

Committee/Meeting: HR Committee	Date: 16 th January 2015	Classification: Unrestricted	Report No: 3.3
Report of: Corporate Director (Resources) Originating officer(s) Simon Kilbey, Service Head (Human Resources & Workforce Development)		Title: Localism Act 2011 – Pay Policy Statement 2015/16 Wards Affected: All	

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

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.
- 1.2 The Council's first pay policy statement was adopted for 2012/13 and subsequent pay policy statements were agreed for 2013/14 and 2014/15 (Appendix 2). The statement for 2015/16 (Appendix 1) should be approved and adopted by 31st March 2015 to enable it to be published as soon as is practical in the new financial year.
- 1.3 The Department for Communities and Local Government produced supplementary guidance to be read alongside existing accountability guidance, which governs pay policy statements, in 2012 and 2013. The 2013 guidance, published on 20th February 2013, was taken into consideration in the production of the 2013/14 pay policy statement.
- 1.4 The Local Government Transparency Code 2014 (Appendix 3) includes further guidance about how the pay multiple to be included in the pay policy should be calculated.
- 1.5 No supplementary guidance specifically on the pay policy was published in 2014 and, to date, no specific supplementary guidance has been published in relation to the 2015/16 pay policy statement. Should guidance be published after the 2015/16 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 Head of Paid

Service 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.

- 1.6 Appendix 1 to this report sets out the draft policy statement for consideration by the HR Committee. The proposed statement has to be published by the end of March 2015. The meeting of Full Council, during which the statement will be considered for adoption, will be held on 26th March 2015.
- 1.7 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.

2. DECISIONS REQUIRED

HR Committee is recommended to:-

- 2.1 Consider the draft pay policy statement and propose any changes to be made and subject to such changes recommend that Full Council agrees the draft statement.
- 2.2 Agree that the Head of Paid Service may make changes to the 2015/2016 pay policy statement without affecting the Committee's recommendation to Full Council, provided that those are made after consultation with the Service Head (HR and Workforce Development), the Chair of the HR Committee and the Monitoring Officer.
- 2.3 Consider the issue set out below with regards to the length of time employees should have to wait before returning to work for the Council after receiving a severance payment (see separate paper presented to HR Committee on 22nd October 2014).

3. REASONS FOR THE DECISIONS

- 3.1 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 to 'Openness and Accountability in Local Pay: Guidance under Section 40 of the Localism Act' was published on 20 February 2013.
- 3.2 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 have to 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.

4. ALTERNATIVE OPTIONS

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

5. BACKGROUND

- 5.1 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).
- 5.2 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.

6. BODY OF REPORT

- 6.1 The draft pay policy statement takes into account the LGA/ALACE guidance issued to 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.
- 6.2 The guidance defines 'senior executive' which for the purpose of the Council's statement are the posts of Head of Paid Service and Corporate Directors.
- 6.3 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.
- 6.4 In addition, the Local Government Transparency Code 2014 also covers the way in which the pay multiple included in the pay policy should be calculated.

Pay Multiple

- 6.5 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 Head of Paid Service) 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 1:5.9 and this year is 1:5.91. (Please note that this figure will be updated following the implementation of the Pay Award in January 2015, to ensure it is accurate and up to date).
- 6.6 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 remains 1:9.92. This allows greater comparison with other boroughs that provide this ratio. (Please note that this figure will be updated following the implementation of the Pay Award in January 2015, to ensure it is accurate and up to date).
- 6.7 The Local Government Transparency Code 2014 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 1:5.91. 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, following the implementation of the Pay Award, to ensure it is accurate and up to date).

Return following redundancy

- 6.8 Section 12.5 of the current pay policy covers employees returning to the Council following the receipt of a severance payment, and states: "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 1 year after the date of termination before they can return either as a directly employed member of staff, an agency worker or a consultant."
- 6.9 For the 2015/16 Pay Policy, the following sentence has been added to the existing paragraph to clarify the position of employees returning to work for one of the schools within the borough "This does not prevent them from working in Tower Hamlets Schools during this period."
- 6.10 A report was presented to the HR Committee on 22nd October 2014 that covered options for changing the length of time that employees would need to wait after receiving a severance payment before they could return to work for the Council. It was agreed that this would be considered as part of the annual review of the pay policy. Given this, the options presented in that paper are replicated below for consideration.

Option 1 - Retain a one year gap for all staff

- 6.11 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.
- 6.12 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.
- 6.13 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

- 6.14 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.
- 6.15 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

- 6.16 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.
- 6.17 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 a one year gap and a three year gap, or other combinations as are felt appropriate.

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

- 6.18 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.

- 6.19 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.
- 6.20 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.

NJC Pay Settlement – Local Agreement

- 6.21 The NJC Pay Settlement was agreed on 17th November 2014 and was implemented on 1st January 2015.
- 6.22 The joint Trade Unions have requested that a local agreement be reached outside the national pay settlement with regards to a lump sum payment to staff at SCP50 and above.
- 6.23 As the Chief Officer pay settlement has not yet been agreed but is imminent, it is felt appropriate to wait until this settlement is agreed before making a decision on this issue. A further report will be presented to HR Committee in due course.
- 6.24 The current pay policy does not provide for a local agreement and if the decision is made to enter into one, the pay policy will need to be amended to reflect this.

Job Evaluation for Chief Officers

- 6.25 The job evaluation scheme that is used to evaluate Chief Officer posts is to be reviewed and a further more detailed report will be submitted to HR Committee on this in due course. If changes are made, Section 3 of the Pay Policy, which covers the pay and grading of posts, will need to be amended to reflect this.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 There are no financial implications of publishing a pay policy statement, which describes current practice. Should any changes to pay policy be proposed (that result in an amended statement being published in future), the financial implications will be assessed at the point that changes are proposed.

8. LEGAL COMMENTS

- 8.1 Section 38 of the Localism Act 2011 requires the Council to prepare a pay policy statement for each financial year which sets out the following matters –

- The Council’s policies for the financial year relating to: (a) the remuneration of its chief officers; (b) the remuneration of its lowest-paid employees; and (c) the relationship between the remuneration of its chief officers, and the remuneration of its employees who are not chief officers.
 - The definition of “lowest-paid employees” adopted by the Council for the purposes of the statement, and the Council's reasons for adopting that definition.
 - The statement must include the Council’s policies relating to: (a) the level and elements of remuneration for each chief officer; (b) remuneration of chief officers on recruitment; (c) increases and additions to remuneration for each chief officer; (d) the use of performance-related pay for chief officers; (e) the use of bonuses for chief officers; (f) the approach to the payment of chief officers on their ceasing to hold office under or to be employed by the authority; and (g) the publication of and access to information relating to remuneration of chief officers.
- 8.2 The Council’s pay policy statement may also set out its policies for the financial year relating to the other terms and conditions applying to the authority's chief officers.
- 8.3 When preparing and adopting its pay policy statement, the Council must have regard to guidance issued by the Secretary of State under section 40 of the Localism Act 2011. The Secretary of State has issued two sets of guidance. The first, issued in February 2012, is entitled “Openness and Accountability in Local Pay”. The second, supplementary guidance was published in February 2013. Reference is made to the requirements of the guidance in the body of the report.
- 8.4 The guidance makes it clear that neither the pay accountability provisions in the Localism Act 2011 nor the guidance are intended to –
- supersede the Council’s existing responsibilities and duties which it has as an employer;
 - remove the Council’s autonomy to make decisions on pay that are appropriate to local circumstances and which deliver value for money for local taxpayers.
 - Determine the Council’s policies or decisions on pay.
- 8.5 The Council remains bound by relevant employment (and other) legislation as the employer and any changes which may be proposed by the policy must bear in mind the requirements of such legislation.
- 8.6 The Act and the guidance require that Councillors take a greater role in ensuring that the remuneration, particularly that of the most senior staff, is appropriate and commensurate with their responsibility. This is with the aim of ensuring that decisions to spend local taxpayers’ money are subject to appropriate levels of accountability and within the wider context of the pay of the workforce as a whole.

- 8.7 The Council can amend the pay policy on an annual basis as required by the Act but may also amend the policy as needed to take into account changing legislative requirements.
- 8.8 The Small Business, Enterprise and Employment Bill 2014-15 which is currently at the Committee Stage in the House of Lords proposes that individuals who earn more than £100,000 who take a new job in the same part of the public sector within a year will have to repay all or part of their redundancy package and may have to repay some of their redundancy if they have been out of work for longer but within a statutorily defined period. This requirement, if it becomes law, may have to be written into the Council's pay policy or supplemental reports. Repayment of redundancy payments could be considered as an alternative to the prohibition on returning to work for the Council for a defined period of time.
- 8.9 When considering its pay policy statement, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). A proportionate equality analysis will be required in order to support consideration of these matters.

9. ONE TOWER HAMLETS CONSIDERATIONS

- 9.1 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.

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 10.1 There are no implications.

11. RISK MANAGEMENT IMPLICATIONS

- 11.1 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.

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

Appendix 1 – Draft Pay Policy Statement 2015/16

Appendix 2 – Pay Policy Statement 2014/15

Appendix 3 – Local Government Transparency Code 2014

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.

Localism Act 2011

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**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**