

24 August 2023		ITEM: 6
General Services Committee		
Pay Policy 2023/24 – Senior Manager Pay		
Wards and communities affected: N/A	Key Decision: N/A	
Report of: Dave Smith – Chief Executive		
Accountable Assistant Director: NA		
Accountable Director: NA		
<p>This report is Public. Appendix 3a,3b and 4 exempt.</p> <p><i>If the report, or a part of this, has been classified as being either confidential or exempt by reference to the descriptions in Schedule 12A of the Local Government Act 1972, it is hereby marked as being not for publication. The press and public are likely to be excluded from the meeting during consideration of any confidential or exempt items of business to which the report relates.</i></p>		

Executive Summary

The Localism Act 2011 requires the Council to publish an annual Pay Policy Statement for chief officers, which must be approved by Council by 31 March each year. The Council's Pay Policy Statement for 2023/24 was approved by Council on 1 March 2023, this applied a 4% pay increase for Grades A-I. Within the report it specified that senior manager pay would be considered in a subsequent report to Council.

Pay for senior managers is governed by the 'Pay Strategy and Pay Policy' which was implemented in 2010, an annual review is conducted each year to determine pay awards. The policy applies to Assistant Directors, Directors and the Chief Executive.

The independent assessment recommends a 4% increase in the pay clusters for senior management pay.

General Services Committee received a report on 27th June 2023 setting out options and risks relating to the 2023/24 pay award for Senior Managers. The outcome of the report was a recommendation of no increase for Senior Managers. Counsel has confirmed the Council has a contractual commitment to pay any increase recommended by the Annual Review. The recommendation of no increase would be in breach of current employment contracts.

This report sets out the position and the way forward to correct the award for the current year and confirms the review of arrangements for senior pay.

Commissioner Commentary

The Council's Section 151 Officer has issued a s114 notice which places restrictions on what the Council can spend to ensure that the Council will be able to balance its budget in the future. However, the Council is permitted to continue spending on existing staff payroll and pension costs, and on existing legal agreements and contracts.

The Council has a Pay Strategy and Pay Policy that requires an annual review of salaries for senior managers to be undertaken and the result of the review applied to the pay structure from 1 April each year. The revised pay structures are approved as part of the Council's Pay Policy each year. The purpose of the review is to ensure senior manager pay at Thurrock remains competitive. The review to determine 2023/24 salaries is particularly challenging taking place during a period of high levels of inflation and employers competing for talent in a tight labour market alongside the implications of the s114 notice.

The Council will review the approach to senior manager pay to ensure the design of senior corporate leadership roles and the attributes required to undertake them, as well as their remuneration, is delivered alongside the design and implementation of the future operating model.

1. Recommendations

General Services Committee are asked to:

- 1.1 Note the recommended Senior Manager Pay award of 4% as determined and by the independent assessment with effect from 1 April 2023.**
- 1.2 Recommend the revised Pay Policy Statement (Appendix 5), incorporating the 4% award, to Council.**
- 1.3 Instruct the Chief Executive, as part of the wider Pay Review, to bring back to General Services Committee a review of pay and arrangements for determining on-going annual pay awards for Senior Managers.**

2. Introduction and Background

- 2.1 The Localism Act 2011 requires Councils to publish an annual Pay Policy Statement. The statement must be approved by Full Council by 31 March each year.
- 2.2 The 2023/24 Pay Policy Statement, agreed at Full Council on 1 March 2023, did not include the annual pay award for Senior Managers. Further information and analysis of options was required before the award could be determined.
- 2.3 Senior Manager pay arrangements are governed by the Council's 'Pay Strategy and Pay Policy for Senior Managers'. Implemented in 2010, the Senior Manager pay scales comprise a single pay cluster for the Chief Executive, five for Director roles and five for Assistant Director roles. The

scales currently cover 27 roles. The current 10 senior pay bands are shown in **Appendix 1**. The pay structure covers all pay elements. No performance pay or car allowance is paid in addition.

- 2.4 The Pay Strategy and Pay Policy for Senior Managers sets out how pay grades and salary levels are determined:
- *The 'normal' pay for each post is derived by taking a median point of the salary data for similar positions, weighted 50% towards Unitary Authorities and 50% towards London Boroughs.*
 - *The market median pay points will be reviewed in February of each year and adjusted to forecast pay for 1 April.*
 - *There will be no other 'cost of living' increase. The annual review of market pay points replaces the NJC arrangements in place prior to 1 April 2010.*

2.5 The market median pay points are reviewed each year to forecast the applicable figure for 1 April. The pay assessments are undertaken by an independent body which provides the Council with a recommendation.

2.6 Since 2010 the Council have used an independent body – Total Reward Projects Ltd – to conduct the annual review of salary levels and submit a report and recommendation to the Council – **Appendix 2**. The purpose of the independent assessment is to ensure the Council's pay levels represent good value, are transparent, fair, and competitive.

2.7 General Services Committee received a report on 27th June 2023 setting out four options for senior pay for consideration. These were:

- A) Pay the 4% increase recommended in the independent assessment
- B) Match the 3.5% national pay offer to Chief Officers
- C) Apply a lower % increase determined by the Council
- D) Offer no increase

General Services Committee selected option D, to recommend no increase for Senior Managers.

2.8 Counsel advice has confirmed that the Council have a contractual obligation to pay an increase in line the annual review and to do otherwise would amount to a breach of contract. See **Appendix 3a**.

Counsel has also advised that the Council has not followed the contractual - provisions relating to Remuneration and Annual Review and has taken a different approach in relation to methodology. Specifically, the Council has not undertaken a review every two years of weighting proportions between Unitary and London Councils, and the external pay review has been based on a different methodology to that set out in the contract, see paragraphs 3.1 and 3.2 below. The Council has approved the recommendations of the external reviewer each year. Counsel has, however, advised that arguably by custom

and practice the contracts of senior staff are likely to be found to have been varied, so that the Council is now advised to pay the independent review figure of 4%. A Court is more likely to infer a variation to a Contract by custom and practice if that variation is to the employees' benefit.

3. Issues, Options and Analysis of Options

3.1 Policy and Annual Review

- 3.1.1 As set out in Section 2 above, the policy governing Senior Manager pay arrangements has been in place since 2010. Total Reward Projects Ltd are commissioned each year to provide two reports, one covering the general pay increase and one for Senior Managers. The provision of an independent assessment and recommendation meets the requirements of the Council's Collective Agreement and the Senior Manager Pay Strategy and Policy.
- 3.1.2 To determine the appropriate pay recommendation the independent assessment uses various sources of pay data as evidence. In the current year the JNC settlements and offers were not known so pay settlements and forecast pay settlements across the public sector from XpertHR and Income Data Review were used.
- 3.1.3 The recommendations received are incorporated into the Council's Pay Policy and presented to Council for approval in February each year. Consultation and discussions with Groups Leaders, Deputy Groups Leaders and Portfolio Holders is normally undertaken outside of formal committee structures in advance of Council. The Pay recommendations are not normally considered by GSC before presentation to Council as they are in line with the policy agreed by GSC. To provide additional oversight and consideration of options it was agreed to present a report to GSC in advance of approval at Council.
- 3.1.4 The pay award for Senior Managers for the current year was not included in the Pay Policy presented to Council on 1 March 2023. Officers and commissioners were concerned to ensure that the advice given to Members in the form of the review of pay was robust and that options were provided to Members alongside the independent review recommended increase of 4%. Those issues provided the basis for the report considered by General Services Committee at its meeting on the 27th of June 2023. In setting out the options for consideration, potential legal consequences and risks were included and incorporated into the formal legal implications of the report.
- 3.1.5 Subsequent to that decision, advice from Counsel clarified that in fact to not pay the recommended 4% would constitute a breach of contract. Counsel also advised on the methodology used in the Annual Review, and as stated above advised that the provisions of the contracts relating to methodology of reviewing senior pay are likely to have been varied by custom and practice, meaning that the safest course of action is to pay the recommended 4 % increase.
- 3.1.6 To incorporate the original GSC recommendation into the revised Pay Policy puts the Council at considerable risk and is essentially asking Council to

approve a recommendation that represents a breach of contract law. Therefore, the original recommendation has been incorporated into the revised Pay Policy which GSC are now asked to endorse and recommend.

3.2 Contractual Variation

- 3.2.1 The detailed review of senior contracts undertaken by Counsel identified a potential historical variation of the specific terms stated, particularly the method used to conduct the annual review. Counsel provided advice to this effect, **Appendix 3b**. The methodology used to determine the annual increase has been in place since the original policy was implemented so has arguably become custom and practice.
- 3.2.2 The methodology that has been used to determine the recommended annual pay increases uses pay data from the JNC settlements or offers for Chief Executives and Chief Officers and other public sector data sources for pay settlements and predicted pay settlements. The data is used to forecast the median pay for each senior position for the forthcoming April. The specific contractual clause suggests that the 50/50 median between London Councils and Unitaries analysis should be undertaken each year, as set out in 2.4 above, and in the appendices.
- 3.2.3 To determine if any detriment had been applied as a result of the variation, an analysis of current salaries against the determined mean of unitary and London councils was undertaken. The assessment identified a close alignment with current pay rates – **Appendix 4**.

3.3 Review of Senior Manager Pay

- 3.3.1 GSC agreed the scope and timescale of a Pay and Reward Review at its meeting on 27th June 2023, this review includes pay for Senior Managers. To ensure Senior Manager Pay Policy, including arrangements for determining annual pay awards, is prioritised, GSC are asked to instruct the Chief Executive to put in place the required resources to conduct a full review for inclusion in the 2024/25 Pay Policy.
- 3.3.2 GSC will receive a report in September 2023 to agree the design principles, scope and detailed timetable for the review of Senior Pay.

4. Impact on corporate policies, priorities, performance, and community impact

- 4.1 The Annual Pay Policy Statement 2023/24 will be updated to incorporate the recommended award for senior managers.

5. Implications

5.1 Financial

Implications verified by: **Jonathan Wilson**
Assistant Director - Finance

There is sufficient growth built into the Medium-Term Financial Strategy that covers the costs that arise from the recommendation set out within this report.

Given that the Council is operating under a s114 notice any use of this budget will need to be considered at the time of a pay award being given.

5.2 Legal

Implications verified by: **Asmat Hussain**
Director of Legal and Governance, Legal Services

Sections 38 to 43 of the Localism Act 2011 require Councils to prepare a Pay Policy Statement for each financial year and the Secretary of State, pursuant to section 40, has issued both the original Pay Accountability Guidance in February 2012 and a supplementary guidance in February 2013. The Annual Pay Policy Statement for 2023/24 was agreed at Council on 1 March 2023.

This report focuses specifically on the recommendation for senior managers' pay. External Counsel legal advice has been provided in this regard which sets out that the Council has an obligation to conduct an annual review of senior managers' pay as detailed within the terms and conditions of the employment contract. A failure to apply any increase identified following the annual review would amount to a breach of contract.

The Council's Chief Finance Officer has issued a s114 notice which places restrictions on what the Council can spend to ensure that the Council will be able to balance its budget in the future. However, the Council is permitted to continue spending on existing staff payroll and pension costs, and on existing legal agreements and contracts.

The legal status of Thurrock's Pay Strategy and Pay Policy is set out in the body report with an assessment of the options available and their associated risks and benefits. Expenditure in relation to the annual senior manager pay review falls into the category of an exceptional reason for spending to be agreed.

The provisions contained within Thurrock's Senior Manager Pay Strategy and Pay Policy are not considered by Legal Counsel to be incorporated into the contract of employment. Therefore, the fact that the Council has issued a s114 notice does not mean it can rely on affordability as a reason to depart from the obligation to carry out the annual review.

Failure to pay the increase may result in claims being submitted for unfair or constructive dismissal, breach of contract and/or unlawful deductions from

wages. Counsel did not generally consider that the Council would be able to successfully defend such claims. Any claims would also incur the costs of defending the claims.

As outlined above, Counsel also advised that the variations to the Remuneration and Annual Review provisions of the contract would be likely to be considered implied variations due to custom and practice, especially where the variation was found to be beneficial to the employee. Therefore, the safest option to the Council would be to pay the 4% as calculated by the independent review.

5.3 **Diversity and Equality**

Implications verified by: **Becky Lee**

Team Manager, Community Development Team

The recommendation set out within this report have been independently assessed based on agreed factors within the Pay Strategy and Pay Policy. This includes the fulfilment of responsibilities set out in the Equality Act 2020 and Public Sector Equality Duty.

5.4 **Other implications** (where significant) – i.e., Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children

No other significant implications have been identified.

6. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- [Annual Pay Policy Statement 2023/24](#)

7. **Appendices to the report**

- Appendix 1 – Current Senior Manager Pay Scales
- Appendix 2 – Senior Pay Review, Thurrock Council, January 2023
- Appendix 3a – Counsel Opinion (Exempt)
- Appendix 3b – Counsel Opinion (Exempt)
- Appendix 4 – Assessment of Median Pay (Exempt)
- Appendix 5 – Pay Policy 2023/24 (Exempt)

Report Author:

Dave Smith
Chief Executive