

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Finance and Resources	<b>DATE</b>	11 March 2010
<b>CORPORATE DIRECTOR</b>	Stewart Carruth		
<b>TITLE OF REPORT</b>	Third Tier Ill Health Gratuity – Discretion under the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009		
<b>REPORT NUMBER</b>	CG/10/056		

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### 1. PURPOSE OF REPORT

The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009 require employers to determine whether to choose to exercise the discretion to make provision for the payment of a one-off limited lump sum to an employee, referred to as the Third Tier Ill Health Gratuity. This would be in circumstances where employment is terminated on grounds of ill health or infirmity of mind or body but the employee is not eligible to receive ill health retirement benefits because they are not permanently incapable of discharging their duties. Employers are required to have a published policy position on this matter.

### 2. RECOMMENDATION(S)

It is recommended that the Committee:

- 1) Be asked to decide whether or not to apply the discretion to provide for the payment of a 'Third Tier Ill Health Gratuity', taking account of the factors detailed in paragraph 6.5, including the fact that the majority of other authorities contacted have determined not to apply the discretion.

### 3. FINANCIAL IMPLICATIONS

If the Committee decided not to apply the discretion there would be no cost to the Council. However, if members wish to apply the ill health gratuity there would be a financial implication for the Council.

For every case falling under the discretion (as detailed in 6.2 below) the employee would be entitled to an ill health gratuity comprising a lump sum of one week's pay for every whole year of employment with the Council up to a maximum of 30 weeks' pay. The amount of one week's pay is the amount equal to the annual rate of a member's pensionable pay on the day before the

member's employment is terminated divided by 52. It is not possible to predict how many cases there would be as this would vary from year to year.

#### 4. SERVICE & COMMUNITY IMPACT

There are no service or community impact implications

#### 5. OTHER IMPLICATIONS

There are no other implications.

#### 6. REPORT

- 6.1 The Third Tier III Health Gratuity is detailed in Regulation 49B of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009 and amends the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 and is to be read with the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008.
- 6.2 The regulation can apply only in the case of an active member of the Local Government Pension Scheme with at least two years' total membership of the scheme. Thus, where an employing authority (ACC) decides to terminate the member's employment on grounds of ill health or infirmity of mind or body and does not determine under Regulation 20(1)(a) of the pension scheme regulations to terminate the member's employment on the grounds that the employee's ill health renders him/her permanently incapable of discharging efficiently the duties of their current employment, the employing authority can make the member a discretionary grant referred to as the Third Tier III Health Gratuity.
- 6.3 The Council, as the employer, has an option to apply the discretion for payment of a Third Tier III Health Gratuity, or not. If it were to apply the discretion to provide for payment of a Third Tier III Health Gratuity, this would be in accordance with the provisions detailed in paragraph 6.4 below. The alternative option would be not to apply the discretion and as such no Third Tier III Health Gratuity payments would be made.
- 6.4 Should committee decide to apply the discretion a Third Tier III Health Gratuity would consist of a lump sum, the amount of which is equal to one week's pay for every whole year of employment with the authority. The amount of the Gratuity cannot exceed a sum equal to 30 weeks' pay. The amount of one week's pay is the amount equal to the annual rate of the member's pensionable pay on the day before the member's employment is terminated divided by 52.
- 6.5 Due to the costs involved it considered that the discretion to pay the Third Tier III Health Gratuity should not be applied. It is felt that the provisions

within the pension regulations of tiers one and two for ill health retirement cases already contained in the Local Government Pension Scheme regulations are generous and sufficient. Therefore, there is no need for the discretionary third tier where the costs will be picked up by the employer. In addition benchmarking has been undertaken with some other Scottish local authorities with seven out of nine intimating that they did not intend to apply the provision (with two yet to decide).

- 6.6 Consequently, if the Committee decision is not to implement the provision, it is proposed that the following policy statement applies to payments for Third Tier Ill Health Gratuity:

**“Aberdeen City Council has determined NOT to apply the discretion to make payment of a Third Tier Ill Health Gratuity provided in Regulation 49B of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009”**

- 6.7 Were the Committee to decide not to apply the discretion, any sickness absence cases falling under this category would continue to be treated under the Council’s Managing Attendance policy as capability dismissals on grounds of ill health, with the employee receiving pay in lieu of notice and any untaken holiday entitlement at termination. In this circumstance, the employee will have been deemed not to be permanently unfit for their current employment and able to undertake further employment at a point in the future.
- 6.8 Following trade union consultation, comments were received from the GMB and Unite. Both unions were of the view that the provision should be applied in the Council. The GMB indicated that “after some discussion we have concluded that we would wish to apply the regulations and not remove the right to payment, therefore we object to the proposal. As it is discretionary then each case can be evaluated on its own merit and in some cases the lieu of notice may be equivalent. The main point is that the third tier is part of the pensions’ regulations for the LGPS Scotland.” Unite indicated that “we are very disappointed that the recommendation is to not apply the discretion as this is seen as an improvement on the scheme which is in place in England and Wales. The very fact that this is a discretionary payment made by the employer should ensure that no “floodgates” are opened. I am sure that going forward there will be the very occasional employee who would benefit from this 3<sup>rd</sup> tier of ill health provision, so why should they be denied this.”

## 7. REPORT AUTHOR DETAILS

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## 8. BACKGROUND PAPERS

Not applicable.