

<p>Non-Executive Report of the:</p> <p>GP Committee</p> <p>13 October 2022</p>	
<p>Report of: Musrat Zaman, Director of Workforce, OD and Business Support</p>	<p>Classification: Unrestricted</p>
<p>Localism Act 2011 and Special Severance Payments</p>	

Originating Officer(s)	Pat Chen, Head of HR
Wards affected	All wards

1. EXECUTIVE SUMMARY

- 1.1 Section 38(1) of the Localism Act 2011 requires the full council to adopt and publish a pay policy statement for each financial year. Section 40(1) of the Act says that a relevant authority in England must, in performing its functions under section 38 or 39, have regard to any guidance issued or approved by the Secretary of State.
- 1.2 The guidance issued by the Secretary of State states that salaries on appointment and severance packages of more than £100,000 should be approved by full council. Currently, the approval for severance packages in excess of £100,000 is delegated to General Purposes Committee.
- 1.3 On 12 May 2022, the Secretary of State issued new statutory guidance on the making and disclosure of Special Severance Payments (SSP) by local authorities. SSP's are payments made to employees, officeholders, workers, contractors, and others outside of the statutory, contractual or other requirements when leaving employment in public service. Such payments may only be made where there is a convincing case that they are in the interests of taxpayers. In taking decisions, elected members must make all proper enquiries and consider all available material that can help in coming to a decision.
- 1.4 The new guidance is statutory and must be followed. It will require changes to the approval process for Special Severance Payments and will require a change to the Council's adopted Pay Policy.

Recommendations:

The General Purposes Committee is recommended to:

- a) Note the revised process for Special Severance Payments.
- b) Consider the revised 2022/23 pay policy statement and recommend the policy for adoption by full council on 16 November 2022.
- c) Delegate to the Chief Executive, in consultation with the Director of Workforce, OD and Business Support, Chair of the GP Committee and Monitoring Officer, any further minor changes to the 2022/23 pay policy statement.

2. REASONS FOR THE DECISIONS

- 2.1 The Localism Act 2011 received Royal Assent on 15 November 2011. Additionally, 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. Further guidance on the making and disclosure of Special Severance Payments was published on 12 May 2022.
- 2.2 The Act's intention is to bring together the strands of increasing accountability, transparency and fairness, with regards to pay.
- 2.3 The provisions of the legislation require local authorities to adopt and publish a pay policy statement. 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, although the statement may be amended at any time by further resolution of full council.

3. ALTERNATIVE OPTIONS

- 3.1 As the publication of a pay policy statement and the nature of its content is a legislative requirement, there are no alternative options.

4. DETAILS OF THE REPORT

- 4.1. The Localism Act guidance (paragraphs 11-15) provides that authorities should offer full council the opportunity to vote on **severance packages** beyond the threshold of £100,000. This applies to the whole severance package and each component, including salary paid in lieu, redundancy

compensation, pension entitlements, holiday pay and any bonuses, fees or allowances paid should be set out clearly. This guidance continues to apply and is not affected by the new Special Severance Pay guidance. There is a distinction between a severance package and a Special Severance Payment. A process for each type of payment is required to be set out.

- 4.2. The table below sets out the authorisation process for Special Severance Payments as laid out in the new regulations.

Amount	Authorisation
Less than £20,000	Authorisation is according to the scheme of delegation
£20,000 to £100,000	Head of Paid Service with a clear record of the Mayor's approval and that of any other who has signed off the payment
£100,000 and above	Full Council

- 4.3. Payments of £20,000 and above, but below £100,000, must be personally approved and signed off by the Head of Paid Service, with a clear record of the Mayor's approval. We will also require the S.151 Officer and the Monitoring Officer to record their approval of the payment.

- 4.4. Payments below £20,000 must be approved according to the scheme of delegation as set out in the council constitution at Part D.

- 4.5. The following types of payments are likely to constitute an SSP:

- a) any payments reached under a settlement agreement between the employer and employee to discontinue legal proceedings without admission of fault
- b) the value of any employee benefits or allowances which are allowed to continue beyond the employee's agreed exit date
- c) write-offs of any outstanding loans
- d) any honorarium payments
- e) any hardship payments
- f) any payments to employees for retraining related to their termination of employment

- 4.6. In addition, the following types of payment may be covered:

- a) pay or compensation in lieu of notice where the amount of the payment is not greater than the salary due in the period of notice set out in the employee's contract
- b) pension strain payments arising from employer discretions to enhance standard pension benefits (for example under Regulation 30(5) where the employer has waived the reduction under Regulation 30(8) or because of the award of additional pension under Regulation 31)

- 4.7. Payments which are **not** covered include:

- a) statutory redundancy payments
- b) contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise
- c) severance payments made in accordance with that local authority's policy adopted pursuant to Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
- d) a strain cost paid to the relevant LGPS administering authority under LGPS Regulation 68(2) which results from a LGPS member's retirement benefits becoming immediately payable without reduction under Regulation 30(7), or under Regulation 30(6) where the employer has waived the reduction under Regulation 30(8)
- e) payment for untaken annual leave
- f) payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation
- g) payments made as part of the ACAS Early Conciliation process
- h) payments made to compensate for injury or death of the worker
- i) payments made in consequence of the award of ill-health retirement benefits under Regulation 35 of the LGPS Regulations

4.8. Currently, the approval for severance packages in excess of £100,000 is delegated to General Purposes Committee. **This process will change so these are approved by a vote of full council before staff leave the organisation.**

4.9. The pay policy statement will be amended at section 12.2 to reflect the new guidance (set out in Appendix 1), and internal processes will be revised to ensure proper recording of approval and monitoring of severance payments between £20,000 and £100,000 is in place.

4.10. The pay policy statement will be amended at section 12.4.1 to remove the discretion to re-employ staff within a two-year period who have left the organisation by reason of redundancy or early retirement and received a redundancy/severance payment.

4.11. Should any further minor changes to the 2022/23 pay policy statement be required, these amendments could be made by the Chief Executive, after consultation with the Director of Workforce, OD and Business Support, Chair of the GP Committee and Monitoring Officer. Should any fundamental changes be required, the pay policy statement will be sent back to the GP Committee for consideration.

5. EQUALITIES IMPLICATIONS

5.1 The revised policies and practice will be recorded and monitored to assess any equalities impact.

6. OTHER STATUTORY IMPLICATIONS

6.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

6.2 This report sets out the council's revised pay policy for 2022/23, which is required by law.

7. COMMENTS OF THE CHIEF FINANCE OFFICER

7.1 There are no direct financial implications arising from this report.

7.2 The costs of meeting the Council's Pay Policy will need to be contained within existing staffing budgets agreed through the Annual Budget and MTFS process. The annual Employees budget for General Fund areas is circa £219m.

8. COMMENTS OF LEGAL SERVICES

8.1 The main legal considerations regarding the Localism Act 2011 and the requirements of the statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England published on 12 May 2022 are set out in the body of the report.

8.2 Whilst there may be no approval requirements required for those elements of any severance package which do not constitute a special severance payment (as set out in 4.7 above), if any element of the severance payment falls within the definition of an SSP (as set out in 4.5 and 4.6 above) then regard must be had to the value of the entire payment when considering what authorisation is required.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix 1 – Draft Pay Policy Statement 2022/23

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

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

DLUHC – Statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England

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

Officer contact details for documents:

Musrat Zaman, Director of Workforce, OD and Business Support 020 7364 4922