



MARKET SUPPLEMENT POLICY

Approved Council Executive: 5 September 2023

DOCUMENT CONTROL

Policy

Title:	Market Supplement Policy
Owner:	Human Resources

History

Version	Revision Date	Summary of Changes	Future Review Date
1.0		New Policy	September 2028

Committee Approval

Version	Committee	Committee Date
1.0	Council Executive	5 September 2023

MARKET SUPPLEMENT POLICY

(Covers all employees, excluding Chief Officers)

1. INTRODUCTION

- 1.1 The rate of pay payable for posts within the council is determined according to the national terms and conditions applicable to the particular staffing group as follows:
- Posts covered by the National Agreement on Pay and Conditions for Local Government Employees (Red Book) are evaluated using the Scottish Joint Council's (SJC) Job Evaluation Scheme.
 - Pay for Teachers is determined by the National Scheme of Salaries and Conditions of Service for Teachers and Associated Professionals as updated.
- 1.2 Determining pay in this way ensures that the council meets its statutory obligation of equal pay for work of equal value.
- 1.3 In exceptional circumstances, where the Council is able to demonstrate that recruitment and retention issues are impacting on service delivery the payment of a temporary additional element of pay paid in addition to basic salary may be justified. This should be supported with clear evidence that the Council's rate of pay for a defined post or group of posts falls below the required level in relation to the comparator market.
- 1.4 This policy will provide services with information on the circumstances under which it may be possible to use market supplements to enhance the total remuneration package offered to postholders and applicants in order to attract and retain the required calibre of staff.

2. MARKET SUPPLEMENTS

- 2.1 A market supplement is a temporary additional payment to employees in a specific post where there is clear evidence that the council's total remuneration package is causing recruitment and retention issues resulting in unacceptable risk.
- 2.2 Unacceptable risk would include:
- Inability to meet essential service delivery;
 - Inability to comply with statutory responsibilities;
 - Reputational damage to the council; or
 - Financial risks to the council.

3. PRINCIPLES

- 3.1 The following guiding principles must be followed when considering and applying market supplement payments to ensure legal compliance and minimise the risk of creating equal pay liability.

- All other non-pay options to improve recruitment and retention to the post must have been considered before an application for approval of a market supplement can be submitted.
- Approval of a market supplement application will only be granted where a business case is supported by evidence of recruitment and retention difficulties, consideration of alternative non-pay options and prevailing market conditions and comparators, which provide justification for application of a market supplement.
- Market supplement payments must be justifiable with reference to current market conditions and therefore will only be agreed for a maximum period of 24 months.
- A review of market conditions will be conducted prior to the end of the agreed period to determine whether the payment should be withdrawn, extended or changed.
- The payment of market supplements may be reviewed at any time where market conditions no longer justify the payment.
- Twelve weeks' notice will be provided to postholders in the event that a market supplement will end early or is subject to change.
- Market supplement payments must be approved by the Chief Executive.
- Market supplement payments will be made to all postholders of the relevant post that meet the criteria for the supplement, those newly recruited and existing employees.

4. LEGAL CONTEXT

- 4.1 The council must ensure that the payment of a market supplement does not lead to exposure to equal pay claims under the Equality Act 2010. Payment of a market supplement has the potential to, for example, result in male and female employees being paid differing amounts for work which has been rated as equivalent under the council's job evaluation scheme or other national pay agreement. In order to successfully resist equal pay claims the council must be able to show that the difference in pay is explained by a material factor that does not involve direct or unjustified sex discrimination. The material factor in this case must therefore be the prevailing market conditions.
- 4.2 The ability to evidence market conditions and the business case to support market supplements, along with a consistent approach to their application is therefore essential to mitigate against any risk of successful equal pay challenge.

5. JOB EVALUATION

- 5.1 Prior to preparing a business case, consideration should be given to whether it would be appropriate to submit the relevant post for job evaluation and re-grading, therefore potentially mitigating the need for a market supplement.
- 5.2 Job evaluation and re-grading may be possible where the post has not been evaluated for a significant period of time and/or the post has undergone material change since the last time it was evaluated.
- 5.3 An initial assessment, by Human Resources, of the job evaluation factors against an up-to-date job description provided by the service would indicate whether there is merit in formal job evaluation by an appropriately trained panel.

6. BUSINESS CASE

- 6.1 A business case for payment of a market supplement may be made where recruitment and retention issues are resulting in unacceptable risk to service delivery, compliance with statutory responsibilities, the council's reputation or financial stability.
- 6.2 Such risks may be identified when a service has experienced difficulty in recruiting to a specific post where the postholder or group of postholders provide essential services and are in a recognised hard to fill position or where there is a relevant skills shortage.
- 6.3 The cost of applying a market supplement must be managed within the current service budget and future budgetary position for the duration of the proposed period of the market supplement. Therefore, the business case must consider how such costs will be managed in relation to the number of postholders to whom the market supplement will apply.

Evidence of Recruitment and Retention Issues

- 6.6 There must be more than a belief that there are recruitment and retention difficulties, and therefore services must provide evidence including:
- Turnover rates;
 - Exit questionnaire data; and
 - Unsuccessful recruitment campaigns.

Non-Pay Factors

- 6.7 Recruitment and retention problems are often caused by factors other than pay which should be addressed in the first instance, before application of market supplements is considered. The Service will be required to provide evidence that recruitment and retention issues cannot be successfully addressed through non-pay options or promotion of the total benefit package. Applications should therefore provide evidence of consideration of the following:
- Job re-design;
 - Effective advertising;
 - Opportunities for development;
 - Support or facilities offered in post;
 - Any matters relating to employee relations or the working environment raised by staff either informally or formally or through the employee survey;
 - Promotion of the council's total benefit package including – pension provision, annual leave, family care benefits, flexible working, employee benefits platform

Equality Impact

- 6.11 The business case should consider any impact to employee groups across the council to establish any inequality in relation to protected characteristics. Careful consideration should be given to employee groups where posts have been evaluated as being of equal value.

6.12 A full Integrated Impact Assessment should be conducted with the outcome of the assessment summarised in the Market Supplement Application Form.

6. MARKET CONDITIONS AND IDENTIFYING COMPARATORS

6.1 In order for a market supplement to be approved, there must be clear evidence that the basic rate of pay for the specific post is directly contributing to increased labour turnover or an inability to recruit. Therefore, in addition to ruling out other non-pay factors, consideration must be given to the prevailing market conditions with a view to identifying comparators.

6.2 The case for payment of a market supplement should be supported by clear evidence that the council's rate of pay for a specific post falls below the 'going rate' in the comparator market.

6.3 When considering market rates and determining whether they are an appropriate comparator, account should be taken of the following:

- The employment sector – local authority, wider public sector, private sector or voluntary sector and the ability of employees to work across these sectors;
- The geographic labour market – where are the comparator organisations based in relation to the council and where might employees reasonably travel from;
- The organisations considered to be the main competitors for talent in relation to the specific post; and
- The size and resources of the potential comparator organisation.

6.4 In addition to the organisational factors above, identification of an appropriate comparator must take account of the post itself. The posts should be the same, or broadly similar, in terms of duties and responsibilities and knowledge and skill requirements. It may therefore be necessary to obtain job descriptions for comparator posts.

6.5 Comparative data from more than one source should be provided as evidence, obtained for example through:

- Benchmarking;
- National earnings surveys or sector specific surveys;
- Local and National job advertisements; and
- Employer networks (local authority and profession specific)

7. DETERMINING THE MARKET SUPPLEMENT PAYMENT

7.1 When determining the market supplement payment to be made, the total remuneration package (salary and wider benefits) of appropriate comparator posts should be considered.

7.2 The starting point is to assess the extent of the difference between the comparator market rate and the council rate, taking account of the salary range payable and any additional allowances.

- 7.3 Market supplements are normally based on the median pay of comparators, however the total remuneration package, inclusive of any market supplement, should be sufficient to enable the recruitment and retention of employees and should not exceed the level deemed necessary to attract suitable candidates.
- 7.4 When recruiting to a post that attracts a market supplement payment, care must be taken when appointing on higher pay points within the grade as the total remuneration must justify market conditions.

8. PAY CONSIDERATIONS

8.1 Market supplement payments will be:

- paid monthly as an allowance, clearly identifiable and separate to basic pay;
- pensionable and subject to tax and NI;
- pro rata for part-time employees;
- payable during authorised paid leave including sickness absence and family care leave – calculation of 90% of earnings and half pay for maternity leave and other types of family care leave will be inclusive of any market supplement payment, as will half pay for sick leave.
- payable during a paid suspension from work;
- included in any deductions related to unpaid leave or other unpaid absence;
- payable for hours worked up to 36 hours per week (inclusive of any overtime up to 36 hours, standby, sleep in or recall to work) – overtime above 36 hours per week will not attract market supplement payments.
- adjusted accordingly where contracted hours are increased/decreased;
- payable to all postholders of the relevant post including those undertaking the role on a temporary or supply basis;
- payable during contractual notice periods.

8.2 Market supplement payments will **not**:

- be paid if an employee moves to, or is seconded/redeployed to, a post that does not attract the market supplement;
- attract pay award increases or be affected by incremental progression;
- be included in pay protection.

8.3 It is acknowledged that payment of market supplements will impact on pay differentials between posts attracting a market supplement payment and those who may be directly line managing them. However, employees in posts not in scope of the relevant market supplement payment should not automatically receive a pay rise to maintain pay differentials. Erosion of pay differentials will be a consideration for the Chief Executive in determining whether a proposed market supplement should be approved.

9. APPLICATION AND APPROVAL PROCESS

Initial Discussions

- 9.1 Initial discussions and agreement to conduct the necessary market condition and comparator research should be conducted between the relevant Service Manager and Head of Service.
- 9.2 In line with the Trade Union Consultation Protocol it would be appropriate at this stage to informally consult with relevant trade union representatives to identify any potential areas of concern. All information shared at this preliminary stage should be treated in the strictest confidence on the understanding that it will not be communicated to potentially affected employees or other parties unless agreement to do so is reached

Application and Approval

- 9.3 Applications [\[link\]](#) for market supplement payments should be prepared by the Service Manager, endorsed by the relevant Head of Service and Depute Chief Executive and submitted to the Chief Executive for approval. Prior to submitting to the Chief Executive, the Head of Service should ensure any required legal advice has been sought and consult with the HR Services Manager to ensure equal pay risks have been considered and any risks and proposed mitigation are reflected in the application.
- 9.4 The completed application form should be shared with relevant Trade Union representatives prior to seeking Chief Executive approval. It is the responsibility of the Head of Service to ensure that appropriate consultation with relevant trade union representatives is undertaken to allow the Trade Union(s) to express views which may influence final proposals and decisions.

10. ADVERTISING POSTS WITH A MARKET SUPPLEMENT

- 10.1 Adverts for posts attracting a market supplement payment will clearly set out that a market supplement payment will be paid as a temporary additional allowance on top of the annual salary/hourly rate, setting out the agreed payment period or specified end date and review arrangements.

11. CONTRACTUAL DOCUMENTATION

- 11.1 All eligible employees, both those newly recruited and existing employees, will receive an additional contractual letter detailing all the terms and conditions relating to the temporary market supplement payment.

12. REVIEW OF MARKET SUPPLEMENT PAYMENTS

- 12.1 Market supplement payments will only be agreed for a maximum period of 24 months and subject to review.
- 12.2 The review should be undertaken no later than six months before the market supplement end date to determine whether the payment should be withdrawn extended or changed. The review will be subject to the same process and scrutiny as the initial application and should provide up to date evidence of the prevailing market conditions and business case to support the continuation of any payment. The Service Manager will be required to complete the Market Supplement Application Form for approval indicating that the application relates to the review of a market supplement.

- 12.3 The payment of market supplements may be reviewed at any time where it becomes evident that market conditions no longer justify the payment. Service Managers will be responsible for maintaining an understanding of current market conditions in order to bring market supplement payments to an end as appropriate. Twelve weeks' notice will be provided to postholders in the event that a market supplement will end early or be reduced.
- 12.4 Contractual documentation will be issued in accordance with any decision to extend or change a market supplement. Extended market supplements will be subject to the same maximum period of 24 months and review no later than six months before the market supplement end date.
- 13. POLICY REVIEW**
- 13.1 The council will review this policy and procedure as necessary, and at least once every 5 years, in consultation with the recognised trade unions.

Human Resources
18 August 2023

APPLICATION FOR THE PAYMENT OF A MARKET SUPPLEMENT

POSITION DETAILS	
Post	
Team	
Service Area	
Grade of Post and Salary Range	
Number of Staff Currently in Post (headcount and FTE)	
Number of Vacant Post(s)	
PROPOSED MARKET SUPPLEMENT DETAILS	
Amount of Market Supplement	
Period of Payment	
Implementation Date	
<p>This application is for:</p> <ul style="list-style-type: none"> • Payment of a new market supplement <input style="float: right;" type="checkbox"/> • Extension of an existing market supplement <input style="float: right;" type="checkbox"/> • Payment of a revised rate of market supplement <input style="float: right;" type="checkbox"/> 	
RISK FACTORS	
<p>Please identify the risk factors currently impacted by recruitment and retention difficulties:</p> <ul style="list-style-type: none"> • Inability to meet essential service delivery <input style="float: right;" type="checkbox"/> • Inability to comply with statutory responsibilities <input style="float: right;" type="checkbox"/> • Reputational damage to the council <input style="float: right;" type="checkbox"/> • Financial risks to the council <input style="float: right;" type="checkbox"/> 	
<p>Please provide further information on how difficulties in recruitment and retention are impacting on the risk factors identified above:</p> 	

JOB EVALUATION
When was the post last evaluated and was the post re-graded at this time?
Has the need for re-evaluation been considered as an alternative to a market supplement? Please provide evidence, as appropriate, of an initial assessment of job evaluation factors against an up to date job description.
RECRUITMENT AND RETENTION
To support an application for a market supplement, evidence of recruitment and retention difficulties must be provided.
Please provide details of turnover rates (in comparison to average turnover rates):
Please provide details of reasons for leaving provided by staff who have left the post in the last two years:
Is competitor employers' pay the main driver in attracting staff away from the council?
Please provide information on the number and quality of responses to job adverts. Include dates, where advertised and recruitment initiatives adopted:
Is there a regional/national skills shortage impacting on recruitment to this position? Would the skills shortage be better addressed through new/alternative training schemes and are there any plans to introduce such?
NON-PAY FACTORS
To support an application for a market supplement, evidence must be provided that recruitment and retention issues cannot be successfully addressed through non-pay options.
Please provide evidence that consideration has been given to redesigning the job/structure to undertake work in a different way eg development of trainee roles, reallocation of duties:
Please provide evidence that consideration has been given to the opportunities for development in the post in order to retain current staff and attract new recruits. How have such opportunities been promoted?

Please provide evidence that consideration has been given to the **support and facilities** available in the post in order to retain current staff and attract new recruits. How have such support and facilities been promoted?

Please provide evidence that the total value of the council's **benefits package** (pension provision, annual leave, family care benefits, flexible working, employee benefits platform) has been promoted effectively:

EQUALITY IMPACT

In order to successfully resist equal pay claims, the council must show that the difference in pay of two posts of equal value is explained by a material factor that does not involve direct or unjustified sex discrimination. Therefore, to support an application for a market supplement, evidence must be provided that any equality impact is objectively justifiable.

A full Integrated Impact Assessment should be conducted with the outcome of the assessment summarised in this form.

Please provide evidence that consideration has been given to posts across the council which have been evaluated as being of equal value to the post under consideration for application of a market supplement.

What is the male/female split of the post under consideration for application of a market supplement and post(s) considered to be of equal value?

Is there any reason to believe that the market rate itself is discriminatory?

Have you identified any other impact on employee groups or protected groups of the application of a market supplement?

ALTERNATIVE STRATEGIES

Is it likely that application of a market supplement will trigger a pay spiral with neighbouring authorities/comparator organisations increasing pay rates to attract the same small group of individuals? If this is the case, please provide evidence that consideration has been given, as an alternative to market supplements, to strategies such as partnership working?

Please provide evidence that consideration has been given to the use of agency workers, contractors, private sector or other providers. Please outline the advantages/disadvantages and associated costs.

MARKET CONDITIONS

Please provide evidence gathered to determine the 'going rate' for the relevant position in the comparator market. Evidence should include the:

- Employment sector
- Geographic labour market
- Main competitors
- Size and resource of comparator organisations
- Duties and responsibilities of comparator posts
- Knowledge and skill requirements of comparator posts
- Sources of the comparator data.

Please attach any documentary evidence eg job descriptions.

PROPOSED MARKET SUPPLEMENT

How has the proposed market supplement been calculated? Please provide comparison of the total remuneration package of appropriate comparator posts against the current council rate (taking account of the salary range payable and any additional allowances) and the proposed total remuneration package including market supplement.

Is the market supplement proposed equal to the median of pay comparators? If not, please provide justification for the rate proposed.

Please provide evidence of consideration of the implications of application of a market supplement in relation to the higher pay points of the salary range and ensuring justification of the market supplement.

Please provide evidence of how the market supplement will be funded within the current service budget and future budgetary position for the proposed period of market supplement application.

Service Manager Statement

It is my belief that the evidence provided demonstrates that:

- There is an unacceptable risk associated with ongoing issues with recruitment and retention in relation to the relevant post;
- Payment of a market supplement is justifiable to address issues with recruitment and retention in relation to the relevant post; and
- The amount of payment is justifiable and likely to achieve positive results.

Service Manager Signature: _____

Date: _____

PLEASE ENSURE ALL RELEVANT DOCUMENTARY EVIDENCE IS PROVIDED ALONG WITH THIS APPLICATION AND SUBMITTED TO THE RELEVANT HEAD OF SERVICE

MARKET SUPPLEMENT APPROVAL

HEAD OF SERVICE

I am satisfied that the application for payment of a market supplement is justified and supported by the evidence provided.

I have discussed any potential equal pay risks with the HR Services Manager, seeking legal advice as required, and I am satisfied that the business case provides mitigating evidence against equal pay challenge.

Appropriate consultation with relevant Trade Union Representatives has been undertaken on the proposal to apply a market supplement in accordance with the Market Supplement Policy and Trade Union Consultation Protocol.

Head of Service Signature: _____

Date: _____

DEPUTE CHIEF EXECUTIVE ENDORSEMENT

Depute Chief Executive Signature: _____

Date: _____

CHIEF EXECUTIVE APPROVAL

Chief Executive Signature: _____

Date: _____