


Agenda Item No:	7	
Committee:	Employment Committee	
Date:	30th June 2023	
Report Title:	Pension Discretions Update	

Cover sheet:

1 Purpose / Summary

- 1.1 The purpose of this report is to inform and make recommendation for the adoption of an updated Fenland District Council pension discretions document.
- 1.2 The pension discretions are to be exercised under the Local Government Pension Scheme (LGPS) Regulations from 1 April 2014 in relations to member of the Career Average Revalued Earnings (CARE) Scheme.

2 Key issues

- The Council has a comprehensive framework of people policies in place. These policies are reviewed in accordance with an ongoing programme of reviews.
- The Council has an extensive (cost neutral) employee benefit offering to all staff, something the Council looks to continuous review and improve.
- The Council is introducing a new salary sacrifice Shared Cost Addition Voluntary Contribution Scheme (AVC Wise) to provide employees, who are members of the Local Government Pension Scheme, with an opportunity to gain National Insurance Contributions savings on additional voluntary contributions made into the Local Government AVC Scheme.
- Under the Shared Cost AVC arrangement with AVC Wise, the Council will agree to pay an employee's chosen contribution amount to their AVC fund and, in return, the employee agrees to enter a salary sacrifice arrangement under which they accept a reduction in their gross salary, which is equal to the contribution amount.
- A key requirement for the Council is to have pensions discretions as required by the LGPS in form of a written statement. The addition of AVC salary sacrifice prompted the review of the pension discretions.
- The main purpose of the discretions is that it is Fenland District Council's decision on which benefits to release for payment, this can be a combination of at least pre April 2008 and/or April 2008 - March 2014, April 2014.
- The changes to the pension discretions are shown in track changes on page 4 and are minimal.
- A comprehensive consultation process has also been undertaken on this revised document with CMT and also with the MTSP (Management, Trade Union & Staff Partnership) group, who have endorsed the changes.
- This policy is now being recommended for formal adoption and communication to staff.

3 Recommendations

- Members are asked to approve the recommended changes to the discretions statement to be exercised under the LGPS Regulations.

Wards Affected	All
Forward Plan Reference	N/A
Portfolio Holder(s)	
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Background Paper(s)	

Report:

1 Background / introduction

- 1.1 Pension discretions are required to be provided to the LGPS in form of a written statement from each employer authority. The main purpose of these discretions is to enable Fenland District Council to decide on which pension benefits to release for payment, this can be a combination of at least pre April 2008 and/or April 2008 - March 2014, April 2014.
- 1.3 As an Employing authority, the Council has operated under the provisions of:
 - The Local Government Pension Scheme Regulations (LGPS) 1997, and
 - The Local Government (Early Termination of Employment) (Discretionary Compensation) England and Wales Regulations 2000.
- 1.2 As a result of the above, Fenland District Council is required to prepare and publish a written statement of policy on certain discretions under the LGPS which Fenland District Council has the power to exercise on and from 1 April 2014 in relation to members of the CARE Scheme. This statement has been included with the appendices and highlights the changes on page 4 relating to the addition of a salary sacrifice scheme for pension.
- 1.3 The Council is introducing a new salary sacrifice Shared Cost Addition Voluntary Contribution Scheme (AVC Wise) to provide employees, who are members of the Local Government Pension Scheme, with an opportunity to gain National Insurance Contributions savings on additional voluntary contributions made into the Local Government AVC Scheme.
- 1.4 As you are aware, the Council offers the LGPS and the LGPS rules allow employees to build up their pension benefits for retirement by paying Additional Voluntary Contributions (AVCs) by way of a tax-free deduction through payroll. If an employee chooses to pay

AVCs, they are invested separately from the main LGPS pension benefits and provide additional income upon retirement.

- 1.5 The LGPS has a provision within its regulations to allow the employer to also contribute to an AVC arrangement. This is known as a 'Shared Cost' AVC which can be provided through a salary sacrifice arrangement. This is AVC Wise.
- 1.6 Under the Shared Cost AVC arrangement with AVC Wise, the Council will agree to pay an employee's chosen contribution amount to their AVC fund and, in return, the employee agrees to enter a salary sacrifice arrangement under which they accept a reduction in their gross salary, which is equal to the contribution amount.
- 1.7 The addition of the new employee benefit means The Council needed to update its pension discretion document.

2 Considerations

- 2.1 When the Council intends to adopt new, or change existing, discretionary policies it should give notice to the recognised union (UNISON) via the MTSP group. The changes are now for Member approval.
- 2.2 A comprehensive consultation process has also been undertaken on this revised policy with CMT and the wider management team, who have endorsed the changes. Comments have been considered and incorporated where appropriate to do so.

3 Effect on corporate objectives

Any changes to the Pension discretions to be exercised under the LGPS Regulations from 1 April 2014 will take immediate effect from the date members agree it.

4 Conclusions

- 4.1 The recommendations contained within this report, if approved, will form Fenland District Council's policies on pension discretions. It should be noted that:
 - The policies will not change any contractual rights.
 - Fenland District Council will retain the right to change the policies at any time without prior notice or consultation although will endeavour to discuss any future changes.
 - Only the policy which is current at the time a relevant event occurs to an employee/scheme member will be the one applied to that employee/member.

No.	Discretion	Regulation	Fenland District Council's Policy
Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations in relation to active scheme members and members who cease active membership after 31 March 2014 (excluding Councillors)			
1	Whether to grant additional pension of up to £6,822 (as at 1 April 2018) to an active member or within 6 months of leaving to a member whose employment is terminated on the grounds of redundancy or business efficiency.	R31	FDC will not make use of the discretion to grant extra annual pension of up to £6,822 (as at 1 April 2018)
2	Whether, where an active Scheme member wishes to purchase extra annual pension of up to £6,822 (as at 1 April 2018) by making Additional Pension Contributions (APC's), FDC will voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC).	R16(2)(e) & R16(4)(d)	FDC will not contribute to a Shared Cost APC.
3	<p>Whether to permit flexible retirement for staff aged 55 or over who, with the agreement of FDC, reduce their working hours or grade and, if so, as part of the agreement:</p> <ul style="list-style-type: none"> • Whether, in addition to the benefits the member has accrued prior to 1 April 2008 (which the member must draw if flexible retirement is agreed), to permit the member to choose to draw: <ul style="list-style-type: none"> • All, part or none of the pension benefits they accrued after 31 March 2008 and before 1 April 2014, and/or • All, part or none of the pension benefits they accrued after 31 March 2014, and • Whether to waive, in whole or in part, any actuarial reduction which would otherwise be applied to the benefits taken on flexible retirement before normal pension age. 	<p>R30(6) & TP11(2)</p> <p>R30(8)</p>	<p><u>Flexible retirement</u> FDC will not agree to flexible retirement except in circumstances where FDC considers it is in its financial or operational interests to do so. Each case:</p> <ul style="list-style-type: none"> • Will be considered on the merits of the financial and/or operational business case put forward, • Will set out whether, in addition to any pre 1 April 2008 benefits, the member will be permitted to take all, some or none of their post 31 March 2008 benefits, and • Will require the approval of CMT and Staff Committee. <p><u>Waiver of any actuarial reduction on flexible retirement</u> Where flexible retirement is agreed, the benefits payable will be subject to any actuarial reduction applicable under</p>

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			the LGPS Regulations 2013 and LGPS Regulations 2014. FDC will only waive any such reductions, in whole or in part, where it considers it is in its financial or operational interests to do so. Each case will be considered on the merits of the financial and /or operational business case put forward and will require approval of CMT and Staff Committee.
4	Whether, as the 85 year rule does not (other than on flexible retirement) automatically fully apply to members who would otherwise be subject to it and who choose to voluntarily draw their benefits on or after age 55 and before age 60, to switch the 85 year rule back on in full for such members.	TPSch 2, paras 1(1)(c), 1(2) and 2(2)	FDC will not agree to switch the 85 year rule on in full where members choose to voluntarily draw their benefits on or after age 55 and before age 60 except in circumstances where FDC considered it is in its financial or operational interests to do so. Each case: <ul style="list-style-type: none"> • Will be considered on the merits of the financial and/or operational business case put forward, • Will require the approval of CMT and Staff Committee.
5	For active members voluntarily retiring on or after age 55 and before Normal Pension Age who elect under regulation 30(5) of the LGPS to immediately draw benefits, and for deferred members and suspended tier 3 ill health pensioners who elect under regulation 30(5) of the LGPS to draw benefits (other than ill health grounds) on or after age 55 and before Normal Pension Age, and who: <ul style="list-style-type: none"> • were <u>not</u> members of the LGPS before 1 October 2006, whether to: • waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits, 	TP3(1), TPSch 2, paras 2(1) and 2(2), B30(5) and B30(8) R30(8)	FDC will not agree to waive on compassionate grounds any reduction on benefits for employees where members choose to voluntarily draw their benefits on or after age 55 and before Normal Pension Age except in circumstances where FDC considers it is in its financial or operational interests to do so or there are compelling compassionate reasons for doing so. <p>Each case:</p> <ul style="list-style-type: none"> • will be considered on the merits of the financial and/or operational business case put forward, or • will be considered on the merits of the

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	<p>if any, accrued before 1 April 2014, and/or</p> <ul style="list-style-type: none"> • waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2014 • were members of the LGPS before 1 October 2006 and <u>will</u> be 60 or more on 31 March 2016 whether to: <ul style="list-style-type: none"> • waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits, accrued before 1 April 2016, and/or • waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2016 • were members of the LGPS before 1 October 2006 and will not be 60 or more on 31 March 2016 and will not attain age 60 before 1 April 2016 and 31 March 2020, whether to: <ul style="list-style-type: none"> • waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits, accrued before 1 April 2014, and/or • waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2014 • were members of the LGPS before 1 October 2006 and will not be 60 or more on 31 March 2016 but will attain age 60 between 1 April 2016 and 31 March 2020, whether to: 		<p>compassionate case put forward, and</p> <ul style="list-style-type: none"> • will require the approval of CMT and Staff Committee.

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	<ul style="list-style-type: none"> waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits, accrued before 1 April 2020, and/or waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2020. 		
6	Whether, how much, and in what circumstances to contribute to a shared-cost AVC arrangement entered into on or after 1 April 2014 and whether, how, and in what circumstances to continue to contribute to any shared-cost AVC arrangement entered into before 1 April 2014.	R17(1) & definition of SCAVC in RSch 1 TP15(1)(d) & A25(3)	FDC will not enter into a shared-cost AVC arrangement. <u>FDC will pay Shared-Cost AVC contributions where an employee has elected to pay AVCs by salary sacrifice. The amount of these employer Shared Cost AVC contributions will not exceed the amount of salary sacrificed by the employee. This is a discretion of FDC which is subject to the employee meeting the conditions for acceptance into the salary sacrifice Shared Cost AVC scheme and may be withdrawn or changed at any time.</u>
7	Whether, with the agreement of the Pension Fund administering authority, to permit a scheme member to elect to transfer other pension rights in the LGPS if they have not made such an election within 12 months of joining the LGPS.	R100(6) R22(8)(b) R22(7)(b)	Subject to the agreement of the relevant administering authority in any individual case, FDC will extend the 12 month period: <ul style="list-style-type: none"> where the member is initially appointed on a fixed term contract for a period of a year or less and the contract is subsequently extend to a period of greater than one year, or where FDC agrees that the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration. <u>In the event of other extenuating circumstances. Each request will be judged on</u>

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			<p>case by case basis, and will be subject to CMT approval.</p>
8	<p>How the pension contribution band to which an employee is to be allocated on joining the Scheme, and at each subsequent April, will be determined and the circumstances in which the employer will, in addition to the review each April, review the pension following a material change which affects the member's pensionable pay in the course of a Scheme year (1 April – 31 March).</p>	<p>R9(1) & R9(3)</p>	<p>FDC will assess an employee's contribution rate based on their annual salary rate.</p> <p>FDC will reassess an employee's contribution rate as from the date from which a change in their annual salary rate is effective. This can result in a retrospective reallocation to a different contribution rate with a consequential adjustment to the employee contributions due.</p> <p>NB: Annual salary will be based on actual rate for a part-time employee</p>
9	<p>Whether or not, when calculating assumed pensionable pay when a member is:</p> <ul style="list-style-type: none"> • on reduced contractual pay or no pay due to sickness or injury, or • absent during ordinary maternity, paternity or adoption leave or during paid additional maternity, paternity or adoption leave, or • absent on reserve forces service leave, or • retires with a Tier 1 or 2 ill health pension, or • dies in service <p>to include in the calculation the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health</p>	<p>R21(5)</p>	<p>In assessing Assumed Pensionable Pay FDC will not include in the calculation any regular lump sum payment, except:</p> <ul style="list-style-type: none"> • shift allowance • market premia • honorarium.

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	retirement or death occurred.		
10	Where in the Employer's opinion, the pensionable pay received in relation to an employment (adjusted to reflect any lump sum payments) in the 3 months preceding the commencement of Assumed Pensionable Pay (AP)), is materially lower than the level of pensionable pay the member would have normally received, decide whether to substitute a higher level of pensionable pay received by the member in the previous 12 months.	R21 (5a) & R21 (5b)	FDC will assess an employee's contribution rate based on their annual salary rate, however FDC will reassess an employee's contribution rate as from the date from which a change in their annual salary rate is effective. Based on any 3 months prior this can result in a retrospective reallocation to a different contribution rate with a consequential adjustment to the employee contributions due.

No.	Discretion	Regulation	Fenland District Council's Policy
Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations in relation to scheme members who ceased active membership between 1 April 2008 and 31 March 2014 (excluding Councillors)			
1	Whether to grant applications for the early payment of deferred pension benefits on or after age 55 and before age 60.	B30(2)	Where a former scheme member who left the scheme between 1 April 2008 and 31 March 2014 requests early release of deferred benefits on or after age 55 and before age 60, approval will only be given on compassionate grounds. Each a case will be considered on its merits and will be subject to the approval of CMT and Staff Committee. Subject to item 2 (below), the benefits payable in such circumstances will be subject to any actuarial reduction applicable under the relevant LGPS regulations.
2	Whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65.	B30(5)	Each case will be considered on its merits and will be subject to the approval of Staff Committee.
3	Whether to grant applications for the early payment of a suspended tier 3 ill health pension on or after age 55 and	B30A(3)	Where a former scheme member who left the scheme between 1 April 2008 and 31 March 2014 requests early

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	before age 60.		<p>release of a suspended tier 3 ill health pension on or after age 55 and before age 60, approval will only be given on compassionate grounds.</p> <p>Each case will be considered on its merits and will subject to the approval of Staff Committee. Subject to item 4 (below), the benefits payable in such circumstances will be subject to any actuarial reduction applicable under the relevant LGPS regulations.</p>
4	Whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to any suspended tier 3 ill health pension benefits awarded before 1 April 2014 which are brought back into payment before age 65.	B30A(5)	Each case will be considered on its merits and will be subject to the approval of Staff Committee.
5	Whether, within 6 months of the date of termination, to grant extra membership in the pension scheme to a Scheme Member whose employment was terminated before 1 April 2014 on the grounds of redundancy or business efficiency.	B12	FDC will not grant extra pension scheme membership to a Scheme member whose employment was terminated before 1 April 2014 on the grounds of redundancy or business efficiency.

No.	Discretion	Regulation	Fenland District Council's Policy
	Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations in relation to scheme members who ceased active membership between 1 April 1998 and 31 March 2008 (excluding Councillors)		
1	<p>Whether to grant applications for the early payment of pension benefits on or after age 50* and before 60.</p> <p>* benefits paid on or after age 50 and before age 55 will be subject to an unauthorised payment charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, and a Scheme sanction charge on</p>	31(2)	Where a former scheme member who left the scheme between 1 April 1998 and 31 March 2008 requests early release of deferred benefits on or after age 50 and before age 60, approval will only be given on compassionate grounds. Each a case will be considered on its merits and will be subject to the approval of CMT and Staff Committee. Subject to item 2 (below), the benefits

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	any benefits built up after 5 April 2006.		payable in such circumstances will be subject to any actuarial reduction applicable under the relevant LGPS regulations.
2	Whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to benefits which are paid before age 65.	31(5)	Each case will be considered on its merits and will be subject to the approval of Staff Committee.

No.	Discretion	Regulation	Fenland District Council's Policy
	Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations in relation to scheme members who ceased active membership before 1 April 1998 (excluding Councillors)		
1	Whether to grant applications for the early payment of deferred pension benefits on or after age 50* and before 65 on compassionate grounds. * benefits paid on or after age 50 and before age 55 will be subject to an unauthorised payment charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, but there would be no Scheme sanction charge.	D11(2)(c)	Each request will be considered on its merits and will be subject to the approval of Staff Committee.

No.	Discretion	Regulation	Fenland District Council's Policy
	Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (excluding Councillors)		
1	Whether to base a redundancy payment on an employee's actual weeks' pay where this exceeds the statutory week's pay limit of, currently £464 per week (as at 6 April 2014).	5	Any redundancy payment will be calculated on the employee's actual week's pay. Continuous local government service, as defined under the Redundancy Payments (Continuity of Employment in

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			Local Government, etc.) (Modification) Order 1999, will be taken into account in the calculations of redundancy payments.
2	Whether to make a termination payment (inclusive of any redundancy payment) of up to a maximum of 104 weeks' pay.	6	Redundant staff will receive a severance payment (to incorporate statutory redundancy pay) calculated using the statutory redundancy payment formula but based on actual pay, as per policy.

No.	Discretion	Regulation	Fenland District Council's Policy
	Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (excluding Councillors)		
1	How a person's annual compensatory added years payment is to be abated during, and following the cessation of, any period of re-employment by an employer who offers membership of the LGPS to its employees, regardless of whether or not the employee chooses to join the LGPS (except where the employer is an Admitted Body, in which case abatement only applies if the person is in the LGPS in the new employment)	17 19 21(7) 21(5)	<p>FDC will, during any period of unemployment in local government (see note below) abate a person's annual compensatory added year's pension payment by the 'excess' if the aggregate of:</p> <ul style="list-style-type: none"> • the annual compensation, and • the annual pension from the LGPS, and • the annual rate of pay from the new employment exceeds the pay the person would have received from the employment in respect of which the compensatory added years were granted, based on the annual rate of pay at the date of casing the formal employment as increased by the retail Prices Index. <p>Where compensatory added years were awarded on or after June 2000, FDC will reduce a person's annual compensatory added year's payment following the cessation of a period of re-employment in local government (see note below) to the extent necessary to</p>

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			<p>secure that if:</p> <ul style="list-style-type: none"> • the period of compensatory added years granted in respect of the former employment. <p>Plus</p> <ul style="list-style-type: none"> • the period of membership the person has accrued in the LGPS (or would have accrued had they joined the scheme when first eligible to do so) during the periods of re-employment in local government, counted at its part-time length, if the person was part-time, <p>exceeds</p> <ul style="list-style-type: none"> • the period of membership the person would have accrued during the period from the cessation of the former employment until age 65 on the assumption that they had continued in that former employment to age 65 (again counted at its part-time length if the person was part-time at the date of cessation of the former employer), <p>then</p> <ul style="list-style-type: none"> • the annual pension and lump sum from the first job combined with the annual pension and lump sum from the second job (based on the assumption that the employee joined the LGPS when first eligible to do so), plus the annual compensation and lump sum compensation, shall not in aggregate exceed the pension and lump sum the person would have achieved if they had remained in the first job through to age 65.

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			<p>Where there is an excess, the annual compensation must be reduced by the excess pension, and if the annual compensation is not reduced to nil, the amount of the remaining (reduced) basic annual compensation (excluding cost of living increases) must then be suspended until the excess lump sum (if any) is recovered.</p> <p>In calculating whether or not, in aggregate, the annual pension and lump sum from the first job, plus the annual pension and lump sum (if any) from the second job (based on the assumption that the employee joined the LGPS at the first opportunity), plus the annual compensation and lump sum compensation, exceeds the pension and lump sum the person would have achieved if he/she had remained in the first job through to age 65 it will be necessary to compare:</p> <ul style="list-style-type: none"> a) the actual LGPS pre 1 April 2009 1/80th pension and 3/80th lump sum, plus the actual LGPS post 31 March 2008 1/60th pension (ignoring commutation for a lump sum), plus the actual 1/80th annual compensation and 3/80th lump sum compensation, with b) the 1/80th LGPS pension and 380ths lump sum the member would have achieved in their first job to 31 March 2008, plus the 1/60th LGPS pension the member would have achieved in their first job

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			<p>(ignoring any potential commutation for a lump sum), if the member had stayed in the first job through to age 65.</p> <p>In determining the benefits the employee could have achieved had he/she remained in the first employment through to age 65 it will be necessary to determine the pensionable pay to be used in the calculation of the pension benefits in the first job will be used as brought up to date, at the date of cessation of the period or re-employment, by increasing it in line with the rate at which an "official pension" would have been increased under the Pensions (Increase) Act 1971.</p>
2	How any surviving spouse's or civil partner's annual compensatory added years is to be apportioned where the deceased person is survived by more than one spouse or civil partner.	21(4)	FDC will apportion any surviving spouse's or civil partner's annual compensatory added years where the deceased person is survived by more than one spouse or civil partner in such proportions as, at its sole discretion, it sees fit (based on the merits of the individual case).
3	Whether, if the spouse of a person who ceased employment before 1 April 1998 remarries, enters into a civil partnership or cohabits after 1 April 1998, the normal annual compensation suspension rules will be dis-applied i.e. the survivor's annual compensatory added years will continue to be paid.	21(7)	If the spouse of a person who ceased employment before 1 April 1998 remarries, enters into a civil partnership or cohabits after 1 April 1998, the normal annual compensation suspension rules will be dis-applied i.e. the spouses annual compensatory added years will continue to be paid.

No.	Discretion	Regulation	Fenland District Council's Policy
	Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Payments) (Injury Allowances) 2011(excluding Councillors)		

No.	Discretion	Regulation	Fenland District Council's Policy
1	<p>Whether to make an injury award to those who sustain an injury or contract a disease as a result of anything they were required to do in performing the duties of their job and in consequence of which they:</p> <ul style="list-style-type: none"> • suffer a reduction of remuneration, or • cease to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease, or • die leaving a surviving spouse, civil partner or dependant, and <p>if so, how the amount of injury allowance to be paid is to be determined.</p>	3(1)	<p>FDC will not make any injury award to those who sustain an injury or contract a disease as a result of anything they were required to do in performing the duties of their job.</p> <p>FDC holds Employer's Liability Insurance and has provision for employees within the Sickness Absence Policy in line with National Agreement on pay and conditions of service (Green Book).</p>

FDC reserve the right to change the policy at any time without prior notice or consultation, although FDC will endeavour to discuss proposed changes with the recognised Trade Unions.