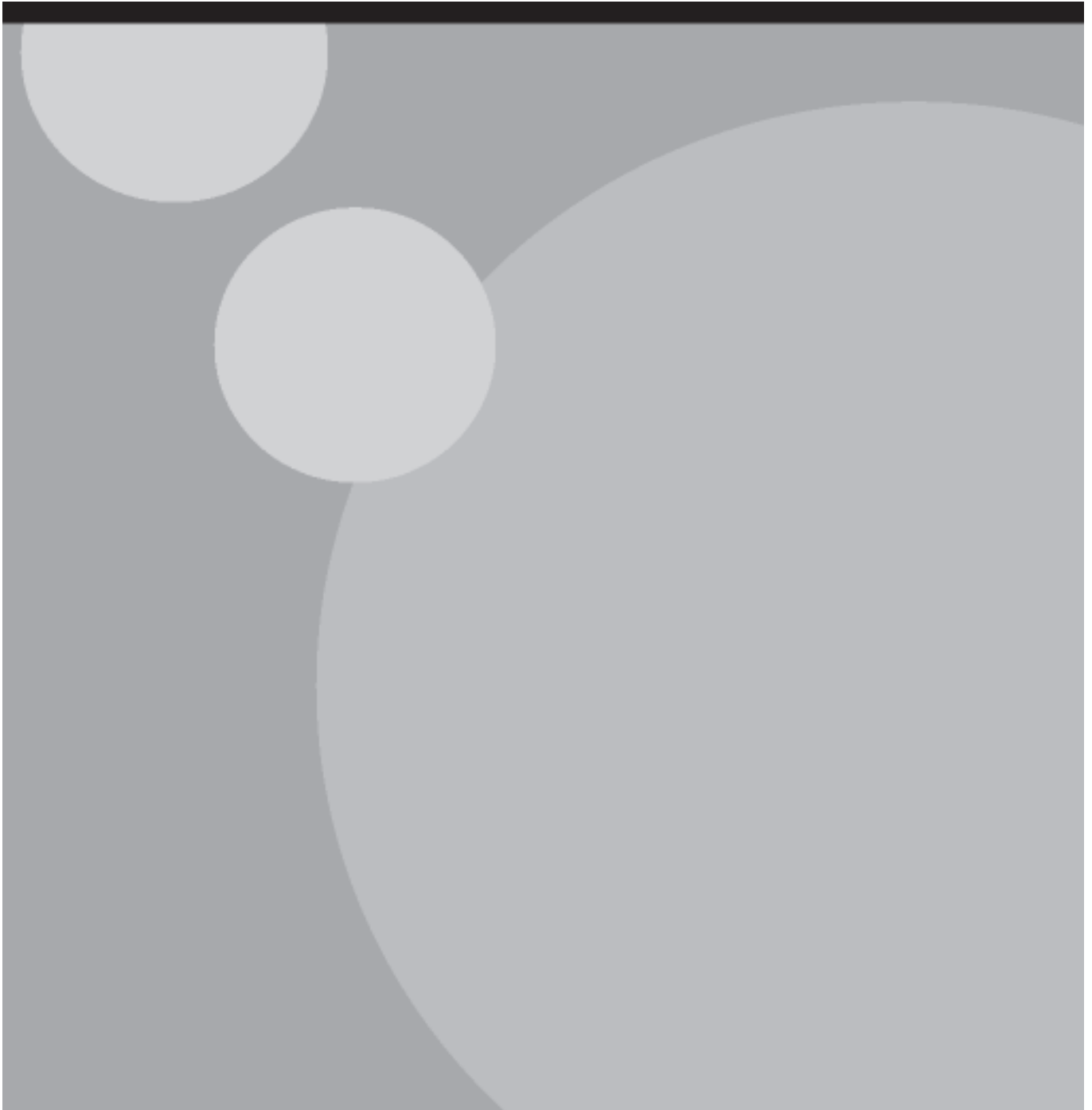




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Guidance under section 40 of the Localism Act





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February 2012  
Department for Communities and Local Government

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# Openness and accountability in local pay: Guidance under section 40 of the Localism Act

## Introduction

1. This guidance applies in relation to England only.
2. Sections 38 to 43 of the Localism Act 2011 ('the Act') apply to 'relevant authorities'. Relevant authorities in England, as listed in section 43 (1) of the Act, are:
  - a county council, (which may be a unitary)
  - a district council, (which may be a unitary)
  - a London borough council,
  - the Common Council of the City of London in its capacity as a local authority,
  - the Council of the Isles of Scilly,
  - the London Fire and Emergency Planning Authority,
  - a metropolitan county fire and rescue authority, or
  - a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies.
3. Relevant authorities are required by section 38(1) to prepare pay policy statements. These statements must articulate an authority's own policies towards a range of issues relating to the pay of its workforce, particularly its senior staff (or 'chief officers') and its lowest paid employees. Pay policy statements must be prepared for each financial year, beginning with 2012/13. They must be approved by full council, or a meeting of members in the case of a Fire and Rescue Authority, and published.
4. This guidance sets out the key policy principles that underpin the pay accountability provisions in the Act. It is issued by the Secretary of State for Communities and Local Government and, by section 40(1) of the Act, relevant authorities in England must have regard to this guidance in performing their functions in preparing and approving pay policy statements.

## Scope

5. Nothing in the pay accountability provisions in the Act or in this guidance supersedes existing responsibilities and duties placed on authorities in their role as employers, under employment and other relevant legislation. Authorities must, of course, bear in mind these responsibilities and duties when formulating a pay policy statement. Discussion of an authority's policies in relation to pay would not engage the Data Protection Act as it does not concern data relating to a particular individual.
6. Each local authority is an individual employer in its own right and has the autonomy to make decisions on pay that are appropriate to local circumstances and which deliver value for money for local taxpayers. The provisions in the Act do not seek to change this or to determine what decisions on pay should be taken or what policies that individual employing authorities should have in

place. Rather, they only require that authorities are more open about their own local policies and how their local decisions are made.

7. The provisions in the Act do not apply to the staff of local authority schools and therefore teaching staff need not be brought within the scope of a pay policy statement.

### **Policy Principles**

8. It is estimated that, between 2001 and 2008, median top salaries in local government grew at faster rates than entry salaries.<sup>1</sup> In that context, around 800 local government employees are in the top 1% of all earners.<sup>2</sup> The decisions about the pay and reward of senior local authority staff which have underpinned this growth have, for too long, been taken without the accountability and transparency that many would expect.
9. In the Coalition Agreement, the Government made a commitment to strengthen councillors' powers to vote on large salary packages for council officers. In addition, the Government has taken necessary steps to increase transparency about how taxpayers' money is used, including in the pay and reward of public sector staff. The Secretary of State published the Code of Recommended Practice for Local Authorities on Data Transparency on 29 September 2011.<sup>3</sup> The Code on transparency enshrines the principles of transparency and asks councils to follow three principles when publishing data they hold; responding to public demand; releasing data in open formats available for re-use; and, releasing data in a timely way. This includes data on senior salaries and the structure of their workforce.
10. In June 2010, the Government asked Will Hutton to undertake an independent review of Fair Pay in the public sector. Hutton's Final Report was published in March 2011 and made several recommendations for promoting pay fairness in the public sector by increasing transparency over pay and tackling disparities between the lowest and the highest paid in public sector organisations.<sup>4</sup> The Government welcomed these recommendations.
11. The provisions in the Act bring together these strands of increasing accountability, transparency and fairness in the setting of local pay. They require councillors (in the case of local authorities) or elected members (in the case of other relevant authorities) to take a greater role in determining pay, ensuring that these decisions are taken by those who are directly accountable to local people. Alongside the Code on transparency, the Act's provisions will ensure that communities have access to the information they need to determine whether remuneration, particularly senior remuneration, is appropriate and commensurate with responsibility. In addition, the provisions will ensure that policies on the pay and reward of the most senior staff are set clearly within the context of the pay of the wider workforce.

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<sup>1</sup> Page 9: Hutton Review of Fair Pay in the Public Sector: Interim report (December 2010)

<sup>2</sup> Page 41: Hutton Review of Fair Pay in the Public Sector: Interim report (December 2010)

<sup>3</sup> Available at: [www.communities.gov.uk/publications/localgovernment/transparencycode](http://www.communities.gov.uk/publications/localgovernment/transparencycode)

<sup>4</sup> Available at: [www.hm-treasury.gov.uk/indreview\\_willhutton\\_fairpay.htm](http://www.hm-treasury.gov.uk/indreview_willhutton_fairpay.htm)

### *Accountability*

12. The Secretary of State considers that decisions on pay policies should be taken by councillors or elected members - those who are directly accountable to local communities. Authorities should ensure that all democratically accountable members have a significant input into how decisions on pay are made, particularly decisions on senior pay, and that they are open about the policies that determine those decisions.
13. That is why the Act requires that pay policy statements, and any amendments to them, are considered by a meeting of full council, or a meeting of members and cannot be delegated to any sub-committee. In scheduling such meetings, authorities should act in accordance with their responsibilities under Part 5A of the Local Government Act 1972. However, the Secretary of State does not consider that pay policy statements engage the Data Protection Act, as they should contain the general principles underpinning the decisions on pay and not personal data. There should therefore be no reason to exclude the public from discussions about the statement on these grounds and such meetings should be open to the public and should not exclude observers. All decisions on pay and reward for chief officers must comply with the current pay policy statement.
14. In addition, under these arrangements, full council, or a meeting of members should be offered the opportunity to vote before large salary packages are offered in respect of a new appointment. The Secretary of State considers that £100,000 is the right level for that threshold to be set. For this purpose, salary packages should include salary, any bonuses, fees or allowances routinely payable to the appointee and any benefits in kind to which the officer is entitled as a result of their employment.

### *Transparency*

15. It is essential that an authority's approach to pay, as set out in a pay policy statement, is accessible for citizens and enables local taxpayers to take an informed view of whether local decisions on all aspects of remuneration are fair and make best use of public funds. Approved pay policy statements must be published on the authority's website and in any other manner locally that the authority thinks appropriate, as soon as is reasonably practicable after they are approved or amended.
16. The Act also requires that authorities include in their pay policy statements, their approach to the publication of and access to information relating to the remuneration of chief officers. Remuneration includes salary (for chief officers who are employees) or payment under a contract for services (for chief officers who are self-employed), expenses, bonuses, performance related pay, as well as contractual arrangements involving possible future severance payments.
17. The definition of chief officers (as set out in section 43(2)) is not limited to heads of paid service or statutory chief officers. It also includes those who report directly to the head of paid service or statutory chief officers (non-statutory chief officers), to those who report directly to non-statutory chief officers (deputy chief officers) and, in the case of a Fire and Rescue Authority, a Deputy Chief Fire Officer. Authorities are reminded that the Act sets out the information that they are required to include in their pay policy statements as a

minimum. Authorities should consider whether, in the light of local circumstance and their own reward structure, it would be appropriate to extend the scope of their pay policy statement to include any other highly paid members of staff who would not come within the definition of chief officers.

18. The Act does not require authorities to use their pay policy statements to publish specific numerical data on pay and reward. However, authorities should consider how the information in their pay policy statements fits with that data on pay and reward that they publish separately. This includes that data required to be published under the Code of Recommended Practice for Local Authorities on Data Transparency and by the Accounts and Audit (England) Regulations 2011. Indeed, pay policy statements offer an opportunity to put that data firmly within the context of the authorities agreed policies, and to provide the public with a clear justification of how their money is being used appropriately in the pay and reward of senior staff.

### *Fairness*

19. In his interim report, Will Hutton found that top managers in local government have seen larger increases in pay than the lowest paid in their workforces and the pay ratios between local authority chief executives and the lowest paid in local councils have grown in the last ten years.<sup>5</sup> In his final report, Will Hutton went on to highlight that there is value in ensuring that decisions about senior pay are taken in the context of similar decisions on lower paid staff, and that the relationship between those decisions is considered.<sup>6</sup>
20. The Government agrees that the type of approach Hutton recommends will enable a clearer debate about whether pay levels across an organisation are fair, and whether differing approaches to the pay and reward are justified. In this context, the Act requires authorities to set their policies on remuneration for their highest paid staff alongside their policies toward their lowest paid employees. In addition, it requires authorities to explain what they think the relationship should be between the remuneration of its chief officers and its employees who are not chief officers.
21. Hutton recommended the publication of an organisation's pay multiple – the ratio between the highest paid employee and the median average earnings across an organisation – as a means of illustrating that relationship.<sup>7</sup> The Code of Recommended Practice for Local Authorities on Data Transparency includes pay multiples within the minimum set of data that authorities should publish.<sup>8</sup> While authorities are not required to publish data such as a pay multiple within their pay policy statement, they may consider it helpful to do so, for example, to illustrate their broader policy on how pay and reward should be fairly dispersed across their workforce. In addition, while they are not required to develop local policies on reaching or maintaining a specific pay multiple by the Act they may wish to include any existing policy.

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<sup>5</sup> Page 48: Hutton Review of Fair Pay in the Public Sector: Interim report (December 2010)

<sup>6</sup> Chapter 2: Hutton Review of Fair Pay in the Public Sector: Final report (March 2011)

<sup>7</sup> Chapter 2: Hutton Review of Fair Pay in the Public Sector: Final report (March 2011)

<sup>8</sup> Available at: [www.communities.gov.uk/publications/localgovernment/transparencycode](http://www.communities.gov.uk/publications/localgovernment/transparencycode)

22. Section 38(4) of the Act specifies that in addition to senior salaries, authorities must also make clear what approach they take to the award of other elements of senior remuneration, including bonuses, performance related pay as well as severance payments. This should include any policy to award additional fees for chief officers for their local election duties. While some authorities have taken the local decision to include such fees within a chief officer's overall salary, others pay separate fees. Authorities should make clear in their pay policy statements which approach applies and, if separate fees are paid, describe their approach to setting and publishing these.
23. In articulating their policies on performance related pay, authorities should consider Will Hutton's recommendations on the value of a system of 'earn back' pay. Hutton considered that senior staff could have an element of their basic pay 'at risk', to be earned back each year through meeting pre-agreed objectives. It was his view that such an approach would allow pay to vary with performance, and ensure that public services do not offer rewards for failure.<sup>9</sup>
24. Authorities should ensure that the way they manage their workforce – including payments offered to staff leaving the authority – delivers the best value for money for local taxpayers and sets the right example on restraint. Authorities are already required to publish their policy on offering discretionary compensation for relevant staff in the event of redundancy.<sup>10</sup> The Act is intended to bring out in the open the approach an authority may take in offering a severance payment to senior staff as part of a decision to terminate a contract for any reason. As with other elements of a pay policy statement, any decision that authority takes in relation to the award of severance to an individual chief officer, must comply with their published policy for that year and should represent value for money for taxpayers.
25. Taxpayers should rightly expect that their interests are being protected including when senior staff move posts within the public sector, particularly when those moves could be seen to have the effect of driving up average pay levels across the sector. In addition, taxpayers should have the opportunity to question whether they are getting value for money from arrangements where it could appear that the public sector is paying an individual twice – through salary and a pension – for doing the same job. Authorities should have an explicit policy in their pay statement on whether or not they permit such practices within their workforces.
26. Authorities should use their pay policy statements to explain their policies toward the reward of chief officers who were previously employed by the authority and who, on ceasing to be employed, were in receipt of a severance or redundancy payment from that authority. This should include any local policy toward ex-employees later engaged as chief officers under a contract for services. Similarly, authorities should include their policies toward the reward of chief officers who are also in receipt of a pension under the Local Government Pension Scheme or relevant Fire Fighter Pension Scheme. These policies should take account of their agreed approach on abatement of pensions.

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<sup>9</sup> Chapter 3: Hutton Review of Fair Pay in the Public Sector: Final report (March 2011)

<sup>10</sup> Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006



27. The Chief Secretary to the Treasury has made clear that the Government is committed to tackling all forms of tax avoidance.<sup>11</sup> Public appointments that involve arrangements whereby savings in tax and National Insurance contributions are made may be at the expense of other taxpayers or other parts of the public sector.
28. In their approach to appointments, particularly senior appointments, authorities should consider the value for money to the whole of the public sector. In developing their pay policy statements, authorities should actively review their approach to the terms of remuneration for their senior appointments, particularly where arrangements exist which could be perceived as seeking to minimise tax payments. Authorities should develop, and include within their pay policy statements, a local policy on the use of such arrangements within their workforces.

#### *Scope for local variation*

29. Pay policy statements must include an authority's policies towards the remuneration of its lowest paid employees. The Act also does not seek to impose a single definition of "lowest paid" for these purposes. Instead, the Act requires authorities to develop their own definition of "lowest paid", one which fits appropriately with their own local circumstances and explain why they have chosen that definition. In formulating such a definition, authorities may wish to consider any guidance provided by the sector for this purpose and whether it is appropriate to consult with relevant parties.
30. Section 38(4) sets out in detail the specific elements which a pay policy statement must include in relation to senior pay. In addition to the information which is required by section 38(2)(b) (policies on the remuneration of an authority's lowest paid employees), it is open to authorities to mirror this level of detail within the pay policy statement for their approach to the pay of those who are not chief officers.
31. While section 38 of the Act specifies the information which must be included in a pay policy statement, authorities can include any additional information relating to their policies on pay that they consider is appropriate to do so.
32. For example, an authority which has or develops a local policy towards the pay of staff working for external contractors with whom the authority has contracted to perform services, may wish to articulate that policy in their pay policy statement. Similarly, an authority may consider it relevant or appropriate to explain their approach to any shared senior management arrangements that it has in place. Where these arrangements exist, an authority should use its pay policy statement to explain its approach to its share of the reward of the staff concerned taking account of principle of the provisions.
33. Pay policy statements may be amended during the course of a financial year to reflect changes or developments in an authority's pay policy. However, section 39(5) of the Act requires that amendments can only be made by resolution of

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<sup>11</sup> Hansard: [www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120202/debtext/120202-0001.htm#12020240000004](http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120202/debtext/120202-0001.htm#12020240000004)

the full council, or a meeting of members, and that any amended statement must be published as soon as is reasonably practicable.

**Queries**

34. If you have any queries on this guidance, please submit them using the details below.

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