



Council Urgency Committee

Pay Policy Statement

Date: 30 April 2020

Key decision: Yes

Class: Part 1

Ward(s) affected: All wards

Contributors: David Austin, Acting Chief Finance Officer

Outline and recommendations

The purpose of this report is to seek approval to the Council's annual pay policy statement for 2020/21 as required by Section 38 of the Localism Act 2011. The Localism Act requires each local authority to publish an annual pay policy statement which identifies the Council's approach to pay. Once it is in place, the Council may only make payments in accordance with the agreed policy.

Council Urgency Committee is recommended to:

- Agree the Pay Policy Statement for 2020/21 as attached at Appendix 1 to this report.

Timeline of engagement and decision-making

The Pay Policy Statement will be published on the Council's website following approval by Council.

Reasons for Submission to Council Urgency Committee

The Council has a statutory duty under section 39 of the Localism Act 2011 to have in place by April 1 each year an annual Pay Policy statement. Owing to the rapidly developing Covid-19 pandemic, the Council AGM on April 1, which included this item, was cancelled.

The report is now therefore submitted to the Urgency Committee in accordance with procedure rule 7 page 93 of the Constitution for urgent consideration, with all members of the Council invited to submit any comments they may have to the Committee as soon as possible. The outcome of the Committee's consideration will be reported to the next meeting of the Council.

It is recommended that a full report is brought to a general meeting of the Council at the earliest practicable opportunity thereafter, to seek additional confirmation as to any decision reached by the Urgency Committee on this matter.

1. Summary

The purpose of this report is to seek approval to the Council's annual pay policy statement for 2020/21 as required by Section 38 of the Localism Act 2011. The Localism Act requires each local authority to publish an annual pay policy statement which identifies the Council's approach to pay. Once it is in place, the Council may only make payments in accordance with the agreed policy.

2. Recommendations

Council is recommended to:

- Agree the Pay Policy Statement for 2020/21 as attached at Appendix 1 to this report.

3. Policy Context

3.1 The Council's strategy and priorities launched its new Corporate Strategy in 2019, with seven corporate priorities as stated below:

- **Open Lewisham** – Lewisham will be a place where diversity and cultural heritage is recognised as a strength and is celebrated.
- **Tackling the housing crisis** – Everyone has a decent home that is secure and affordable
- **Giving children and young people the best start in life** - Every child has access to an outstanding and inspiring education, and is given the support they need to keep them safe, well and able to achieve their full potential.
- **Building an inclusive local economy** – Everyone can access high-quality job opportunities with decent pay and security in our thriving and inclusive local economy.
- **Delivering and defending health, social care and support** – Ensuring everyone

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receives the health, mental health, social care and support services they need.

- **Making Lewisham greener** – Everyone enjoys our green spaces, and benefits from a healthy environment as we work to protect and improve our local environment.
- **Building safer communities** – Every resident feels safe and secure living here as we work together towards a borough free from the fear of crime.

- 3.2 The attached pay statement is published annually to comply with the Chapter 8 of the [Localism Act](#) 2011.

4 Background

- 4.1 The Council has each year since 2012/13 adopted a Pay Policy Statement in accordance with the requirements of the Localism Act.
- 4.2 The statement sets out the approach which the Council will take in relation to pay (i.e. it identifies how jobs are evaluated, graded and the relationship between roles) It also sets out the levels of remuneration for the Council's chief officers The proposed pay Policy Statement also explains the position on additional payments
- 4.3 Once agreed by the Council, the Pay Policy Statement will form the basis on which the Council remunerates employees as required by Section 41 of the Localism Act 2011.
- 4.4 Guidance under the Localism Act sets out an expectation that the Council will have regard to any proposal that the Mayor may have before the statement is considered. The Mayor has been given a copy of the proposed pay policy statement appearing at Appendix 1 and has not made any further proposal in respect of it.

5. Summary of changes since 2019/2020

- 5.1 The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (in force from 31 March 2017) require public sector employers operating in England to provide gender pay reports by 30 March 2018 (and annually thereafter) covering mean gender pay gap in hourly pay for year in the previous year (included in Section 18 of Appendix 1). This data is also required to be published on the Government website. The headline statistic within the Gender Pay Gap Information, of mean hourly rate, shows a positive picture in favour of women of 10.6% in line with last year's figure of 11.4%.
- 5.2 The 2019/20 pay deal for the majority of Council workers (NJC terms and conditions) was a minimum of 2% for all NJC staff, with further enhancement at some of the lowest pay spine levels to support staff maintaining pay above the London Living Wage. This was implemented in December 2019
- 5.3 The 2020/21 pay deal is not yet known and is still under negotiation at a national level
- 5.4 The minimum pay for apprentices has been brought in line with the London Living wage for 2020.

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6. Legal Implications

- 6.1 Attention is drawn to the legal implications set out in the body of the report.
- 6.2 The Pay Policy Statement attached to this report complies with the requirements of Section 38 Localism Act 2011 which requires all local authorities to prepare an annual Pay Policy Statement. Chapter 8 of the Localism Act 2011 sets out the information which a pay policy statement must contain and the proposed statement appearing at Appendix 1 is compliant with those requirements. Section 40 of the Act also requires the Council to have regard to any guidance issued or approved by the Secretary of State. Guidance under Section 40 was issued in February 2012 and the attached pay policy statement takes account of this guidance.
- 6.3 Additional guidance under Section 40 of the Localism Act was issued in February 2013. As with the earlier guidance, the Council is required under Section 40 to have regard to this guidance when preparing its Pay Policy Statement. This later guidance introduced two further requirements. The first requirement is for local authorities with directly elected mayors. The guidance sets out an expectation that the Council would involve the directly elected mayor and have regard to any proposals that the mayor may have before the statement is considered and approved. The second requirement is that the pay policy statement should include a requirement that full Council is required to vote in relation to any severance packages of over £100,000 (including redundancy pay, holiday pay and pension entitlements).
- 6.4 There are likely to be a number of difficulties with this requirement. First, a number of the elements of the “severance package” are likely to be contractual and/or statutory entitlements, such as redundancy compensation, pension entitlements and holiday pay. If the Council decided not to approve payments of this type then this is likely to result in the Council being in breach of contract and/or statute. It is feasible that a member of staff’s pension and redundancy compensation alone could take them above the £100,000 threshold without any further payments being made to them. Second, the requirement to hold a vote at full Council could delay the making of any payments. Again this has the potential of placing the Council in a position where it may be in breach of contract and/or legislation. A delay could also fetter the Council’s ability to effectively settle any potential claims against the authority, particularly in situations where a timely settlement may be the most cost effective resolution. Third, where the Council enters into settlement of potential claims, it is often a term of any settlement agreement that the settlement remains confidential. This can be of benefit to the Council as well as to the employee. If a vote at full Council was required then it may be difficult for the Council to provide the confidentiality required by these agreements. If the confidentiality requirement of an agreement was breached this could lead to further claims against the Council and it may be difficult for the Council to provide evidence that confidentiality had definitely not been breached when details of the potential settlement had been distributed to full Council.
- 6.5 As set out above, the Localism Act 2011 requires the Council to have regard to the guidance. This does not require the Council to follow the guidance in circumstances where it has considered the requirements of the guidance but where the Council considers that it has good reasons for not following it.

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- 6.6 The draft Pay Policy Statement attached to this report does not include a requirement that full Council is required to vote before large severance packages are provided to staff leaving the organisation. This is consistent with the position set out in the previous years' Pay Policy Statements. This report recommends that the Council approve the draft pay policy statement in this respect for the reasons set out above.
- 6.7 A Pay Policy Statement must be approved by a resolution of the Council before it comes into force.
- 6.8 Once a Pay Policy Statement is in force, any decision of the authority made after 1st April 2020 and relating to remuneration or other terms and conditions must comply with the Pay Policy Statement in force at the time, subject to any legislative changes which may subsequently be in force. An authority may amend its pay policy statement by resolution.
- 6.9 In the event that the Council wished to adopt a pay policy that does not reflect the current contractual arrangements in place for the employment of officers, then this may give rise to employment law implications.
- 6.10 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.11 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
 - advance equality of opportunity between people who share a protected characteristic and those who do not
 - foster good relations between people who share a protected characteristic and those who do not.
- 6.12 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 6.13 The Equality and Human Rights Commission has issued Technical Guidance on

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the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

6.14 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

6.15 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

7. Financial implications

7.1 The financial implications captured in the Councils Pay Policy statement relate to staff National pay deal settlements for 2020/21. Provisions have already been made for these in the 2020/21 budget, agreed by Council on 26th February 2020

8. Equalities implications

There are no specific equalities implications

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9. Climate change and environmental implications

There are no direct climate change or environmental implications arising from this report.

10. Crime and Disorder Implications

There are no direct crime and disorder implications arising from this report.

11. Health and wellbeing implications

There are no direct health and wellbeing implications arising from this report.

12. Report author and contact

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