

Non-Executive Report of the:  <b>HR Committee</b>  21 <sup>st</sup> January 2016	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Zena Cooke, Corporate Director Resources	<b>Classification:</b> Unrestricted
<b>Localism Act 2011 – Pay Policy Statement 2016/17</b>	

<b>Originating Officer(s)</b>	Simon Kilbey – Service Head HR&WD
<b>Wards affected</b>	All wards

## Summary

Under Section 38(1) of the Localism Act 2011, the council is required to adopt a pay policy statement for each financial year.

The council's first pay policy statement was adopted for 2012/13 and subsequent pay policy statements were agreed for 2013/14, 2014/15 and 2015/16 (Appendix 2). The statement for 2016/17 (Appendix 1) should be approved and adopted by 31<sup>st</sup> March 2015 to enable it to be published as soon as is practical in the new financial year.

The Local Government Transparency Code 2015 (Appendix 3) includes further guidance regarding the calculation of the pay multiple, which forms part of the pay policy statement. No further supplementary guidance has been published in relation to the 2016/17 pay policy statement.

No supplementary guidance specifically on the pay policy was published in 2014 or 2015 and, to date, no specific supplementary guidance has been published in relation to the 2016/17 pay policy statement. Should guidance be published after the 2016/17 pay policy has been considered by the HR Committee and/or Full Council, which requires minor amendments to be made to the pay policy statement, it is proposed that the HR Committee delegate the authority to make such amendments to the Chief Executive after consultation with the Service Head (HR and WD), the Chair of the HR Committee and the Monitoring Officer. Should any fundamental changes be required, the pay policy statement will be sent back to the HR Committee for consideration.

The draft 2016/17 pay policy statement is included at Appendix 1 for consideration by the HR Committee. The proposed statement has to be approved and adopted by the end of March 2016. The meeting of Full Council, during which the statement will be considered for adoption, will be held on 3<sup>rd</sup> March 2016.

The pay policy statement sets out the council's current policies and practice in relation to pay for all parts of the workforce, with the exception of school based employees. Any changes to the way in which staff are remunerated would need to be dealt with as outlined in section 8 – Legal comments.

## **Recommendations:**

HR Committee is recommended to:-

Consider the draft pay policy statement, proposing any changes to be made and, subject to such changes, recommend that Full Council agrees the draft statement.

Agree that if any minor changes to the 2016/17 pay policy statement are required as a result of future government guidance, these amendments be delegated to the Chief Executive, after consultation with the Service Head (HR and WD), the Chair of the HR Committee and the Monitoring Officer. Should any fundamental changes be required, the pay policy statement will be sent back to the HR Committee for consideration.

## **1. REASONS FOR THE DECISIONS**

- 1.1 The Localism Act 2011 received Royal Assent on 15 November 2011. In addition to the Act, the 'Code of Recommended Practice for Local Authorities on Data Transparency' was published in September 2011 under Section 2 of the Local Government, Planning and Land Act 1980. The Code sets out key principles for local authorities in creating greater transparency through the publication of data. Supplementary guidance, 'Openness and Accountability in Local Pay: Guidance under Section 40 of the Localism Act', was published on 20 February 2013.
- 1.2 The Act's intention is to bring together the strands of increasing accountability, transparency and fairness, with regards to pay.
- 1.3 The provisions of the legislation required Local Authorities to adopt and publish a pay policy statement for 2011/12 and for each subsequent financial year. Statements must be approved by Full council and have regard to the guidance published by the Secretary of State. Authorities will be constrained by their policy statement when making determination on senior officer pay, although the statement may be amended at any time by further resolution of Full Council.

## **2. ALTERNATIVE OPTIONS**

- 2.1 As the publication of a pay policy statement is a legislative requirement, there are no alternative options.

## **3. DETAILS OF REPORT**

- 3.1 The pay policy statement must set out the authority's policies for the financial year relating to the remuneration of its officers. This must include:
- A policy on the level and elements of remuneration for each chief officer
  - A policy on the remuneration of lowest paid employees (together with a definition of 'lowest paid employees' and reasons for adopting that definition)
  - A policy on the relationship between the remuneration of chief officers and the remainder of the workforce
  - A policy on other specific aspects of chief officers' remuneration (remuneration on recruitment, increases and additions to remuneration, use of PRP and bonuses, and the approach to termination payments).
- 3.2 Additionally, the council must have regard to other statutory guidance or recommendations e.g. relating to pay multiples, but it should be noted that the statutory guidance emphasises that each LA has the autonomy to take its own decisions on pay and pay policies.
- 3.3 The draft pay policy statement takes into account Local Government Association (LGA)/Association of Local Authority Chief Executives (ALACE) guidance issued to local authority Chief Executives 'Localism Act: Pay Policy Statement Guidance for Local Authority Chief Executives' and the statement details the council's current arrangements; using the definitions contained in the Act and associated guidance. The Act also requires the council to have regard to statutory guidance entitled 'Openness and accountability in local pay' under the Transparency Agenda. The original guidance was published in 2012, with updated guidance published in February 2013, which stated that the pay policy statement should set out the council's position in relation to appointments to posts with salary packages over £100,000 and redundancy packages over the same amount.
- 3.4 The Localism Act defines senior executives, and in this statement they are the Chief Executive/Head of Paid Service, Corporate Directors, the Monitoring Officer, Directors and Service Heads.
- 3.5 The draft statement refers to information already published by the council in relation to senior salary data to meet with the requirements of the Government's transparency agenda. In addition, the Local Government Transparency Code 2015 also covers the way in which the pay multiple included in the pay policy should be calculated.

## **Pay Multiple**

- 3.6 There is a requirement to publish a ratio, or pay multiple. There are a variety of ways to approach this, but the Hutton Review of Fair Pay in the Public Sector (2011) supported the publication of the ratio of the council's highest paid employee (the Chief Executive) to that of its median earner (i.e. the mid-point between the highest and lowest salaries). This multiple is quoted in the draft statement. The ratio last year was 1:5.91 and this year is 1:6.7. This change is due to the appointment of a Chief Executive in place of a Head of Paid Service.
- 3.7 For the 2014/15 pay policy statement, an additional ratio demonstrating the relationship between the council's highest paid employee (total salary package) and the lowest salary of the non-schools workforce was included. This ratio last year was 1:9.92 and this year is 1:10.87. This allows greater comparison with other boroughs that provide this ratio. This year's change is again due to the appointment of a Chief Executive in place of a Head of Paid Service.
- 3.8 The Local Government Transparency Code 2015 states that the pay multiple is defined as the ratio between the highest paid taxable earnings for the given year (including base salary, variable pay, bonuses, allowances and the cash value of any benefits-in-kind) and the median earnings figure of the whole of the authority's workforce. If this definition is applied, the ratio is 1:6.7. This is the same as the figure already used. (Please note that this figure will be updated in March, when a full tax year can be taken into consideration, to ensure it is accurate and up to date).
- 3.9 When considering the 2015-16 pay policy in January 2015, HR Committee asked about schools and apprentices information in relation to the pay multiples. Apprentices and schools' staff are not included in the pay multiple calculations. Apprentices are excluded due to the fact the multiples apply to employees only and each school can adopt their own pay policy and therefore their staff would be covered by this. The Pay Policy is clear that the pay multiples only apply to the non-schools workforce.
- 3.10 Once other councils have published their pay policies, there will be a further report to HR Committee including benchmarking information as to how the council's pay multiples compare to those of other London boroughs.

## **London Living Wage**

- 3.11 The council is an accredited Living Wage Employer. This means that we adhere to the Living Wage Foundations accreditation statement, which states that "Employees based in London Boroughs (shall be paid) not less than the London Living Wage; and increase the amount which it pays to affected Employees by the same amount as any increase to the London Living Wage, within 6 months of the date on which any increase in the London Living Wage is officially announced."

- 3.12 The London Living Wage (LLW) increases annually and the latest rise was announced on 2<sup>nd</sup> November 2015. The LLW rate increased from £9.15 to £9.40 per hour.
- 3.13 The council has 6 months in which to apply the new LLW rates, i.e. by 2<sup>nd</sup> May 2016.
- 3.14 The lowest paid staff in the council are currently paid on spinal column point 8, which equates to £9.35 per hour, just £0.05 per hour below the new LLW rate of £9.40 per hour.
- 3.15 The Trade Union Side have submitted their national pay claim for 2016, which asks for £1 an hour on each spinal column point. There has been no response from the employers' side to this request as yet, but it is fair to assume, based on past awards, that any pay award will be no higher than 1%.
- 3.16 In order for the current spinal column point 8 to reach the new LLW rate, this would only require a 0.6% pay rise. Given this, the council will make interim payments to those staff on spinal column point 8 from 1<sup>st</sup> April 2016 to ensure they receive £9.40 per hour. Once any pay award is agreed, this will be applied, increasing the spinal point to above the LLW rate. Any increases will be backdated as appropriate.
- 3.17 In the event that no pay award is agreed for 2016, those staff would be moved up to spinal column point 9.
- 3.18 The Pay Policy 2016-17 has amended wording in section 7 - lowest paid employees, which reads as follows: -

*The council's lowest paid London based employees are those who are paid on the lowest scale point above the level of London Living Wage.*

*The council's lowest paid non London based employees are those who are paid on the lowest scale point above the level of National Living Wage.*

*The council's Apprentices are paid at the London Living Wage rate.*

*The council will implement the increase to the London Living Wage on 1<sup>st</sup> April 2016, by temporarily paying the London Living Wage to employees on Scale point 8, until a national pay agreement is implemented, at which point the increased salary will be backdated. This will ensure that all London based staff continue to be paid at the scale point above the London Living Wage.*

*In the event that no pay award is agreed for 2016, those staff will be moved up to spinal column point 9.*

*As the London Living Wage rises in future years, the council will continue to increase pay levels for the lowest paid staff to ensure that they are paid the nearest scale point above the London Living Wage.*

### **Chief Executive Returning Officer Fees**

- 3.19 The pay policy has been amended to reflect that with the appointment of a Chief Executive, there has been a change to the payment of Returning Officer Fees to this post.
- 3.20 Returning Officer fees will be payable to the Chief Executive in respect of elections or referenda where fees are not funded by the council. This means that no fees will be paid for local elections or referenda which are funded by the council but, the Returning Officer will receive fees for all elections and referenda externally funded. This is reflected in section 5 of the pay policy – Senior Officer Remuneration.

### **Chief Officer Job Evaluation**

- 3.21 The Greater London Provisional council (GLPC) is considering commissioning the London Councils Heads of HR network to lead on an initial review of the current grading arrangements to see if there are any opportunities to improve the London pay framework. If agreed, the intention would be to report back to GLPC Employers' Side at the next meeting on 17 March 2016. The results of any review will be used to inform any changes the council may make to its job evaluation process for Chief Officers.

### **Future Legislative Changes**

#### **Change expected 1<sup>st</sup> April 2016 - Repayment of Public Sector Exit Payments**

- 3.22 The Small Business, Enterprise and Employment Act 2015 became law on 26<sup>th</sup> March 2015. The Act includes provision for secondary legislation in relation to the repayment of public sector exit payments. Draft Repayment of Public Sector Exit Payments Regulations 2015 have been created, which are due to come into force on 1<sup>st</sup> April 2016.
- 3.23 The Regulations will mean that individuals earning more than £100,000, who receive an exit payment and then take a new job in the same part of the public sector within a year, either on or off payroll, will have to repay, to the employer who made the payment, all or part of their exit payment.
- 3.24 The separate report on Repayment of Public Sector Exit Payments elsewhere on this agenda should be read alongside this report.
- 3.25 As a result of the regulations, a separate paragraph has been included in the Pay Policy 2016-17, under section 12.5 – re-employment following redundancy/early retirement, to cover the requirement in the regulations as follows: -

*“Any employee or office holder who earns £100,000 per annum will be required, by the Repayment of Public Sector Exit Payment Regulations 2016, to repay in full or part (as set out in the Regulations) any exit payment they receive should they return to a similar role in another local authority or other local government body (see the Regulations for a full list), either on or off payroll within 12 months. This requirement can only be waived in exceptional circumstances and by a decision of Full Council.”*

### **Change expected 6<sup>th</sup> April 2016 – Changes to Tax Treatment of Pensions**

- 3.26 In the summer budget, the Government announced it will reduce the Lifetime Allowance for pension contributions from £1.25 million to £1 million from 6<sup>th</sup> April 2016.
- 3.27 To ensure the change is not retrospective, there will be transitional protection for pension rights already over £1 million. The Lifetime Allowance will, from 6<sup>th</sup> April 2018, be indexed annually in line with the Consumer Price Index (CPI).
- 3.28 This change could have an impact on senior managers. Concerns have been expressed that the impact of the changes might mean there is some reluctance to apply for more senior roles.
- 3.29 Also in April 2016, the Government will restrict the benefits of pensioners' tax relief for those with incomes above £150k (including pension contributions), by tapering away their Annual Allowance to a maximum of £10k. Affected employees will see the loss of tax relief reduce their take home pay.

### **Change expected within 2016 – Public Sector Exit Payment Cap**

- 3.30 At present there is no limit on public sector exit payments. The government announced on 23<sup>rd</sup> May 2015 that it intends to end six figure exit payments for public sector workers. The government therefore proposes to introduce a cap of £95k on the total value of exit payments.
- 3.31 This cap will include all forms of exit payment available to employees on leaving employment, for example cash lump sums, such as redundancy payments, the cost to the employer of funding early access to unreduced pensions ('pension strain'), severance payments, ex gratia payments and other non-financial benefits, such as additional paid leave. The cap of £95k on the total value of the exit payment would apply whether these benefits are taken individually or in combination.
- 3.32 Where multiple payments are made, these will be aggregated to be measured against the £95k cap. At present, it is proposed that the following will not be in scope: -
- Compensation payments in respect of death or injury attributable to employment, serious ill health and ill health retirement and certain fitness related requirements

- Payments made to conclude/settle litigation, including claims for unfair dismissal and/or breach of contract
- 3.33 It is proposed that waivers would be available in exceptional cases and will require the approval of Full Council. There will be a requirement for the council to maintain records and publish annual details of all exit payments made within the financial year
- 3.34 Draft Public Sector Exit Payment Regulations 2016 have been created by the Treasury, in exercise of the power conferred upon them by section 153A(1) of the Small Business, Enterprise and Employment Act 2015. However, these are still in draft form and an implementation date is yet to be set. The LGA has advised it is awaiting further legislative developments and guidance will be issued in due course.
- 3.35 At present, it is unclear how the proposals set out in the Regulations will override either the statutory or contractual rights of employees. It is likely that further legislation will be required to give effect to these proposals where they override contractual provisions. The proposals may also require legislative amendments to the Local Government Pension Scheme.
- 3.36 The proposed changes are aimed at senior managers within the public sector, however, there will be a greater impact on employees with longer service, even at middle income level, in relation to the cost of providing unreduced pension benefits.
- 3.37 It is not proposed to add anything to the pay policy at this stage with regard to these proposals. If changes are needed once the final regulations are implemented and their impact is clear, they will be made at that time.
- 3.38 A further report and guidance will be produced on these regulations and their impact once the final details are known.

#### **Date of change unknown – Simplification of Tax and NI Treatment of Termination Payments**

- 3.39 Government consultation was undertaken, closing in October 2015, which looked at how the tax and NI treatment of termination payments can be simplified.
- 3.40 At present, the majority of payments made on termination will be tax and NI free up to the limit of £30k. HMRC have suggested that the distinction between the tax treatment of contractual and non-contractual elements have not been clearly understood.
- 3.41 A report from the Office of Tax Simplification (OTS) has suggested the following options: -
- Remove the distinction in treatment between contractual and non-contractual termination payments



- Lower the current £30k limit
- Link the exemption from tax and NI in some way to the employees number of completed years
- Provide tax and NI relief only in the case of redundancy

3.42 Should any legislative changes be implemented during the financial year which will have an impact on the pay policy statement, the statement will be updated and changes agreed as defined in 2.2.

### **Trade Union Consultation**

3.43 The draft pay policy and this report were sent to Unison, GMB and Unite for their comments. A number of comments came back: an addition to paragraph 3.35 was suggested to make it clear that changes may also need to be made to the Local Government Pension Scheme, and this has been included; a suggestion that the section in the pay policy on incremental progression should include information about career grades; re-employment following redundancy needs to be clearer; the trade unions should be informed of any cases where the one or two year gap before returning has been waived, which will be done; that if the one or two year gap is waived, there should be at least a 6 month gap; and that buy outs be included in the pay policy. HR Committee are asked to consider these comments/suggestions.

3.44 There were also some issues raised about the specific detail of some procedures referred to in the pay policy and these will be discussed with Unite separately by officers in line with normal working practice.

### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

4.1 The recommendations within this report do not lead to any additional financial commitments for the council, although there will be additional administrative responsibilities arising from these changes.

### **5. LEGAL COMMENTS**

5.1 The legal considerations are set out in the body of the report and therefore there are no additional legal implications arising.

### **6. ONE TOWER HAMLETS CONSIDERATIONS**

6.1 An equality analysis will be carried out on the draft policy statement, but it should be noted that the statement describes existing policies and practice rather than proposing new ones. Should there be amendments, further advice on the impact will be given.

### **7. BEST VALUE (BV) IMPLICATIONS**

7.1 This report sets out the council's pay policy for 2016/17, which is required by law. It ensures that employees receive an appropriate salary for the work they undertake and that the council's approach to pay is set out clearly.

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

8.1 There are no implications.

## **9. RISK MANAGEMENT IMPLICATIONS**

9.1 The draft statement describes existing policies and practice. Any risks, e.g. from proposing changes in the future to pay and benefits, would be assessed at the time.

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

10.1 There are no implications.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

Repayment of Public Sector Exit Payments

#### **Appendices**

Appendix 1 – Draft Pay Policy Statement 2016/17

Appendix 2 – Pay Policy Statement 2015/16

Appendix 3 – Local Government Transparency Code 2015

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#### **Local Government Act, 1972 Section 100D (As amended)**

##### **List of “Background Papers” used in the preparation of this report**

List any background documents not already in the public domain including officer contact information.

#### **Localism Act 2011**

##### **LGA / ALACE - ‘Localism Act: Pay Policy Statement Guidance for Local Authority Chief Executives’**

##### **DCLG - Openness and Accountability in Local Pay: guidance under section 40 of the Localism Act**

##### **DCLG - ‘Openness and accountability in local pay: Guidance under section 40 of the Localism Act 2011’ Supplementary Guidance**

#### **Communities and Local Government - The Code of Recommended Practice for Local Authorities on Data Transparency**

**Officer contact details for documents:**

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