

25 January 2023		ITEM: 12
Council		
Annual Pay Policy Statement 2022/23		
Wards and communities affected: All	Key Decision: N/A	
Report of: Graham Snell – Portfolio Holder for Finance		
Accountable Assistant Director: n/a		
Accountable Director: Jackie Hinchliffe – Director of HR, OD & Transformation		
This report is Public		

Executive Summary

The Localism Act 2011 requires the Council to publish an annual Pay Policy Statement. Council approved the 2022/23 Pay Policy Statement in February 2022.

In accordance with the recommendation from the independent market assessment the 2022/23 Pay Policy included a pay increase of between 2.25% and 2.5%. Noted in the report was the unpredictability of the national pay negotiations.

The national negotiations for Local Government pay for 2022/23 have now concluded with an agreed increase of £1,925 on all pay points. This represents a higher increase than applied by the Council.

The recognised Trade Unions have all requested the Council apply the higher NJC award in the current year. This will cost £2.758m in 2022/23 and represents an unaccounted in year pressure with an already declared S114.

General Services Committee (GSC) have considered a report setting out the costs, legal framework, options, and risks in applying the NJC award and making a change to the Council's 2022/23 Pay Policy Statement and pay scales. GSC unanimously recommend Council support a change to the 2022/23 Pay Policy Statement to implement the NJC award in year.

General services Committee also supported the Commissioners recommendation to review pay arrangements and requested terms of reference to come back to the Committee.

1. Recommendations

- 1.1 The Annual Pay Policy Statement 2022/23 is revised to replace the locally agreed pay award with the higher national award.**
- 1.2 As requested by the commissioner a full review of pay arrangements be carried out before any future agreements are made, which should include a review of policies for increments and all other pay allowances to ensure all opportunities for mitigating the pay growth are considered.**
- 1.3 An appropriate oversight arrangement for decision making be introduced.**

2. Introduction and Background

- 2.1 The Localism Act 2011 requires the Council to publish an annual Pay Policy Statement for chief officers. This must be approved by Council by 31st March each year. Like many other local authorities, Thurrock's statement includes a pay policy for all categories of employees which reflects existing employment terms and conditions.
- 2.2 The Annual Pay Policy Statement for 2022/23 was approved by Council in February 2022. The Pay Policy Statement included a cost of living pay increase of 2.5% for the lowest bands and 2.25% for the remaining bands. This increase was based upon the market assessment conducted in December 2021 and recommended by the independent assessor.
- 2.3 The outlook for pay settlements in 2022 was unpredictable due to the challenging back drop of the post Covid economic recovery; the cost-of-living crisis; the lifting of the public sector pay freeze and the unresolved Local Government pay negotiations.
- 2.4 The annual cost of living review conducted in December 2021 to inform the 2022/23 Pay Policy Statement did not reference the National Joint Council recommendations as this information was not available at the time.
- 2.5 In July 2022 the National Employers made a one year (1 April 2022 to 31 March 2023) final offer to the Trade Unions representing the Local Government Workforce. The elements of the offer relevant to the Council are:
 - **With effect from 1 April 2022, an increase of £1,925 on all NJC pay points 1 and above**
 - **With effect from 1 April 2023, an increase of one day to all employees' annual leave entitlement**

The national offer achieves a bottom rate of pay of £10.50 with effect from 1 April 2022.

- 2.6 Following pay consultations, the NJC confirmed on 1 November 2022 that agreement had been reached encouraging employers to implement the new pay scales as swiftly as possible.
- 2.7 The three recognised Trade Unions, Unison, Unite and GMB, have all formally requested the Council apply the NJC agreed increase of £1,925 across all the Council's pay points with effect from 1 April 2022.
- 2.8 This report seeks approval to amend the Council's pay scales to incorporate the NJC agreed pay award – all other elements of the Pay Policy remain as agreed in February 2022.

3. Issues, Options and Analysis of Options

- 3.1 Under Thurrock's 2019 Human Resources Framework Collective Bargaining Agreement, the Council agreed to remove the historical annual link to National Joint Council for Local Government (NJC) pay rates and for the pay rates to be determined locally. The Agreement states:

- ***Annual Cost of Living Review***

- *The Council reserves the right to review, revise, amend or replace the content of the Pay Policy Statement from time to time to reflect service delivery needs and to comply with new legislation, including the inclusion of the payline.*
- *The annual cost of living review will be a locally agreed decision with reference to the National Negotiating committee (NJC) recommendations, an independent pay review (commissioned annually by the Council), budget availability and the UK Living Wage.*
- *Should the Council decide that annual pay will increase, this will be applied equally across all pay points.*
- *The cost-of-living review will continue to be effective from 1st April annually.*
- *Whilst the annual increase will be locally agreed, the Council commits that the overall increase to the pay line over the lifetime of this agreement (as per section 2.5) shall not be less than the cumulative "headline" increase of the NJC scales, as measured over the same period. This excludes any weighting or "loading" of the NJC scales.*

- 3.2 The current five-year Agreement runs until the 2023/24 financial year. The Agreement does not require the annual cost of living increase to reflect the NJC Award. Instead, the Council is contractually obliged to:

- Conduct and agree an annual cost of living review.

- Ensure the overall increase in the pay line over the lifetime of the agreement (1 April 2019 to 31 March 2023) is not less than the cumulative increase of the NJC scales over the same period.
- In addition, the Council aims to ensure its lowest pay point is not below the lowest pay point on the NJC scale and keeps pace with the expected National Living Wage.

3.3 The annual cost living increases that have been applied up until the current year are:

Year	National Award	Thurrock Award
2019/20	2.00%	4.25%
2020/21	2.75%	2.00%
2021/22	1.75%	0.00%
Total	6.50%	6.25%

3.4 Following approval of the Pay Policy at Council in February 2022, the Council implemented a pay increase of 2.5% for Bands A & B and 2.25% for Bands C to I. This essentially levelled up against the NJC increase over the previous three years and applied a 2% pay increase for 2022/23, this was in line with expected increases in the public sector at the time and agreed with the Trade Unions.

3.5 The 2% pay increase awarded by the Council is significantly below the offer that has now been agreed nationally. The national pay award represents a pay increase of over 13% to the Council's lowest pay point and 2.75% to the highest pay point. The 2022/23 NJC pay scales now have a minimum pay point of £10.50, the Council's minimum pay point is £9.50.

3.6 Following the NJC agreement the local Trade Unions all requested the Council implement the national award, effectively asking to reopen local pay negotiations for the current year. Slough and Croydon Councils, both subject to S114 and intervention, have implemented the NJC award, as have the majority of the regional and London Councils who represent the Councils main competitors for resources.

3.7 From a legal position the Council have complied with the Collective Agreement in the current year. An annual cost of living review has been undertaken, albeit without reference to the NJC award, agreed with the Trade Unions and by Council as part of the Pay Policy Statement. The increase was implemented on 1 April 2022.

3.8 There is a possible risk of legal challenge from two perspectives; firstly, the cost-of-living review did not reference the NJC negotiations and secondly in relation to the implied contractual term of mutual trust and confidence – the Trade Unions could argue that the decision not to pay or to defer payment of the higher national award is irrational and capricious in the context of the

current cost of living challenges and in breach of the mutual trust and confidence term.

- 3.9 The Collective Agreement also references budget availability. The Council has issued a Section 114 Notice as it is unable to balance the budget in the current financial year. The Council's financial position is unprecedented and Government support will be required for many years. The additional £2.758m cost of implementing the NJC award was not built into the budget for the current financial year, it is therefore an unfunded additional pressure in 2022/23. Finding an additional £2.758m in the current context results in further service and staff reduction considerations. The additional cost of the NJC award has been factored into the MTFS from next year however is essentially unfunded as it simply increases the significant structural deficit.
- 3.10 The Collective Agreement runs until 2023/24 and ends on the 31st of March 2024. Consequently, the next financial year is the final opportunity for the Council to meet the legal and contractual 'no-detriment' clause and match the NJC increases over the period of the Agreement.
- 3.11 As reported above the three recognised Trade Unions have all formally requested the Council implement the NJC Award in the current year. The local Unite Union have advised they will be seeking a ballot for industrial action due to the delay and uncertainty of the Council implementing the award. Unison have advised of specific groups of key staff expressing concern and disappointment that the award has not been implemented.
- 3.12 General Services Committee considered three options:

- **Implement the NJC Award in year.** This option reverses the local increases applied to the pay scales from 1 April 2022 and instead implements the NJC award of £1925.00 to each pay point. This meets the request of the Trade Unions, complies with the spirit of the Collective Agreement, ensures the Council's pay rates remain competitive and in line with national arrangements and avoids disputes with Trade Unions and the workforce. It also ensures the lowest paid groups of staff earn a salary equivalent to the national rate and receive an above inflation increase in pay during a severe cost of living crisis.

The financial implications of this option are significant. The additional costs to the general fund in 2022/23 are £2.758m net, representing an unbudgeted increase in expenditure which increases the in-year deficit.

- **Defer the implementation of the NJC Award to 2023/24.** The Council is legally obliged to match the NJC pay increases over the five-year period of the Collective Agreement, however this does not require the Council to match the NJC awards annually. The Council agreed

and implemented a pay award for 2022/23 with effect from April 2022. This option avoids increasing the in-year deficit by £2.758m.

There are considerable risks associated with this option including formal disputes and industrial action, business continuity and productivity, failure to attract and retain resources. In addition, it would require a substantial pay award in 2023/24 to remain compliant with the Collective Agreement and potentially a failure to negotiate a new Collective Agreement from 2024 onwards.

The costs of deferring the NJC award could exceed the costs of implementing it.

- **Partial implementation of the NJC Award.** There are 1,969 FTE employees currently covered by the Thurrock pay scale (excluding vacancies) which covers bands A - I. This pay scale does not cover senior managers. The Collective Agreement requires that any pay increase should be applied equally across all pay points. However, given the exceptional circumstances an approach which targets specific groups and provides a partial implementation could be considered and proposed to the Trade Unions.

General Services Committee considered options for partial implementation and the reduction in costs they represented. A partial implementation provided both the benefits and the consequences associated with the other options, dependent upon the breadth of the implementation. It was the most complex to implement as there would need to be consultation with the Trade Unions to remove the requirement to apply awards across all pay points, this could also cause a delay and a timing issue for next years' pay policy statement. There are also additional risks and consequences associated with the partial approach:

- It could be divisive for teams and services and be seen and felt as unfair.
- The pay scales would be impacted and the differentials between pay points and grades eroded with the possible risk of equal pay claims.

4. Pay Award for Senior Management 2022/23

- 4.1 The Senior Manager pay scales are separate to the Thurrock pay scales and are not covered by the collective agreement. The independent market assessment recommended a 2.25% increase across the Senior Manager Pay Scales. This was implemented on 1 April 2022. The Council is not proposing to apply the national award to senior pay.

5. Consultation

5.1 The report has been shared with the Commissioners.

6. Implications

6.1 Financial

Implications verified by: **Jo Freeman**
Finance Manager

There is a general fund staff pay budget of £90.302M (excluding pensions) which is forecast as fully spent in year. There was an agreement of a pay award between 2.25% and 2.5% which cost a total of £2.251m to the Council and was budgeted for as part of a total cost increase of £4.603m (including a further £0.570m relating to the increase in Employer NI). This is now superseded by a proposed pay deal of £1,925 for all staff which, for the General Fund employee base, represents a cost of £5.009m. This is an increased cost of £2.758m over the original £2.251m. The total increase to the staff pay budget in 2022/23 as a result of all increases is therefore now £7.361m which represents 8% of the budget. The balance of £2.352m is due to increments (£1.782m) and the increase to employer National Insurance increase contributions of (£0.570m) which are now committed in year. A review of pay assumptions for 2023/24 will be carried out as part of the budget setting process.

The additional £2.758m is unbudgeted for in 2022/23. The projected cost is currently reflected within the Councils Medium Term Financial Strategy in 2023/24. If the proposed pay award was not supported in 2022/23 the Medium-Term Financial Strategy would be amended, and the current projected deficit would reduce by the equivalent amount.

A decision to implement additional pay costs in the current financial year will further increase the funding gap the Council has identified in 2022/23. The Council continues to experience significant revenue budget pressures and exceptional wider financial risks, and as result, a Section 114 notice was issued on 19th December 2022.

The expenditure controls put in place for all aspects of employee spend will support a reduction in spend and work is underway to review existing vacancies and mitigate the impact of any agreed additional award. Where recruitment is essential a delay to recruitment will be enforced, subject to risk assessments and demand pressures. However, it is noted there is likely to remain a significant residual pressure if the NJC award is adopted.

The wider considerations associated with not implementing the NJC award are set out in the report and the potential financial consequences of these are

referenced but remain uncertain. These should also be considered in the context of the delivery of the revised strategic priorities of the Council in the context of the section 114 notice.

The impact on the HRA of the revised pay award is an additional cost of £0.395m and this will be managed within the existing budget. This increases the total pay cost from £0.737m to £1.132m.

6.2 Legal

Implications verified by: **John Jones**
Interim Director of Legal and Governance

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 content of this report and the recommendations comply with the Council's responsibilities in this regard. Section 39(4) permits the Council to amend its policy by resolution.

The risks in not implementing the change are set out in paragraph 3.8 of this report.

The key risk relates to the collective bargaining agreement.

Clause 9.5 of the Thurrock agreement states:

Whilst the annual increase will be locally agreed, the Council commits that the overall increase to the payline over the lifetime of this agreement (as per section 2.5) shall not be less than the cumulative "headline" increase of the NJC scales, as measured over the same period. This excludes any weighting or "loading" of the NJC scales.

It is more likely than not that a Tribunal or Court would consider provisions of this Collective bargaining Agreement dealing with pay as forming part of individual contracts of employment of Thurrock Council employees.

Failing to honour contractual commitments are likely to either 1) prompt a strike 2) employees working under protest and submitting mass ET claims for unlawful deduction from wages 3) a combination of 1+2.

In the event of 2) If claims are brought asserting that the Council has not complied with the collective agreement the Council would probably be unsuccessful in resisting those claims and would incur additional legal costs.

The Council's Chief Finance Officer has issued a section 114 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.

As it is likely that the provisions of Thurrock Collective bargaining agreement would be found to be part of the contracts of employment of council employees, expenditure in relation to pay would fall into the category of an exceptional reason for spending to be agreed. Members will need to consider the advice of the Chief Financial Officer as how the additional pay costs would be met.

6.3 **Diversity and Equality**

Implications verified by: **Becky Lee**
Team Manager – Community Development and Equalities

This pay statement implements the recommendations and standard protocols set by law and policy and therefore there are no diversity and equality implications arising.

6.4 **Other implications**

The implications of the various options have been detailed in the report.

7. **Appendices**

Appendix 1 – Pay Policy Statement 2022/23

Report Author:

Jackie Hinchliffe

Director of HR, OD & Transformation