

Council Report

Ward(s) affected: n/a

Report of Managing Director (Head of Paid Service)

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Pay Policy Statement 2020-21

Recommendation to Council

That the amendments required within the Pay Policy Statement for the 2020-21 financial year be approved.

Reasons for Recommendation:

To comply with the Restriction of Public Sector Exit Payments Regulations 2020.

Is the report (or part of it) exempt from publication? No

1. Purpose of Report

1.1 The Public Sector Exit Pay Cap regulations ([Restriction of Public Sector Exit Payments Regulations 2020](#)) came into force on 4 November 2020. The regulations will apply to all exit payments that fall due on or after that date. The regulations implement a £95,000 cap on exit payments and we are awaiting the publication of the Guidance and Directions documents to accompany the regulations. Our Pay Policy Statement for the current financial year needs to be amended to reflect the regulations.

2. Strategic Priorities

2.1 By setting out clearly how the Council is spending public money, the statement supports the Council's mission and values to be efficiently run and to deliver value for money while also demonstrating that we have effective governance in place to manage pay and remuneration for all our staff.

3. Background

3.1 Payments which are covered by the £95,000 cap include:

- redundancy payments
- payments in lieu of notice exceeding three months
- pension costs
- severance payments
- compensation under the Acas arbitration scheme (a direction is expected to be made excluding those payments made in respect of discrimination or whistleblowing)
- any other payment made as a consequence of loss of employment

3.2 Under the current Local Government Pension Scheme Regulations employees aged 55 or over who are members of the Local Government Pension Scheme (LGPS) are currently entitled to immediate access to an unreduced pension where they are dismissed on redundancy or business efficiency grounds. The employer then has to make additional payments to the pension fund to make up the resulting shortfall in the pension funding. This extra payment is also known as the 'pension strain' and this cost is included in the £95,000 pay cap. Changes are required to the Local Government Pension Scheme rules to accommodate the £95,000 cap and these will not be in place when the cap comes into effect. The following link provides further information on [MHCLG's consultation](#).

3.3 In certain circumstances the pay cap may be waived. There are likely to be two types of waiver (although full details have not yet been published):

- Mandatory Waivers can be made where it is likely that an award would be made by an Employment Tribunal in response to a claim made for whistleblowing, discrimination, health and safety and other similar cases. They can also be made where employees are protected by TUPE Regulation obligations.
- Discretionary Waivers can be made where the cap will cause undue hardship, to assist workforce reform, and where the exit has been delayed by the employer. Waivers must be approved by the Council, MHCLG Accounting Officer (permanent secretary), MHCLG and HMT Ministers.

4. Updates made to the current Pay Policy Statement

4.1 The Pay Policy Statement currently contains a termination pay cap of £95,000 but this figure includes all payments associated with the termination and specifically refers to pay in lieu of notice, holiday pay and any other contractual payments. This needs to be amended and aligned with the requirements of the Regulations to only reflect the payments set out in 3.1 above.

4.2 The Pay Policy Statement sets out the requirement to refer any proposed payment exceeding the cap to the Council for approval. Under the Regulations these payments would now need to follow the approval process to apply for a Discretionary Waiver as set out in 3.3 above.

5. Equality and Diversity Implications

- 5.1 The Council's duty under section 149 of the Equality Act 2010 is to have due regard to the matters set out in relation to equalities when considering and making decisions. The Pay Policy Statement is designed to bring fairness and equality to the application of pay and remuneration within the Council. There are no direct equality impacts associated with agreeing the Pay Policy Statement amendment itself.
- 5.2 However concern has been raised by the Local Government Association (LGA) and Unison regarding the potential unequal equality impact of the Public Sector Exit Pay Cap Regulations. Further information and guidance is expected to follow.

6. Financial Implications

- 6.1 The effect of the Regulations requires further clarification and specifically in relation to the impact of the delay to the required changes to the LGPS rules. Once this has been received the financial impact of the Regulations can be assessed however it is likely to result in lower costs to the Council associated with the termination of employment of our employees.

7. Legal Implications

- 7.1 The Pay Policy Statement requires immediate amendment to include the requirements of the Restriction of Public Sector Exit Payments Regulations 2020. Failure to comply could lead to a legal challenge to the Council and therefore it is important that the statement reflects the Regulations and all the associated statutory guidance.
- 7.2 The absence of a robust Equalities Impact Assessment of the Regulations is a cause for concern and is one of several areas where the LGA is concerned that these Regulations increase legal risks facing councils,
- 7.3 Over the next few months we will continue to monitor and review all aspects of the Pay Policy Statement in the light of relevant legislation, statutory guidance, best practice and the changing landscape of pay policy in local government and the wider public sector. This will ensure that future statements continue to meet the changing business needs and future challenges facing the Council.

8. Human Resource Implications

- 8.1 The Pay Policy Statement clearly relates to human resource management issues. We have considered the impact of the Regulations on our staff, particularly those currently affected by Phase B of the Future Guildford transformation programme, and have advised them accordingly. We will continue to review the likely impact once the changes to the LGPS are published and plan for these. There are therefore no additional human resource implications to amending the Pay Policy Statement itself.

9. Conclusion

- 9.1 The Pay Policy Statement is required to comply with legislation and also supports our long-standing approach of openness and transparency about pay.
- 9.2 The Council is fulfilling its legal obligation by amending the Pay Policy Statement 2020-21.

10. Background Papers

[Restriction of Public Sector Exit Payments Regulations 2020](#)

Consultation paper setting out the Government's proposals for reforming local government exit payment. [MHCLG's consultation](#)

11. Appendices

Appendix 1: Pay Policy Statement 2020-21