appeals.
- 2.2. If an application is made for an allowance, an LGPS employer must determine the application. The payment of an injury allowance is however discretionary. To ensure decision making is fair, consistent, and transparent it is important to have a clear framework (including specific provisions under the Scheme of Delegation) place for determining applications and any internal appeals.
- 2.3 It is also a statutory requirement to have a policy statement to assist with the determination of any applications and internal appeals.
- 2.4 It is therefore proposed that any application made by an employee (or representative or dependent as set out by the Regulations) who is on NJC terms and conditions is determined by a senior officer at Director level and above and that any appeal against the first determination is made by an Executive Director or the Head of Paid Service, Monitoring Officer or Section 151 officer.
- 2.5 In the case of those employees on JNC terms and conditions it is proposed that an application and appeal is determined by an Executive Director or the Head of Paid Service, Monitoring Officer or Section 151 officer. When there is an appeal against a first determination, then the officer dealing with the appeal must have had no previous involvement in the initial application.
- 2.6 In the unlikely event, there is no officer available to consider an application or an appeal perhaps due to a conflict of interest or previous involvement in an application then it is proposed that the matter be referred to the Appeals Committee for determination.

## **3. Alternative options considered**

- 3.1 None

## **4. Consultation and feedback**

**4.1** The draft policy has been shared with the recognised Trade Unions.

<b>Report author</b>	One Legal/HR
<b>Appendices</b>	1. Risk Assessment
<b>Background information</b>	1. <a href="#">Local Government (Discretionary Payments) Regulations 1996</a> and the <a href="#">Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011</a>

## Risk Assessment

## Appendix 2

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	In the absence of having a procedure and policy in place there is a risk that the authority is unable to determine applications in a timely manner	CEX	26/11/21	3	2	6	Control				
	In the absence of having a procedure and policy in place there is a risk that decisions are not fair, open and transparent	CEX	26/11/21	3	2	6	Control				
<p><b>Explanatory notes</b></p> <p><b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p><b>Likelihood</b> – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p><b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											