

<b>Committee/Meeting:</b> HR Committee	<b>Date:</b> 19 <sup>th</sup> February 2015	<b>Classification:</b> Unrestricted	<b>Report No:</b>
<b>Report of:</b> Head of Paid Service		<b>Title:</b> <b>Pay Policy / Pay Issues</b>	
<b>Originating officer(s)</b>  Parts A & B – Simon Kilby, Service Head, HR & WD  Part C – Barry Scarr, Interim Service Head, Finance and Procurement		<b>Wards Affected:</b> All	

<b>Lead Member</b>	Cabinet Member for Resources
<b>Community Plan Theme</b>	All
<b>Strategic Priority</b>	Work efficiently and effectively as one Council

**Special Circumstances to Justify Urgent Consideration:**

The Pay Policy was considered by HR Committee on 28<sup>th</sup> January. A decision on Part A of this report was deferred in order to gather the views of Trade Unions. The Pay Policy must be agreed in order to be presented to Council and published by 1<sup>st</sup> April 2015. In order to meet these timescales the report must be discussed at HR Committee on 19<sup>th</sup> February.

**1. SUMMARY**

- 1.1 Under Section 38(1) of the Localism Act 2011, the Council is required to adopt a pay policy statement for each financial year. The Pay Policy Statement 2015/16 was presented to HR Committee on 28<sup>th</sup> January 2015 and was agreed subject to decisions on three elements, which form the basis of this report.
- 1.2 This report is separated into three distinct parts, as detailed below:  
Part A – Re-employment following redundancy / early retirement  
Part B – Joint Trade Union request relating to the NJC pay settlement  
Part C – Implication of the Chief Officers pay settlement on salary differentials
- 1.3 Following the decision of HR Committee on these elements, it will be reported to Council that HR Committee have approved the Pay Policy and, once ratified by Council, the policy will be published on the internet from 1<sup>st</sup> April 2015.

## **2. DECISIONS REQUIRED**

HR Committee is recommended to:-

- 2.1 Agree that the Pay Policy should reflect a differential gap for re-employment following redundancy / early retirement based on reason for leaving.
- 2.2 Agree the differential gap to be included in relation to the above recommendation.
- 2.3 Give their support to the agreement or rejection of the request of the joint Trade Unions to provide a lump sum payment to NJC staff on SCP 50 and above.
- 2.4 Note the implication of the Chief Officers pay settlement on the scale point for Service Head posts and decide whether to support continued maintenance of the differential between scale points.

## **3. REASONS FOR THE DECISIONS**

- 3.1 Decisions required within this report are necessary for the agreement and ratification of the Pay Policy, the publication of which is a requirement under Section 38(1) of the Localism Act 2011.

## **4. ALTERNATIVE OPTIONS**

- 4.1 The alternative options are covered in the body of the report.

## **5. BACKGROUND**

- 5.1 Under section 38(1) of the Localism Act 2011, relevant authorities are required to produce an annual Pay Policy statement. The most recent guidance "Openness and accountability in local pay: Guidance under section 40 of the Localism Act" published in February 2012, sets out the key policy principles that underpin the pay accountability provisions in the Act.
- 5.2 The guidance states "It is essential that an authority's approach to pay, as set out in a pay policy statement, is accessible for citizens and enables local taxpayers to take an informed view of whether local decisions on all aspects of remuneration are fair and make best use of public funds."
- 5.3 Pay Policy statements "offer an opportunity to put data on pay and reward firmly within the context of the authorities agreed policies, and to provide the public with a clear justification of how their money is being used appropriately in the pay and reward of senior staff." With this in mind, the Council must have consideration of not making redundancy payments unnecessarily and that proper prudence and governance arrangements are in place around such payments.

**6. PART A**  
**RE-EMPLOYMENT FOLLOWING REDUNDANCY / EARLY RETIREMENT**

6.1 The Council's 2014-2015 Pay Policy states the following with regards to re-employment following redundancy/early retirement: -

"Any member of staff who has left the Council by reason of redundancy (compulsory or voluntary) or early retirement and received a severance payment is required to have a gap of at least one year after the date of termination before they can return either as a directly employed member of staff, an agency worker or a consultant."

6.2 The Pay Policy also includes a current exemptions process as follows: -

"To allow for exceptional circumstances, when it might be necessary to re-employ someone sooner than after a year's gap, a Corporate Director, in conjunction with the Service Head HR and WD, and after consultation with the Chair of the Human Resources Committee, has authority to waive the one year requirement, provided there is justification."

6.3 An example of where such an exemption may be applied is where a post is deleted due to the withdrawal of government funding. Then, at a later date, the funding is reinstated and it is a Council priority that this service is up and running quickly again and the ex-employee is best placed to achieve this. It is recommended that this exemption process is retained, regardless of the option pursued.

6.4 This requirement was added to the Pay Policy in 2013-2014 to try to prevent employees leaving by way of redundancy and then returning within a short period to work for the Council again, either as an employee, agency worker or consultant.

6.5 At the HR Committee on 12<sup>th</sup> March 2014, which considered the implementation of the 2014-2015 Pay Policy, there was a discussion about whether the gap should be raised to two years rather than one, but this was not adopted and it remained at one year.

6.6 Given the current Employment Options Programme and the upcoming Transformation process, HR Committee requested, on 15<sup>th</sup> September 2014, a report on the period of time that an employee is prevented from taking up alternative employment with the Council.

6.7 The Pay Policy report, presented to HR Committee on 28<sup>th</sup> January 2015, included options for reviewing the current policy on reemployment following redundancy/early retirement. HR Committee requested that this element of the report be deferred to enable Trade Unions to provide feedback prior to HR Committee reaching a decision.

6.8 It is common practice for many organisations to enforce a break before an ex-employee can return to work for the same organisation. The break is

used to ensure that redundancy payments are not being made unnecessarily. A redundancy payment is a compensatory payment for loss of employment and it is therefore appropriate that anyone receiving such a payment is prevented from returning to work for the same organisation without a break.

- 6.9 At the time the one year gap was introduced, there was more of a mix between the type of redundancies that were taking place, with staff leaving the organisation through both compulsory and voluntary redundancy.
- 6.10 The average redundancy payment during the LEAN programme was circa £38,000 for a Council employee, which is close to an average years salary for the people who left due to redundancy during that period. Given this, a one year gap was thought appropriate at the time. It is timely to review whether the one year gap is still the most appropriate approach.

### **Benchmarking information**

- 6.11 Information has been gathered from other London Boroughs with regards to how (or if) they address this issue in their pay policies, to use as a basis for Tower Hamlets approach. The research found the following: -
- Newham Council – don't have a gap
  - Greenwich – their pay policy only covers Chief Officers and in relation to those staff, a 2 year gap is required
  - Hackney Council – require a 1 year gap for all staff
  - Ealing Council – require a 6 month gap for all staff
  - Enfield Council – require a 2 year gap for all staff
- 6.12 Given the benchmarking information, there are a number of potential options that might be appropriate for Tower Hamlets, which are considered in more detail below: -
- Retain a one year gap for all staff
  - Move to a two year gap for all staff
  - Move to a differentiated gap based on reason for leaving
  - Move to a differentiated gap based on pay grade

### **Option 1 - Retain a one year gap for all staff**

- 6.13 As stated above, the average redundancy payment during the LEAN programme was circa £38,000 for a Council employee, which is close to an average years salary for the people who left due to redundancy during that period.
- 6.14 However, with any redundancy payment, the first £30,000 is tax free and therefore in real terms the payment is higher than an average years salary. In addition, the maximum redundancy payment equates to 66 weeks (which is approximately 15 months). This means that any staff member who

received a redundancy payment based on the maximum entitlement of 66 weeks could in effect return to employment before this period had passed.

- 6.15 Given this, for staff who leave due to voluntary redundancy, using a one year gap may not be appropriate. A one year gap may be appropriate for staff who leave due to compulsory redundancy however, but as identified above, the organisation strives to minimise all redundancies, particularly those that are compulsory.

### **Option 2 - Move to a two year gap for all staff**

- 6.16 Moving to a two year gap for all staff would address the matter highlighted above. As the maximum redundancy payment equates to 66 weeks (which is approximately 15 months), applying a two year gap would mean that no-one would be re-employed by the council during the period for which they were receiving compensation for loss of employment.
- 6.17 However, it needs to be considered whether this is appropriate in relation to staff who are compulsorily redundant, even though the number of staff in this situation is diminishing at present.

### **Option 3 - Move to a differentiated gap based on the reason for leaving**

- 6.18 Given the issues highlighted by the two options above, it may be that a differentiation is made between those who are made compulsorily redundant and those who volunteer.
- 6.19 If this principle is adopted, the time scales could be a one year gap for staff made compulsorily redundant and a two year gap for those who volunteer, or other combination as appropriate.

### **Option 4 - Move to a differentiated gap based on pay grade**

- 6.20 In considering this option the Council would need to decide where to draw the line with regards to differentiation in relation to pay grade. This could be at Chief Officer level, in line with the approach of Greenwich Council.
- 6.21 This approach would differentiate between Chief Officers and other staff, so that staff at Chief Officer level (regardless of whether they leave due to voluntary or compulsory redundancy) have a gap of two years and all other staff (regardless of whether they leave due to voluntary or compulsory redundancy) have a gap of one year, or any other combination of years as appropriate.
- 6.22 This approach does not, however, address the issue with regards to whether it is appropriate that someone who leaves voluntarily has the same gap as someone who is made compulsorily redundant.

### **Controls**

- 6.23 There are controls in place, via People Board, to ensure that people won't return to work for the Council unless an exemption is agreed in line with the process set out in the current Pay Policy.

### **Views of the Trade Unions**

- 6.24 This issue has been discussed informally with the Trade Unions. Whilst the intention to review this policy was received positively, TUs did not express any strong views regarding the direction of the policy. In general, the proposal to create a distinction between compulsory and voluntary redundancy was welcomed. Discussion also focused on Chief Officers and whether the period of non-return should be extended for those in posts receiving the highest levels of remuneration; however it was acknowledged that this issue may be addressed through the Small Business, Enterprise and Employment Bill 2014-15, which is currently being debated by the House of Lords.
- 6.25 Two of the Trade Unions have acknowledged that, due to annual leave and the high numbers of service reviews currently in progress, they have been unable to fully review the proposed options and provide comments in addition to those reported above. However, it is recognised that a decision is required in order that the Pay Policy can be published in a timely manner. It is therefore recommended that HR Committee take a decision on the proposed options in acknowledgement of the initial comments of the Trade Unions. Should the TUs identify any subsequent areas of concern with the agreed option further details can be provided to HR Committee at a later date.

## **7. PART B NJC PAY SETTLEMENT – JOINT TRADE UNION REQUEST**

- 7.1 The NJC pay settlement came into effect from 1<sup>st</sup> January 2015 and will be in place until 31<sup>st</sup> March 2016. Much of the national offer was directed at employees on low pay. This will not affect Tower Hamlets staff because of the Council's longstanding commitment to pay the LLW, which means there are no employees on the lowest national spinal column points.
- 7.2 The pay settlement, as it applies to Council employees, is as follows: -
- Pay increases with effect from 1<sup>st</sup> January:**
- £789 (equiv. to 4.85%) on Spinal Column Point 7
  - £387 (equiv. to 2.3%) on SCP 8
  - 2.20% on SCPs 9 and above
- 7.3 In addition to the percentage pay award (2.20 per cent), there are non-consolidated lump sum payments for staff on SCP49 and below. The reasoning behind awarding the lump sum payments is to ensure that all staff up to SCP49 inclusive receive a salary rise equivalent to 1% for the year April 2014 to March 2015 (as the new pay scales are only effective from 1<sup>st</sup>

January 2015). The lump sums payments for December have already been paid. Additional payments, where relevant will be paid in April, as detailed below:

- £150 to employees on SCPs 7 and 8 to be paid in December 2014
- £100 to employees on SCPs 9-20 to be paid in December 2014
- 0.44% of new salaries to employees on SCPs 21-49 of which £100 to be paid in December 2014, and the balance to be paid in April 2015

7.4 The Council's Pay Policy 2013-14 states that "Annual pay increases across the Council's grades are set through the process of national pay bargaining which the Council subscribes to". Therefore, no further agreement from any meeting or board within the Council is required before the pay settlement can be implemented.

7.5 HR Committee considered the joint Trade Union request during its meeting in December 2014. A decision on the request was deferred pending the conclusion of JNC negotiations on the Chief Officer Pay Settlement 2014-16.

### **Cost Implications of Pay Settlement**

7.6 In total, the cost per annum of the pay settlement is circa £2.95 million. In addition, the non-consolidated lump sums (paid in December 2014 and April 2015) will cost circa £500k. This figure includes the cost of implementing the London Living Wage increase from 1<sup>st</sup> January 2015.

### **Joint Trade Union Request**

7.7 The national pay settlement makes no lump sum payment for staff on grades LPO7 to LPO9 (i.e. with salaries above £47,000). Representation has been received from the joint Trade Unions (Unison, GMB and Unite) stating that this means that those staff will receive less than a 1% increase to their pay for 2014-15 – and so are left worse off than the original 1% pay offer. The joint Trade Unions have submitted a request to make a local agreement for parity for those on SCP50 and above (that is to ensure they receive the equivalent of a 1% increase for 2014-15).

7.8 Some other London boroughs have received the same request, but at time of writing had either rejected the request or not made a decision.

7.9 This proposal would affect approximately 166 staff, which covers all those employees on grades LPO7 to LPO9. The cost of implementing this proposal would be circa £50,050.

### **Option 1 – Enter a local agreement**

7.10 Entering a local agreement would achieve parity for staff on SCP50 and above and would not incur a significant cost.

- 7.11 However, this would mean moving away from the national agreement for this sector and the intention behind the agreement, which was that lower paid staff should receive the biggest pay award. Forming a local agreement would mean a change to the Council's Pay Policy, though since this is a single, one-off payment, there would be no implications for pay awards in future years, although it may be argued that a precedent could be set. It is recommended, therefore, that, should HR Committee agree to form a local agreement, it is only supported as a one-off agreement and the commitment to national pay bargaining is re-emphasised.
- 7.12 The decision to agree or reject this request is the responsibility of the Head of Paid Service. The view of the HR Committee will be taken into account when taking this decision.

### **Option 2 – Continue to apply the national agreement only**

- 7.13 This is what the Council has done to date. The national agreement has already been implemented.
- 7.14 Continuing to only apply the national agreement would mean that staff on SCP50 and above would not receive a lump sum, and therefore are effectively receiving less than a 1% increase to their pay for 2014-15.
- 7.15 However, continuing to apply the national agreement only would be in line with the Council's Pay Policy and also the intention behind the national agreement. It would also mean that no additional cost would be incurred (above the cost of the national agreement).

## **8. PART C JNC PAY SETTLEMENT – IMPLICATION ON SALARY DIFFERENTIALS**

- 8.1 The JNC settlement comes into effect from 1<sup>st</sup> January 2015, although notification of the settlement was not released until 2<sup>nd</sup> February 2015. The settlement covers the period to 31<sup>st</sup> March 2016.
- 8.2 The settlement states that “the individual salaries and salary scales of all officers within scope of the JNC for Chief Officers of Local Authorities should be increased by two per cent on guaranteed FTE basic salary of £99,999 or less [as at 31 December 2014].
- 8.3 The settlement prescribes that “‘Guaranteed FTE basic salary’ should exclude other separately identified payments such as London area / fringe allowances or Returning Officer fees etc.”
- 8.4 A new grading structure for Service Heads was introduced on 1<sup>st</sup> April 2005, establishing Grade SH1 and SH2. These replaced Grades SM4, SM3 and SM2. Non service-heads on SM4 moved to the newly created grade LPO9.
- 8.5 The current Service Head salary structure does not include any separately identified payments.



8.6 The table below reflects the increase in salary points for the Service Head pay bands as a result of the settlement:

		SPINE	OLD	NEW	Comment	Increase over previous SCP
		POINT	SALARY	SALARY		SCP
<b>SHBAND2 (SCP 1-6)</b> <b>(Bar at SCP 3)</b>	<b>SHBAND2A (SCP 4-8)</b>	1	70,389	71,797	2% added	n/a
		2	72,852	74,309	2% added	2,512
		3	75,336	76,843	2% added	2,534
		4	77,691	79,245	2% added	2,402
		5	80,277	81,883	2% added	2,638
		6	82,740	84,395	2% added	2,512
<b>SHBAND1 (SCP 7-13)</b> <b>(Bars at 7 and 9)</b>		7	85,275	86,981	2% added	2,586
		8	87,816	89,572	2% added	2,592
		9	90,369	92,176	2% added	2,604
		10	92,913	94,771	2% added	2,595
		11	95,463	97,372	2% added	2,601
		12	98,013	99,973	2% added	2,601
		13	100,557	100,557	over £100,000. 2% not added	584

8.7 The highest point within the scale is above £99,999 and will therefore not be increased according to the nationally agreed settlement. This reduces the differential between the top spine point and those below, thus creating a disparity in the incremental grading system that has been adopted by the Council.

### Cost Implications of the Pay Settlement

- 8.8 The cost of implementing the Chief Officers Pay Settlement, as detailed above, is £12,805 per annum.

### **Option 1 – Note the Implication of the Pay Settlement on the Spine Point Differentials**

- 8.9 Implementing the pay settlement as stated will reduce the differential between spine point 12 and 13 from £2544 to £584. Applying a 2% pay award to all points within the range (excluding point 13) increases the differential between each point, increasing this to £2601 between points 10 – 11 and 11 – 12.
- 8.10 This option would reflect the ethos of the pay settlement, reducing salary payments to senior officers over £100k.

### **Option 2 – Maintain the Pay Differential Between Spine Point 12 and 13**

- 8.11 In order to maintain the incremental difference between the spine points, point 13 would need to be increased to £102,574, creating a differential of £2601, which is comparable to the increases between 10 -11 and 11-12.
- 8.12 By virtue of increasing spine point 13 the salary for those currently on this point would increase. This would cost £16,136 in addition to the pay settlement.
- 8.13 The decision to agree or reject this request is the responsibility of the Head of Paid Service. The view of the HR Committee will be taken into account when taking this decision.

## **9. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 9.1 There are no financial implications arising from recommendations 2.1 and 2.2 of this report.
- 9.2 Should the request of the joint Trade Unions to provide a lump sum payment to NJC staff on SCP 50 and above (recommendation 2.3) be agreed there would be an additional one off cost of approximately £50,000 in 2014/15 and this would need to be contained within directorate budgets.
- 9.3 The financial implications of the Chief Officer pay settlement are detailed in section 8.8 above. The additional cost of £12,805 will be contained within the overall provision for pay award within the MTFP. If a decision is taken to reinstate the differential between scale points above £99,999, there would be a cost implication of approximately £25,000 per annum and this would also be funded through the pay provision.

## **10. CONCURRENT REPORT OF LEGAL SERVICES**

### **Part A**

- 10.1 The Council will need to have regard to whether any amendment to the existing policy might have an adverse impact on any particular grouping of employees who might have the protection of the Equality Act 2010. An equality impact assessment should be able to identify any potential adverse impact. Any equality assessment undertaken will also need to consider the potentially disproportionate effect of the policy on part and fixed term employees as well as those employees with a protected characteristic.
- 10.2 One of the potential consequences of imposing a gap in service is that the Council can seek to recover the payment of the discretionary severance payment if the employee returns within the prescribed period. The Council will only be entitled to seek recovery of the severance payments where there is a contractual right to do so or where there is a statutory power which allows this.
- 10.3 The current statutory power in relation to recovery is contained within the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999 (as amended) which only requires repayment of redundancy payments if an employee commences work with a modification order body within one month of ceasing employment.
- 10.4 If recovery of the severance payment is to be considered this provision will need to be given contractual effect by either reference to the recovery provision in the employee's contract of employment or by reference to the provision within a relevant contractual policy which has been brought to the employee's attention.
- 10.5 Any proposed changes to the current provision will need to be consulted on and Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006) says that any amendment to the pay policy will not be enforceable until one month after the date of publication of the amended pay policy.
- 10.6 If repayment of the severance payment is to be sought it is further advised that the Council includes within any settlement agreement signed by exiting staff a clause which authorises the repayment of discretionary settlement within a defined period and the Council's ability to waive that requirement. This will ensure that any employee to whom the policy is applied will not be able to claim ignorance of its existence where the Council seeks to recover such sums.

## **Part B**

- 10.7 The Council is obliged to implement the NJC pay settlements as this is a contractual entitlement for its employees therefore in respect of the employees to whom the lump sum payments apply under the pay settlement there is no discretion in respect of the payment of these lump sum awards. With respect to the employees who are not covered by the lump sum

payment, regard has to be had to the pay award relevant for the period 2014-2015 and the Council will have the discretion to determine how that award is to be paid to those employees who have not received the full benefit of the award to date. A failure to honour the pay award will leave the Council vulnerable in respect of contract claims from the affected employees.

- 10.8 As the Council is merely implementing the pre-agreed NJC terms in respect of the pay settlement, the HR committee is not being asked to determine major policy on the terms and conditions on which staff hold office within allocated resources. The terms of reference for the HR committee therefore do not give them the authority to determine how the pay award is implemented and therefore this function should sit with the head of paid service to determine.

### **Part C**

- 10.9 The decision to maintain the pay differential between Spine point 13 and 13 has the effect of increasing the pay of those on Spine Point 13 therefore an decision to maintain the differential would amount to a local pay agreement for those employees who would benefit from this agreement. The Council has the discretion to agree a local pay agreement in respect of the affected employees but must bear in mind that this goes against the ethos of reducing salary payments to senior officers over £100K.
- 10.10 Again, in respect of this issue, the HR committee is not being asked to determine major policy on the terms and conditions on which staff hold office within allocated resources. The terms of reference for the HR committee therefore do not give them the authority to determine how the pay award is implemented and therefore this function should sit with the head of paid service to determine.

### **11. ONE TOWER HAMLETS CONSIDERATIONS**

- 11.1 Should there be amendments to the pay policy, a further impact assessment will be needed.

### **10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 10.1 There are no implications.

### **11. RISK MANAGEMENT IMPLICATIONS**

- 11.1 There are no direct risks as a result of this report.

### **12. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 12.1 There are no implications.

### **13. EFFICIENCY STATEMENT**

13.1 No changes to service delivery or the use of resources are proposed.

**14. APPENDICES**

14.1 Tower Hamlets Pay Policy 2014 - 2015

**Local Government Act, 1972 Section 100D (As amended)  
List of "Background Papers" used in the preparation of this report**

Brief description of "background papers"	Name and telephone number of holder and address where open to inspection.
None	N/A