



Scheme for the Payment of Injury Allowances – January 2016

Contents**Page**

1. INTRODUCTION	3
2. ENTITLEMENT	3
3. REDUCTION IN LEVEL OF REMUNERATION	4
4. CONTRIBUTORY NEGLIGENCE	4
5. DEATH BENEFITS & DEPENDANT'S PAYMENTS	4
6. LENGTH OF PAYMENT	4
7. SCALE OF BENEFIT	4
8. REDUCTIONS TO ALLOWANCE	5
9. DECIDING AND NOTIFYING THE LEVEL OF AWARD	5
10. APPEALS PROCEDURE	5

1. Introduction

- 1.1. Government has in place legislation that requires local authorities to maintain an injury allowance scheme. The provision of the scheme is mandatory, but any payments that arise from the scheme are at the discretion of Council.
- 1.2. The entitlement for an employee of Merthyr Tydfil County Borough Council to make a claim for payment under this scheme only relates where they have suffered a loss in their ability, or capacity, to earn.
- 1.3. They do not have to be members of the Local Government Pension Scheme, but must be employed by the authority, although their employment does not have to be the same employment in which the injury or disease was sustained or contracted. As the payment of injury allowances to employees does not come under the guise of the Local Government Pension Scheme it is open to all employees of the Council, i.e. it can include teachers.
- 1.4. Injury allowances are payable in accordance with *the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011*. Employees are entitled to claim an allowance if they:
 - sustain an injury or contract a disease as a result of any duty, they were required to perform in carrying out their work; and
 - are employed in relevant employment (i.e. they are employed by the Council).
- 1.5. Under *Regulation 3* of this legislation an employee may be granted a discretionary payment up to the amount that their earnings are reduced because of the injury or disease. The amount payable can be varied from time-to-time. The decision on the amount to be paid rests entirely with the Council. The only compulsion is that there must be a justification where payment of some sort is made.
- 1.6. For employees remaining in relevant employment but suffering reduced remuneration, an allowance is payable of an amount up to the employee's normal remuneration. The allowance is payable as an addition to the employee's salary for as long as the reduction continues.
- 1.7. The regulations also make provision for death benefit to a surviving, spouse, civil partner, nominated cohabiting partner or dependant.
- 1.8. Injury allowances are not met out of any pension fund; they are to be funded in their entirety by the Council. Payments would be decided by Cabinet and paid through the authority's payroll.

2. Entitlement

- 2.1. The scheme applies where an employee sustains an injury or contracts a disease as a result of any duty they were required to perform in carrying out their work. If, as a result of permanent incapacity caused by an injury or disease, a person ceases to be employed, he/she shall be entitled to an annual allowance.
- 2.2. If an employee is injured while travelling as a passenger in a vehicle to or from his/her place of work with the Council's express or implied permission and the vehicle was, at the time the injury was sustained, being operated on behalf of the Council (other than as a public transport vehicle), then the employee will be treated as having sustained a qualifying injury.
- 2.3. An injury allowance is payable to:
 - an employee who loses his/her employment as a result of an incapacity which is likely to be permanent, caused by the injury or disease or who suffers a reduction in remuneration as a result of the injury or disease.

- A surviving spouse or dependant(s) or an employee (or former employee in receipt of an allowance under this scheme) who dies as a result of the injury or disease.

2.4. Employees will only be eligible for an award if the injury or disease is wholly attributable to the incident and not if it caused the exacerbation of a current or previous condition.

2.5. Eligibility for an award will be decided following a report by an independent registered medical practitioner (IRMP) in accordance with the relevant legislation covering ill health determinations in the Local Government Pension Scheme (even if the member is not in / not eligible to join the LGPS).

3. Reduction in Level of Remuneration

3.1. Where, as a result of a qualifying injury or disease, an employee suffers a reduction in remuneration while employed in that or any other relevant employment, he/she is entitled to an allowance while the reduction continues.

3.2. For this purpose, a person's remuneration is regarded as reduced when it is lower than it would have been but for the injury or disease.

3.3. Again, the amount of the allowance is at the discretion of the Council, but may not in any year exceed the shortfall between the Employee's remuneration in the relevant employment and the remuneration that would have been paid but for the qualifying injury or disease.

3.4. In the case of a pensionable employee, if immediately before retirement he/she was entitled to an allowance under Section 4.1 below and ceases employment with immediate pension benefits and the annual rate of retirement pension falls short of what it would be if the allowance paid under section 4.1 was part of his/her remuneration, the Council may pay a further allowance. The amount is at the discretion of the Council, but may not exceed the shortfall.

4. Contributory Negligence

4.1. It is worth bearing in mind that the authority should not reasonably 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. In determining the level of award it is therefore reasonable for Council to take into account any contributory negligence by the employee.

5. Death Benefits & Dependant's Payments

5.1. Payments in respect of death in service to dependents (such as surviving spouse, civil partner, nominated cohabiting partner or dependant) could be given in the form of an allowance under this scheme, in addition to provisions covered by a public service pension scheme.

6. Length of Payment

6.1. An allowance continues for such maximum period as the Cabinet may determine, or while there remains a reduction in the level of remuneration.

7. Scale of Benefits

7.1. It should be noted that Personal Injury and Employer Liability claims are already in existence, which provide recourse to adequately remunerate workers who sustain an injury or contract a disease. In addition, payment for ill-health and to dependents may be covered by provisions in a public sector scheme, so payment of remuneration under these provisions could doubly compensate individuals.

7.2. Therefore, only in the event of a clear demonstration of detriment, after all of the factors in the above section have been taken in to account will anything other than a zero value award be provided.

8. Reductions to Allowance

- 8.1. In determining the amount of the allowance, regard must be had to all the circumstances of the case, including:
- any right to Benefit under *Part 5 of the Social Security Contributions and Benefit Act 1992*;
 - any other statutory right to benefit or compensation;
 - any right to receive pension benefit or gratuity;
 - any damages recovered and any sum received from a contract of insurance;
 - any contributory negligence by the employee.
- 8.2. Once in payment, the injury allowance may be varied according to circumstances and may be suspended either temporarily or permanently if the individual secures gainful employment (where gainful employment means paid employment for not less than 30 hours in each week for a period of not less than 12 months).

9. Deciding and Notifying the Level of Award

- 9.1. Once the level of an injury award is decided then the authority must make written notification of that decision to every person affected by it. The notification must include the grounds for the decision and also draw the recipient's attention to their right of appeal. The notification will include the amount of the award and detail the supporting calculation to demonstrate how the award amount was determined.
- 9.2. If at any stage of the process, it is considered that the claim for an injury award is not valid, that too must be communicated to the individual, along with the right of appeal against that decision.
- 9.3. In light of new medical evidence, or where there has been a material change in the degree of incapacity, or that person's financial situation, Council may choose to review cases. The employee, ex-employee or dependant may also request a review on the receipt of new evidence. These will be the only occasions when cases are reviewed.

10. Appeals Procedure

- 10.1. Employees have a right of appeal if they feel a payment should have been made. Although the scheme is not part of the Local Government Pension Scheme, and could affect any employee all appeals are processed through the LGPS's Internal Disputes Resolution Procedure (IDRP).
- 10.2. The employee has the right to appeal against a decision to not make a payment under the Injury Allowance Scheme. If the employee wishes to exercise their right of appeal against the decision, then they must do so within 6 months from the date when they were notified of the decision.
- 10.3. There is no right of appeal against the amount of benefit awarded, only whether they should be entitled to an injury allowance payment.