

<b>Council</b>			
Report Title	Pay Policy Statement		
Key Decision		Item Number	
Ward			
Contributors	Head of Organisational Development and Human Resources		
Class		Date	3 April 2019

## 1. **Introduction**

The purpose of this paper is to seek approval to the Council's annual pay policy statement for 2019/20 as required by Section 38 of the Localism Act 2011.

## 2. **Summary**

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.

## 3. **Recommendation**

That the Council agree the Pay Policy Statement for 2019/20 as attached at Appendix 1 to this report.

## 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 2018/2019**

- 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 on page 8 paragraph 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 11.4% up from 10.9%.
- 5.2 The 2019/20 pay deal for the majority of Council workers, NJC terms and conditions, is in the final stage of sign-off with our unions and represents 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.
- 5.3 Anticipated legislation and guidance in relation to exit payments has not yet been brought into force. Any relevant legislation that may be enacted during the year will apply and may vary this policy by operation of law.

## **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 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.
- 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 1<sup>st</sup> April 2019 and relating to remuneration or other terms and conditions must comply with the Pay Policy Statement in force at the time. 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 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. Provisions have already been made for these in the 2019/20 budget, agreed by Council on 27<sup>th</sup> February 2019