

Document Name	Protection of Earnings Policy
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Responsible Business Manager	Sarah Lawrie



# **PROTECTION OF EARNINGS POLICY**

## **1. INTRODUCTION**

- 1.1 Newark and Sherwood District Council is committed to providing pay and grading that is equitable to every employee. The Council has agreed job evaluation mechanisms to achieve this.
- 1.2 Individuals may suffer a reduction in pay as a consequence of redeployment arising from redundancy, reorganisation, a reduction in grade resulting from changes in the level of responsibility of a role, making a reasonable adjustment as a consequence of a disability or other exceptional circumstances beyond their control. The aim of this policy is to establish the principles that govern pay protection arrangements within the Council in these circumstances.
- 1.3 By applying this policy consistently:
  - 1.3.1 Employees will be treated fairly and consistently if their pay is reduced;
  - 1.3.2 The Council will be 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.
- 1.4 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 gender.
- 1.5 The Council believe that there is a case to objectively justify a salary protection arrangement 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.
- 1.6 This policy has been introduced after full consultation with the recognised Trades Unions.

## **2. SCOPE**

- 2.1 This policy applies to all substantive employees who, as a consequence of organisational change (redundancy, reorganisation), a reduction in grade resulting from changes in the level of responsibilities of a post or making a reasonable adjustment because of a disability, suffer a reduction in their earnings as a result.

## **3. PROTECTION ARRANGEMENTS**

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

- redeployment caused by redundancy<sup>1</sup>/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;

may receive a 'protected element' of earnings<sup>2</sup> 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 spinal column point for the new post.

- 3.2 In circumstances where individuals are redeployed consideration will be given to the **suitability of any** 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.
- 3.3 Employees in receipt of pay protection will be moved to the maximum scale point of the new grade. They 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 greater<sup>3</sup>) in addition to their new basic salary. **NOTE – in accordance with Para 3.2 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.**
- 3.4 When calculating the 'protected element' **an employee's basic salary and annual leave entitlement will be protected for the protection period.** 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 contractual allowances; for example overtime and/or honoraria/market supplements will not be protected. Similarly, an employee's previous hours will not be protected. 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.
- 3.5 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)

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Pro rata for part time employees

- 3.6 Where an employee's earnings are inconsistent due to variable hours (excluding non-contractual overtime), subject to 3.4 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.
- 3.7 Where, as a result of redeployment an employee requests to reduce their contracted working hours or accepts a reduction in their contracted hours, 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'.
- 3.8 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;
  - during the 'protection period' the maximum salary of the new post reaches or exceeds the protected level of pay, in which case the employee will be placed on the maximum spinal column point of the new post and pay protection will no longer apply;
  - The employee leaves the Council or retires.
- 3.9 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 awarded to them.**
- 3.10 The employee will be given written details of the pay protection being awarded to them, including start and end dates before the start of the pay protection period.
- 3.11 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.
- 3.12 Nothing in this policy shall entitle an employee to receive any pay protection which amounts to a sum greater than their actual financial loss.

#### **4. 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.

#### **5. EQUALITIES**

- 5.1 This policy has been developed with due regard and consideration to equalities matters and all other policies, procedures and agreements currently in operation at NSDC.

#### **6. ADDITIONAL RELEVANT POLICIES**

6.1 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

Disciplinary and Dismissal

Job Evaluation Regrading of Posts Procedure