

Document Name	Protection of Earnings Policy
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Date for Review	This policy will be reviewed by Human Resources following consultation with the Trade Unions in response to changes in relevant legislation and/or other NSDC policies, procedures or agreements.
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Responsible Business Manager	Tracey Piper



PROTECTION OF EARNINGS POLICY

1. POLICY AIM

- 1.1 Newark and Sherwood District Council is committed to providing pay and grading that is equitable to every employee. To this end the Council has an agreed job evaluation mechanism.
- 1.2 In addition to the above in certain circumstances individuals may suffer a reduction in pay as a consequence of redeployment arising from redundancy, reorganisation, making a reasonable adjustment as a consequence of a disability or other exceptional circumstances beyond the employee's control. The aim of this policy is to establish the principles that govern pay protection arrangements within the Council in these circumstances.

2. OBJECTIVE

- 2.1 The objective of this policy is to provide a consistent and equitable approach to the protection of employees where there has been a reduction to their income as a result of redeployment caused by redundancy or reorganisation or making a reasonable adjustment because of a disability.
- 2.2 As well as providing support to those staff directly affected by a reduction in salary the Council is also mindful of its obligations under the Equality Act 2010 to ensure that any form of pay protection can be objectively justified.

3. OUTCOME

- 3.1 Employees who as a consequence of redeployment suffer a reduction in pay are treated equitably in accordance with this policy.
- 3.2 The Council are able to objectively justify the salary protection arrangements outlined within the policy, therefore reducing the likelihood of equal pay claims being pursued against the Authority.

4. POLICY STATEMENT

- 4.1 This policy has been developed with due regard to equality based legislation and precedents established through case law with the intent of providing a fair and equitable framework for the provision of salary protection within the Council. Although Equality law says that an employer's long-term aim of reducing pay inequality between women and men is always to be regarded as objective justification it is important to ensure that the policy satisfies the 'material factor' defence, e.g. that the difference in pay and/or other terms is for a material reason other than sex.
- 4.2 When developing the policy the Council has considered the matter in terms of whether it satisfies the 'material factor' defence from both a financial perspective and also from an employee's perspective. As part of this process the Council have considered whether it is possible to temporarily enhance an employee's pay to match that of a comparator who is in receipt of protection. However, given the financial constraints associated with this the Council are unable to offer any form of temporary enhancements. In addition the Council have also considered the potential impact that an immediate reduction in salary without any form of protection is likely to have on an individual irrespective of whether they are

female or male. The Council have recognised that not only may this result in extreme levels of disaffection amongst all staff irrespective of their gender, but that it will also have a detrimental impact on employee morale which may result in increased levels of sickness absence and consequent disruption to service delivery.

4.3 Following detailed consideration of the above and as part of the policy development process the Council believe that they have a case to objectively justify a salary protection arrangements that is a proportionate means of achieving a legitimate aim, falling within the 'material factor' defence. The arrangements contained within this policy are however, subject to continual review and monitoring in respect of implementation from an equality perspective.

4.4 This policy has been introduced after full consultation with the recognised Trades Unions.

5. SCOPE

5.1 This policy applies to all substantive employees who as a consequence of organisational change (redundancy, reorganisation) or making a reasonable adjustment because of a disability suffer a reduction in their earnings as a result.

6. PROTECTION ARRANGEMENTS

6.1 Employees who are redeployed into a lower graded post as a result of:

- redeployment caused by redundancy¹/departmental reorganisation/restructuring;
- reduction in grade as a result of a change in duties/responsibilities of the post;
- making a reasonable adjustment because of a disability;
- other exceptional reasons for example, recommendations arising out of disciplinary, harassment or grievance procedures. All cases that fall within the exceptions category should first be discussed with Human Resources (HR) and where necessary HR will refer the matter through to CMB and the Section 151 Officer for their consideration/approval.

may receive a 'protected element' of earnings² for a period of not more than 12 months (the 'protection period'). At the end of the protection period, the employee's pay will revert to the maximum salary scale for the new post.

6.2 In circumstances where individuals are redeployed consideration will need to be given in relation to **suitable** alternative posts. Ordinarily the Council will consider offering posts graded one grade below the employee's existing grade. However, in exceptional circumstances and in order to protect employment consideration will be given to **redeployment opportunities** that are graded up to two grades below the employee's existing grade.

¹ For the avoidance of doubt, an employee who is dismissed on the grounds of redundancy, (compulsory or voluntary) and subsequently re-appointed into a lower paid job will not be afforded protection of earnings. A break of at least 4 weeks must take place and there will be no entitlement to continuity of service.

² Note in accordance with regulation 20 (g)/(h) of the LGPS 2014 protected elements of earnings will not be regarded as pensionable pay. Pensionable pay will therefore be based on the substantive salary for the post.

- 6.3 Employees in receipt of pay protection will be moved to the maximum scale point of the new grade and will receive the difference between their old and new salary as a 'protected element' (subject to an upper cap of either 50% of the difference in salary or £3,000 per annum placed on any protected element of salary whichever is the greater³) in addition to their new basic salary. **NOTE – in accordance with Para 6.2 above, this only applies for reductions of up to a maximum of 2 grades below the employee's existing grade. If the reduction in pay/grade is more than 2 grades below the employee's existing grade then the calculations regarding salary protection will be based on the difference between the existing salary and the highest spinal column point of 2 grades below.**
- 6.4 When calculating the 'protected element' only an employee's basic salary will be protected. Where an employee is a member of the Local Government Pension Scheme their pensionable pay will be based on the substantive salary for the new post (pro-rata applied as appropriate). An employee's previous terms and conditions, including any contractual allowances for example overtime and/or honorariums/market supplements will not be protected. Similarly, an employee's previous hours will not be protected. In circumstances where an employee is redeployed into a lower-graded post which carries more hours, protection will not apply where the increase in hours enables the employee to maintain their former basic salary. Salary protection will only be payable whilst the employee performs the post to which the pay protection applies.
- 6.5 Whilst an individual is in receipt of salary protection it should be noted that inflationary pay awards and annual increments that otherwise would have been available to the post holder will not be paid (during the protection period) until or if the pay level for the new job reaches the protected level of pay (basic salary + protected element)
- 6.6 Where an employee's earnings are inconsistent due to variable hours (excluding non-contractual overtime), subject to 6.4 above, the pay protection element will be calculated based on an average of the preceding 12 months earnings. Periods of maternity, paternity, adoption, reduced sick pay and unpaid leave will be discounted from this calculation.
- 6.7 Where an employee requests to reduce their contracted working hours or accepts a reduction in their contracted hours as a result of redeployment the 'pay protection' element will be pro-rated accordingly. The only exception to this arrangement would be in circumstances where an employee temporarily reduces their hours in which case the 'protected element' will be adjusted as appropriate. Such cases may include situations where a woman returning from maternity leave wishes to return on reduced hours temporarily, gradually increases her hours within the 'protection period'.
- 6.8 Protection arrangements will continue to apply throughout the 'protection period' unless:
- the employee changes jobs voluntarily during the 'protection period' in which case the new salary and terms will apply immediately on taking up the new position;
 - the employee's overall salary increases above the previous salary (including the protected element) during the 'protection period' in which case protection would no longer apply;
 - The employee leaves the Council or retires.

³ Pro rata for part time employees

- 6.9 In the event that an employee suffers a reduction in salary as a consequence of either a capability (excluding disability) or disciplinary procedure being invoked it should be noted that no form of salary protection will be afforded to them.
- 6.10 The employee will be given written details of the pay protection being afforded to him/her, including start and end dates before the start of the pay protection period.
- 6.11 Pay protection will cease automatically when the 'protection period' ends. If pay protection is continued beyond the 'protection period' in error, the Council reserves the right to recover any overpayment made.
- 6.12 Nothing in this policy shall entitle an employee to receive any pay protection which amounts to a sum greater than their actual financial loss.

7. MONITORING AND REVIEW

- 7.1 This policy will be reviewed by Human Resources following consultation with the Trade Unions in response to changes in relevant legislation and/or other NSDC policies, procedures or agreements.

8. EQUALITIES IMPACT ASSESSMENT

- 8.1 This policy has been developed with due regard and consideration for other policies, procedures and agreements currently in operation at NSDC and follows the completion of an equality impact assessment details of which are held in Human Resources.

9. ADDITIONAL RELEVANT POLICIES

- 9.1 Where appropriate reference should also be made to the following policies and or procedures currently in operation within the Council:

Redundancy Policy
Redeployment Policy
Capability Policy
Attendance Management Policy
Dignity at Work Policy