

# LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>COUNCIL</b>	
<b>DATE OF DECISION</b>	<b>1 MARCH 2023</b>	
<b>REPORT TITLE:</b>	<b>CROYDON PAY POLICY STATEMENT 2023/24</b>	
<b>CORPORATE DIRECTOR</b>	<b>ELAINE JACKSON ASSISTANT CHIEF EXECUTIVE</b>	
<b>LEAD OFFICER:</b>	<b>DEAN SHOESMITH CHIEF PEOPLE OFFICER Email: Dean.Shoesmith@croydon.gov.uk</b>	
<b>LEAD MEMBER:</b>	<b>CLLR JASON CUMMINGS CABINET MEMBER FOR FINANCE</b>	
<b>KEY DECISION?</b>	<b>No</b>	REASON: N/A
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	<b>PUBLIC</b>
<b>WARDS AFFECTED:</b>	<b>ALL</b>	

## 1 SUMMARY OF REPORT

- 1.1** In accordance with sections 38 and 39 of the Localism Act, the Council is required to prepare and publish an annual Pay Policy Statement.
- 1.2** The Pay Policy Statement for the financial year 2023/24 is attached at Appendix 1 and covers the legal requirement to set out:
- The remuneration of its senior staff, designated Chief Officers
  - The remuneration of its lowest paid employees

- The relationship between the remuneration of its Chief Officers and the remuneration of staff who are not Chief Officers

- 1.3** Notably the Pay Policy Statement references the Statutory Guidance on the making and disclosure of Special Severance Payments by local authorities in England (attached at Appendix 1e), introduced in May 2022 and the process for approving any Special Severance Payments and severance packages.
- 1.4** The Pay Policy statement also references a change to the benchmarking arrangement regarding the appropriate remuneration for the Chief Executive and Head of Paid Service.
- 1.5** It is noted that at the Council meeting of 14 December 2022, as part of moving of the '*Response to the External Auditor's Query regarding the Former Chief Executive's Settlement Payment*' it was agreed that the Council should decide payments of over £100,000 to individuals going forward.
- 1.6** At the meeting of the General Purposes Committee (GPC) of 23 January 2023, some drafting changes were made to the Pay Policy Statement and GPC covering report. These were to make it clear that whilst Special Severance Payments and severance packages of £100,000 and above should be approved by a vote of full Council, if the proposals are being made in the context of litigation and the making of the decision is urgent, General Purposes Committee can approve such payments in accordance with the Council's constitution. Decisions will however only be referred to the GPC for approval in limited and exceptional cases, where a decision is required urgently in the context of litigation.
- 1.7** A robust business case setting out the considerations for making a Special Severance Payment, and in the context of litigation including the case as to why the making of the decision is urgent, along with appropriate written professional legal and financial advice, must be provided where approval for a Special Severance Payment is sought.
- 1.8** The purpose of this report is to:
- (1) approve the Council's Pay Policy Statement for the financial year 2023/2024, as amended and recommended by General Purposes Committee on 23 January 2023;
  - (2) ensure that the proposed Pay Policy Statement for the financial year 2023/2024 complies with the Council's Constitution and the legal requirements regarding decision-making processes concerning the agreement of severance packages and Special Severance Payments; and,
  - (3) agree, as recommended by the General Purposes Committee on 23 January 2023 that paragraph 6 of the General Purposes Committee's terms of reference, as set out in Part 3 of the Council's Constitution - Responsibility of Functions, section 2, sub-section 2.5, be amended, as set out below

## 2 RECOMMENDATIONS

For the reasons set out in the report and its appendices, Full Council is recommended:

- 2.1 To approve the annual Pay Policy Statement for the financial year 2023-24, (as recommended by General Purposes Committee on 23 January 2023) and proceed to publish it in accordance with the requirements of section 39 of the Localism Act 2011;
- 2.2 To note the change to the benchmarking arrangement regarding the appropriate remuneration for the Chief Executive and Head of Paid Service;
- 2.3 To note the approval process regarding Special Severance Payments and severance packages within the Pay Policy Statement for 2023/2024 and in particular with regard to urgency;
- 2.4 To agree, as recommended by the General Purposes Committee on 23 January 2023 that paragraph 6 of the General Purposes Committee's terms of reference, as set out in Part 3 of the Council's Constitution - Responsibility of Functions, section 2, sub-section 2.5, be amended as follows (to include the underlined wording):

"6. The function in respect of voting on severance packages of staff above such specified thresholds as may, from time to time, be updated by statutory guidance if the proposals are being made in the context of litigation and the making of the decision is urgent";

- 2.5 To note that any review of whether the function of voting on severance packages and Special Severance Payments of £100,000 and above in the context of litigation and where the making of the decision is urgent (in accordance with the amendment to the General Purposes Committee's terms of reference set out in paragraph 2.5 of this report, above), should move to the Appointments and Disciplinary Committee, will be considered by the Constitution Review Group;
- 2.6 To also agree the following consequential change to paragraph 11 of the General Purposes Committee's terms of reference as underlined:

11. Subject to paragraph 6 any matter reserved to the Council and a non-executive function, or a matter reserved to a non-executive committee or sub-committee of the Council which requires, in the Committee's view or on the recommendation of the Mayor, the Chief Executive or a Corporate Director, action as a matter of urgency.

### **3. REASONS FOR RECOMMENDATIONS**

- 3.1** To ensure that the Pay Policy Statement complies with the decision-making requirements within the Constitution in accordance with the statutory guidance and the Localism Act 2011 for dealing with severance packages and Special Severance Payments and in particular with regard to urgency.
- 3.2** To comply with the legal requirements for the Council, in accordance with sections 38 and 39 of the Localism Act 2011, to prepare and publish an annual Pay Policy Statement.

### **4 BACKGROUND AND DETAILS**

- 4.1** The Council aims to ensure that its remuneration packages are fair, equitable and transparent and offer suitable reward for the employment of high-quality staff with the necessary skills and experience to deliver high quality services.
- 4.2** This Pay Policy Statement sets out the Council's policy relating to the pay of its workforce (excluding school-based employees) as required under the Localism Act 2011. The Localism Act requires the Council to have prepared, approved and published a Pay Policy Statement for each financial year. The areas to be covered in the statement are salary, expenses, bonuses, performance-related pay, severance payments, how election fees are paid and the pay policy on re-engagement of ex-employees.
- 4.3** The pay of the Chief Executive and Head of Paid Service is not aligned to the Joint National Committee for Chief Executives' pay award and is determined on appointment with reference to market rates. The change to the benchmarking arrangement is in the appointment of an independent, external advisor with remuneration and performance expertise to advise the Executive Mayor (and at the Executive Mayor's discretion other political group leaders) about appropriate remuneration for the post of Chief Executive and Head of Paid Service.
- 4.4** The Pay Policy Statement refers to the Government guidance on Special Severance Payments, (the Statutory Guidance on the making and disclosure of Special Severance Payments by local authorities in England) issued under section 26 of the Local Government Act 1999. This guidance was published on 12 May 2022 and forms part of the best value regime for local authorities in England, in accordance with the best value duty, as set out in section 3 of the Local Government Act 1999. The guidance sets out the Government's view that Special Severance Payments do not usually represent value for money and should only be considered in exceptional circumstances, giving examples of the circumstances in which Special Severance Payments may be appropriate, sets out the criteria employers should consider in the exceptional circumstances, in which it may be appropriate to make a Special Severance Payment and clarifies the disclosure and reporting requirements for Special Severance Payments.

## **4.5 Appointments**

Statutory guidance issued by the Secretary of State, in February 2012 under section 40 of the Localism Act 2011 (*Openness and accountability in local pay: Guidance under section 40 of the Localism Act 2011*) provides that Full Council, or a meeting of members, should take decisions about remuneration packages for new appointments of £100,000 or more per year. The Appointments and Disciplinary Committee has delegated responsibility for approving appointments and decisions about remuneration packages for new appointments of £100,000, or more, per year in accordance with the provisions of the Localism Act 2011.

## **4.6 Severance Packages**

In February 2013 Statutory Guidance issued by the Secretary of State under section 40 of the Localism Act 2011 (*Supplementary Guidance on Openness and Accountability in Local Pay issued under section 40 of the Localism Act 2011*) provided that Full Council, or a meeting of members, should take decisions about severance packages of £100,000, or more, per year.

**4.7** In accordance with that guidance, in presenting information to Council, authorities should set out clearly the components of relevant severance packages. These components may include salary paid in lieu, redundancy compensation, pension entitlements, holiday pay and any bonuses, fees or allowances paid.

## **4.8 Special Severance Payments**

In May 2022, new statutory guidance was issued by the Government which introduced the concept of Special Severance Payments: *The Statutory Guidance on the making and disclosure of Special Severance Payments by local authorities in England dated May 2022*.

**4.9** Special Severance Payments, as set out in that Statutory Guidance, include additional, discretionary sums paid on top of statutory and contractual redundancy or severance terms, including certain payments reached under a settlement agreement to discontinue legal proceedings without admission of fault, and certain pay in lieu of notice payments.

**4.10** The following types of payments are likely to constitute Special Severance Payments:

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.

**4.11** The following types of payments may constitute Special Severance Payments, depending on the terms of the individual's contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions:

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).

**4.12** The following do **not** constitute Special Severance Payments:

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.

**4.13** The May 2022 Statutory Guidance introduced a new approval process, and the government expects that any Special Severance Payments should be approved according to the following process:

- Payments of £100,000 and above must be approved by a vote of Full Council, as set out in the Localism Act 2011

- 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 Leader's (Executive Mayor's) approval and that of any others who have signed off the payment
- Payments below £20,000 must be approved according to the local authority's scheme of delegation.

- 4.14** It is noted that at the Council meeting of 14 December 2022, as part of moving of the 'Response to the External Auditor's Query regarding the Former Chief Executive's Settlement Payment' it was agreed that the Council should decide payments of over £100,000 to individuals going forward.
- 4.15** The Local Government Association (LGA) has identified a conflict between the Localism Act 2011 and the Statutory Guidance on the making and disclosure of Special Severance Payments by local authorities in England dated May 2022, that *"on the face of it the approval process in the (May 2022) statutory guidance only applies to the Special Severance Payment element of a severance payment, except where it is referring to duties already in place i.e. under the Localism Act 2011 and the duties to spend public money with propriety as well as the existing s.151 officer and Monitoring Officer duties, in which case those duties apply to the whole severance payment.* The LGA has raised a query with the Department for Levelling Up, Housing and Communities, which (at the time of writing this report) has yet to respond. The Council will ensure that it complies with its duties under the Localism Act 2011 and the Statutory Guidance on the making and disclosure of Special Severance Payments by local authorities in England dated May 2022 and any further information that may be provided from DLUHC when seeking approval for severance packages and Special Severance Payments.
- 4.16** Part 3 of the Council's Constitution - Responsibility of Functions, Section 2 Responsibility for Council Functions, sub-section 2.5 General Purposes Committee, paragraph 6 states that *'The function in respect of voting on severance packages of staff above such specified threshold as may, from time to time, be updated by statutory guidance'* and paragraph 7, *'the function of deciding in respect of severance packages, whether the Council wishes to vote on a severance package above the specified threshold'* rests with the General Purposes Committee. Further under paragraph 11 the General Purposes Committee has the responsibility of functions for *'any matter reserved to the Council and a non-executive function, or a matter reserved to a non-executive committee or sub-committee of the Council which requires, in the Committee's view or on the recommendation of the Mayor, the Chief Executive or a Corporate Director, action as a matter of urgency'*.
- 4.17** To make it clear in the context of litigation where the making of the decision is urgent concerning Special Severance Payments and severance packages of £100,000 and above, it was recommended by General Purposes Committee on 23 January 2023 that paragraph 6 of the General Purposes Committee's terms of reference, as set out in Part 3 of the Council's Constitution - Responsibility of Functions, section 2, sub-section 2.5, be amended, by the addition of the underlined wording, as follows:

“6. The function in respect of voting on severance packages of staff above such specified thresholds as may, from time to time, be updated by statutory guidance if the proposals are being made in the context of litigation and the making of the decision is urgent”

Such decisions will only be referred to the GPC in limited and exceptional cases where a decision is required urgently in the context of litigation and a robust written business case must be provided to include the reason for the urgency.

**4.18** The Pay Policy Statement for 2023/2024 provides:

- Full Council or, if the proposals are being made in the context of litigation and the making of the decision is urgent, General Purposes Committee will be given the opportunity to vote on severance packages of £100,000 and above in accordance with the Council’s Constitution.
- Special Severance Payments of £100,000 and above must be approved by a vote of full Council or, if the proposals are being made in the context of litigation and the making of the decision is urgent, General Purposes Committee in accordance with the Council’s Constitution.
- Special Severance Payments of £20,000 and above, but below £100,000 must be personally approved and signed off by the Head of Paid Service, section 151 Officer and Monitoring Officer with a clear record of the Executive Mayor’s approval (and that of any others who have signed off on the payment).
- Special Severance Payments below £20,000 must be approved by the Chief People Officer in accordance with the Council’s Scheme of Delegations.

**4.19** A robust written business case setting out the considerations for making a Special Severance Payment, along with appropriate professional legal and financial advice, must be provided in accordance with the Statutory Guidance on the Making and Disclosure of Special Severance Payments by Local Authorities in England (May 2022), when approval for a Special Severance Payment is sought in all cases.

**4.20** In the context of the Appointments and Disciplinary Committee having delegated responsibility for approving appointments and decisions about remuneration packages for new appointments of £100,000 or more per year in accordance with the provisions of the Localism Act 2011, the question arises as to whether the function of voting on severance packages and Special Severance Payments of £100,000 and above if the proposals are being made in the context of litigation and the making of the decision is urgent, should transfer from the General Purposes Committee to the Appointments and Disciplinary Committee, to the effect that the Appointments and Disciplinary Committee would then deal with all such employment related matters. Any changes to the Constitution around decision-making in this area will be considered by the Constitution Review group.

## **5 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1** As the Pay Policy Statement is a requirement of the Localism Act 2011, it must be prepared, agreed by a vote of full Council and published and, therefore, there are no other options.

## **6 CONSULTATION**

- 6.1** This report is a statement of fact regarding the pay of senior officers in the Council. Senior pay is carefully consulted on with lead members.

## **7. CONTRIBUTION TO COUNCIL PRIORITIES**

- 7.1** *We will live within our means, balance the books and provide value for money for our residents*, including the pay for senior managers which has been benchmarked and independently evaluated and in the making of Special Severance Payments and agreeing severance packages.

## **8. IMPLICATIONS**

### **8.1 FINANCIAL IMPLICATIONS**

**8.1.1** Finance have reviewed the report and can confirm that all salaries will be accounted for in the 2023-24 budget.

**8.1.2** Comments approved by Lesley Shields, Head of Finance for Assistant Chief Executive and Resources on behalf of the Director of Finance. 10/2/2023

### **8.2 LEGAL IMPLICATIONS**

**8.2.1** The Council must comply with the requirements of sections 38, 39 and 42 of the Localism Act 2011, which require the Council to prepare, approve and publish a Pay Policy Statement for the financial year 2023/2024 and in future years and must under section 40 of the Localism Act 2011, have regard to any guidance issued or approved by the Secretary of State. Under section 41 of the Localism Act 2011, the Council must comply with its Pay Policy Statement when making certain determinations relating to remuneration. The Council must also comply with its obligations under Regulation 10 of the Accounts and Audit (England) Regulations 2015 and the Local Government Transparency Code. The Pay Policy Statement sets out the Council's policy relating to the pay of its workforce (excluding school-based employees) as required under the Localism Act 2011.

**8.2.2** The proposed statement complies with the statutory requirements for pay policy statements. Under section 112 of the Local Government Act 1972, the Council has the "power to appoint officers on such reasonable terms and conditions as

the authority thinks fit”, subject to section 41 of the Localism Act 2011 (requirement for determinations relating to terms and conditions of Chief Officers to comply with the Pay Policy Statement). The Localism Act 2011 contains a definition of ‘Chief Officer’ which is set out in the proposed policy. The Localism Act 2011 also requires that the Council must decide on a definition of ‘lowest paid employees’ and set out the reasons for that decision. In accordance with Section 38 of the Localism Act, this Pay Policy Statement sets out the Council’s policy for 2023/24 on:

- The remuneration of its senior staff designated Chief Officers
- The remuneration of its lowest paid employees
- The relationship between the remuneration of its Chief Officers and the remuneration of staff who are not Chief Officers

**8.2.3** On 12 May 2022, the Government issued Statutory Guidance on the Making and Disclosure of Special Severance Payments by Local Authorities in England and the Council must adhere to that guidance as part of the best value regime for local authorities in England. The best value duty, as set out in section 3 of the Local Government Act 1999 provides “A best value authority must make arrangements to secure continuous improvement in the way on which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. The best value duty is relevant to local authority duties to deliver a balanced budget (Part 1 of the Local Government Finance Act 1992), provide statutory services and secure value for money in spending decisions. This includes decisions to make Special Severance Payments. The Pay Policy Statement also includes the Council’s policy on severance payments in accordance with section 38 of the Localism Act and the May 2022 statutory guidance.

**8.2.4** Part 3 of the Constitution - Responsibility of Functions, section 2, sub-section 2.5 sets out the terms of reference of the General Purposes Committee, paragraph 5 states that the General Purposes Committee will consider and recommend to Full Council the Pay Policy Statement as required. Following a recommendation from the General Purposes Committee, Full Council is then expected to approve the Pay Policy Statement for 2023/2024. Part 2 of the Constitution- Article 4- Functions of Full Council, section 4.1, paragraph (p), provides that Full Council shall approve the Pay Policy Statement.

**8.2.5** The terms of reference for the General Purposes Committee provide in paragraph 6 *‘The function in respect of voting on severance packages of staff above such specified threshold as may, from time to time, be updated by statutory guidance’* and paragraph 7, *‘the function of deciding in respect of severance packages, whether the Council wishes to vote on a severance package above the specified threshold’* rests with the General Purposes Committee. Part 2 of the Constitution- Article 4- Functions of Full Council, section 4.1. paragraph (f) provides that Full Council shall exercise the function of agreeing and amending the terms of reference for non-executive Committees. Part 2 of the Constitution- Article 15- Changes to the Constitution - section 15.2, paragraph (a) provides *‘subject to paragraph (b) below, changes to this Constitution shall only be approved by the Full Council after consideration of written proposals made by the Mayor, Cabinet, General Purposes Committee or Monitoring Officer and the submission of a recommendation to a meeting of the Council. Changes approved by the Council shall take effect from the conclusion*

*of the meeting at which those changes are agreed unless the recommendation specifies otherwise.’ Section 15.2, paragraph (b) provides ‘unless the change relates only to the operation of Scrutiny and Overview Committee or Sub-Committees, any resolution of the Full Council to approve a change will have no effect without the written consent of the Mayor.’*

**8.2.6** Comments approved by Sandra Herbert, the Head of Litigation and Corporate Law on behalf of the Director of Legal Services and Monitoring Officer.

### **8.3 EQUALITIES IMPLICATIONS**

**8.3.1** The Council will continue to carefully monitor the equalities issues associated with pay, including the pay ratio, gender pay gap, ethnicity pay gap and disability pay gap. New appointments to senior roles will be reviewed, including the appointment of senior staff by protected characteristics, a key equality performance indicator.

**8.3.2** Recipients of severance payments will be monitored by protected characteristic. Any arising action from analysis of data should be considered by the appropriate Internal Control Board.

**8.3.3** Comments approved by Denise McCausland, Equalities Programme Manager 14/2/2023.

### **8.4 HUMAN RESOURCES IMPLICATIONS**

**8.4.1** The Human Resources implications are set out in the main body of this report.

**8.4.2** Comments approved by Gillian Bevan, Head of HR Resources and Assistant Chief Executives Directorates 10/2/2023.

## **9. APPENDICES**

**9.1** 1. *Pay Policy Statement 2023-24*

1a *Chief Officer Grades*

1b *Pay Structure for Chief Officers*

1c *Mileage rates*

1d *Early Retirement and Redundancy Scheme*

1e *Statutory Guidance on the making and disclosure of Special Severance Payments by local authorities in England*