

# Market Supplement Procedure

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## Contents

### Page

1.0	Introduction	3
2.0	Scope and aim of the procedure	3
3.0	Definition	4
4.0	Legal framework	4
5.0	Process	5
6.0	Responsibilities	7
7.0	Monitoring and evaluation	8

## **1.0 Introduction**

- 1.1 Walsall Council is committed to the principles of equal pay for work of equal value and has introduced a single job evaluation scheme (National Joint Council) to measure the relative value of all jobs. The grading, and therefore the salary range, of all posts are determined by the outcome of job evaluation. However, it is also essential that Walsall Council is able to attract and retain high performing employees with the skills, knowledge and experience to meet the changing needs in service delivery.
- 1.2 There are times when the grading for a post results in an inability to successfully recruit to, or retain employees in particular posts. In such cases it may be appropriate to pay a market supplement in addition to the salary to ensure that such a post is filled. Such a payment is lawful under the Equality Act 2010 where there is evidence to justify that market factors are the “material reason” for the post attracting a higher rate of pay than other posts graded similarly.
- 1.3 Walsall Council recognises the need to have a procedure to deal with difficult recruitment situations where conditions in the market for particular skills are causing recruitment and retention problems that are impacting on the delivery of the service to customers as a result of employee shortages.
- 1.4 Walsall Council needs to be aware of the risk of perpetuating further claims for equal pay; the rate paid for the job should remain at the evaluated rate to protect the authority. A market supplement can be paid however, in order for the authority to defend the supplement (in the event of legal challenge) it must be reviewed annually and have the facility to be removed if the market changes.
- 1.5 This procedure will set out when such supplements may be paid, the process by which these cases are considered and approved and the conditions applied to them.

## **2.0 Scope and aim of the procedure**

- 2.1 This procedure covers prospective employees and existing employees of Walsall Council.
- 2.2 This procedure aims to ensure that the Council is able to attract and retain highly skilled employees by offering competitive salaries.

- 2.3 It aims to provide a fair and transparent system for considering payment of a market supplement where a recruitment and/or retention problem has been identified, which relates to a lack of competitiveness between the remuneration levels within the Council and the relevant labour market for the particular job role.
- 2.4 It aims to ensure that the Council meets the requirements of equal pay legislation and is not discriminatory in applying a market supplement to a post.

### **3.0 Definition**

- 3.1 Market Supplements are additional payments paid where a particular skill, specialism or qualification attracts a higher rate of pay in the labour market than is attributed to the job through job evaluation. Market supplements are payable in addition to basic salary but form part of the pensionable pay. They are detailed separately in the offer of appointment/amendment to terms and conditions. This makes it clear that this is in addition to the rate recommended for the job through job evaluation and payments may be stopped with appropriate notice at any given time.

### **4.0 Legal framework**

- 4.1 The Equalities and Human Rights Commission recognises that an employer may wish to pay one group of workers more than another, even though their work is of equal value, because the 'going rate' for the job is higher. This may be due to geographical reasons or a skills shortage of qualified or experienced employees in one job as compared to another. The scope for using market forces as a basis for explaining the difference in pay between a man and a woman doing equal work is limited. However in some circumstances market forces can provide a defence to an equal pay claim.
- 4.2 The appointing manager must be able to demonstrate that there are objectively justified grounds to enhance the pay of a particular job by the payment of a market supplement. This includes:
- Demonstrating that there are recruitment and retention difficulties resulting in actual or foreseeable operational and/or organisational problems
  - Demonstrating that these problems will be removed or lessened by paying a market supplement and that it will be subject to review as circumstances change

- Demonstrating that the external market rate for the job is higher than the internal rate
- Ensuring that there is a valid comparison between the post concerned and the posts identified in other organisations, i.e. are they the same in terms of duties and responsibilities, and are there any differences in conditions of employment/overall reward package
- Demonstration that the proposal is free from bias on the grounds of gender, race, disability, marital status, religious belief, sexual orientation or other unlawful grounds of discrimination.

## **5. Process**

### **5.1. Proposal to pay a market supplement**

The appointing manager, in consultation with their Human Resources Business Partner must provide a business case containing the following information:-

- Recruitment - where available: the number of applications for a post; the number of candidates short listed; and the appropriateness of the media used.
- Employee turnover - where available, the employee turnover rate for the post and reasons for leaving stated on exit interview forms.
- Impact - an outline of the operational problems caused by the recruitment and retention issues; how long the post has been vacant and the impact on the Service.
- Options considered - whether the post could be redesigned or covered in an alternative way.
- Consideration must be given to training and development of existing employees and establishing trainee posts, to address any recruitment difficulties or skills shortages.
- Market data - what appears to be the local 'going rate' for the job. This can be obtained from job advertisements, survey data/pay databases and direct from other councils or relevant public sector employers. Posts must be matched in terms of duties and responsibilities, and the terms and conditions and total reward

package must be ascertained. Information should be provided for comparable posts in at least three relevant organisations. The median remuneration level within the relevant local labour market survey should be used as the indicator of the 'market rate' for the post.

For an existing post where there is a specific skill set that is 'business critical' to the service area, the appointing manager may wish to pay a market supplement. Having obtained evidence, they should complete a Market Supplements Business Case for approval by the Executive Director in the first instance, followed by the Head of Human Resources.

Where it is a new post, the above exercise can be conducted prior to the request for approval to establish a new post. It is the service areas responsibility to ensure budget is available to pay the market supplement.

The payment should be set at a level to alleviate the recruitment/retention difficulties and can be justified in terms of the rates paid to the comparator jobs in the local market place. The value of the supplement will be the difference between the internal comparison and the market rate and will be for a specific amount.

Records must be maintained to demonstrate the purpose, justification and extent of any proposed supplement. These will be held on the personal file within Human Resources.

## 5.2. Making a payment

- If a market supplement is introduced to a particular post category, it will not automatically be applied to all current employees in that post category. The law requires that to ensure equal pay principles, market supplements are only awarded in cases where a 'genuine material reason' can be demonstrated for the payment.
- Human Resources will provide to employees in a post which attracts a market supplement written confirmation detailing the basis for paying a market supplement, the amount of the payment, the effective date, the duration of the payment, arrangements for review and how any subsequent changes would be implemented. The post holder must agree to and sign for an amendment to their contract. This will state that if upon review there is no longer justification to pay a market supplement, that it will be withdrawn. The authority will seek to ensure that three months' written notice will be given, but reserves the right to shorten or extend when it considers that appropriate.

- If the post holder is promoted or appointed to another position which is not subject to a market supplement, the market supplement will cease with effect from the date of their commencement in the new position.
- The amount of any market supplement must be clearly identified as a separate payment and not incorporated in the basic grade/rate of pay for the post. It will not alter the grade of the post determined by the job evaluation process.
- Payments will be made on a pro-rata basis to the hours worked for employees working part-time in the post, based on the amount for full-time employees.
- The cost of market supplements will be met from the relevant service area's budget.
- The market supplement will be subject to tax, national insurance (NI) and will be pensionable. In seeking approval for market supplements the cost for the employers NI and pension contributions along with the cost of the market supplement must be included in the business case.
- The market supplement would be included in gross pay and will therefore be included in calculations for e.g. sick pay, maternity/paternity/adoption pay, holiday pay, overtime pay, redundancy pay, and when making any deductions.
- If the employee in post becomes subject to protection of earnings for any reason the market supplement payment will not be included in the protection arrangements.
- The market supplement payment may be suspended if an employee is on a long term sickness absence. Long term absence is defined as a continuous absence of 4 weeks or longer. Decisions will be made on a 'case specific' basis.
- The market supplement payment will not be subject to national pay award increases on the basis that it will be reviewed on an annual basis.
- The market supplement payment will not be disclosed for mortgage or loan application purposes, except as discussed with the employee, based on the fact that it is a temporary payment

subject to review and could put the employee at longer term personal financial risk.

### **5.3. Reviewing the payment of a market supplement**

- It is necessary to review the payment of a market supplement, in order to ensure that it continues to be justified and that the amount paid is still appropriate.
- The manager must complete an updated Market Supplements Business Case and obtain approval for renewal from the Executive Director in the first instance, followed by the Head of Human Resources.
- Market supplements are awarded to a post for a specified period of time. They will be reviewed every twelve months, in the event of the review not taking place within the specified period, payment will be stopped.
- A review will also be carried out when an individual leaves a post that has attracted a market supplement, in order to assess the need to advertise the vacancy with a market supplement in the current labour market. Where such a review leads to a decision to withdraw the market supplement, this will apply with immediate effect to vacant posts. Existing employees still in receipt of a market supplement will be given three months' written notice (although the authority reserves the right to change this period) that the market supplement is being withdrawn.
- If, subsequent to approval to pay or to continue to pay a market supplement for a post, a post is re-graded as a result of job evaluation, a review should be carried out to assess the need to continue to pay a market supplement or to vary the amount to be paid. Depending on the outcome, Human Resources will write to the post holder(s) accordingly.

### **6.0. Responsibilities**

- 6.1. It is the responsibility of the appointing manager to provide a business case to demonstrate the grounds to pay a market supplement.
- 6.2. Human Resources will assist the appointing manager in gathering factual evidence.



- 6.3. Payment of any market supplement, and subsequent withdrawal, will be subject to approval by the Executive Director in the first instance followed by the Head of Human Resources.
- 6.4. Human Resources will confirm in writing to the employee the details in relation to payment of a market supplement at the point it is applied to the post and upon review.
- 6.5. Human Resources will request that the appointing managers of posts which include a market supplement review the payment one year after the initial approval and at the time of future recruitment to the post.

## **7.0 Monitoring and evaluation**

- 7.1 This procedure will be reviewed on a regular basis as necessary and more frequently if the need arises as a result of a change of regulation or legislation. The review of the procedure will be carried out in accordance with the established procedures agreed and include engagement and consultation with all appropriate stakeholders.
- 7.2 The procedure will be compliant with the requirements of Equality Act 2010 and the public sector equality duty to advance equality of opportunity and eliminate discrimination. Council's recruitment process will continue be used to instigate positive action where applicable. All casework and intelligence gathered in respect of the market supplement posts and appointments will be analysed for its impact on the council's public sector equality duty.