

Appendix E

HR notes on the consultation responses

Name of item being assessed:	Market Supplement Review
Version and release date of item (if applicable):	
Owner of item being assessed:	Robert O'Reilly
Name of assessor:	Robert O'Reilly
Date of assessment:	19 th February 2013

General points mentioned in responses	
1	ICT salary surveys are freely available.
2	A post in ICT has not recruited to (Citrix Infrastructure Analyst) which shows the market supplements are still needed
3	The payment must be contractually protected because Wokingham didn't review it in eight years
4	Bracknell Forest Council pays more for Trading Standards Officers
5	The £500 payment to Civil Enforcement Officers is a reward for going the extra mile
6	If the payment is withdrawn some affected employees will suffer financial hardship
7	The Head of ICT doesn't support the proposal
8	The market supplement is an indirect way of paying one ICT employee for working unpaid overtime (and is actually less expensive)
9	There is difficulty recruiting to the post of Civil Enforcement Officer.
10	Explanation of Equal Pay
11	Salary benchmarking should be carried out against other local authorities in the area
12	There have been problems recruiting in the Trading Standards team.

HR Response to general points	
1	The ICT salary surveys are freely available are too general to allow comparisons. Typically they will use job titles which do not provide the detail which would allow HR to be sure that a proper comparison was being made. We would need to find job descriptions and grades/benefits from the same job in the public and private sector to ascertain whether the market supplements were needed to prevent the affected employees from leaving to join other organisations. This work would need to be undertaken by a consultancy because HR no longer has the resources to undertake this work. The cost would be several thousand pounds.
2	The post of Citrix Infrastructure Analyst was advertised in October. The ICT service did not ask for the post to be advertised with a market supplement. When no suitable applicants were found the post was re-

	<p>configured and advertised as an apprenticeship post. Applications for the re-configured post have been high and an appointment is imminent. HR will advise the re-configuration route to all services which find recruitment difficult for certain posts in future (for example offering training in a particular skill rather than insist that the applicants are trained already).</p>
3	<p>Some employees were transferred under TUPE from Wokingham in receipt of a market supplement (also known as a 'functional premium'). The HR service in Wokingham neglected to review the payment on a regular basis as stated in their policy. Does this create an implied term that means the payment is de facto permanent? HR would advise that the answer is no because express terms always outweigh implied terms in a contract of employment. There is an express term in the contracts which came to WBC under TUPE from Wokingham which states: "Such supplements are not permanent" and "the Council may also decide to discontinue the general scheme for the payment of salary supplements following consultation". This express contractual term transferred to WBC under TUPE and therefore the payment cannot be contractually payable on a permanent basis.</p>
4	<p>It is true that another Council in West Berkshire pays a higher rate for Trading Standards Officers. However the payment of market supplements is about the whole labour market not just one rival employer. The question to consider is whether WBC can recruit another Trading Standards Officer from the market. The managerial judgment is that recruitment is possible and therefore market supplements are no longer justified.</p>
5	<p>There is an equal pay risk in paying all the Civil Enforcement Officers additional pay as a reward for 'going the extra mile'. The CEOs are a predominately male workforce and this type of universal reward is not made to other employees. 75% of the WBC non schools workforce is female but only 24% of those in receipt of a market supplement payment are female. From an equal pay perspective, it would be safer to reward those CEOs who go the extra mile through an honorarium payment for exceptional performance (as measured through the performance management system).</p>
6	<p>It is true that the size of some of the market supplements is high and to lose such a payment will cause the employees concerned financial hardship. However if the payments are to be regarded as permanent on this basis, then the Council will face potential equal pay challenges. Under the market supplements policy employees can be given three months notice that the payment will cease with no right of appeal. The proposal in this report would give a notice period of over 12 months that the payments will cease.</p>
7	<p>The Head of ICT does not support the proposal. However the Chief Executive has stated at Management Board that he does not believe that</p>

	<p>his Directorate will suffer if this proposal is implemented. It is clearly less disruptive for the Head of ICT to keep the payments and maintain the status quo. However the Personnel Committee need to consider whether to do so is justifiable in the current economic conditions and in light of the risk of an equal pay challenge. Sections of the WBC workforce which are mostly female (such as social workers) do not receive market supplement payments. The post of Citrix Infrastructure Analyst mentioned in some responses was presented to HR by ICT for advertisement without requesting that a market supplement was used. When a poor response was achieved the post was re-configured. This is a n example of how HR will advise managers to act in future if the Market Supplement Policy is abolished.</p>
8	<p>The Head of ICT appreciates the goodwill shown by an employee who works a great deal of unpaid overtime. However the HR perspective is that payments to staff should be correctly labelled (not least to protect the Council from Equal Pay challenge). There are ways to pay an employee for additional hours worked. It is not correct to use a market supplement payment as a 'proxy' for paying for additional hours worked. This employee could be paid for the additional hours worked through a timesheet.</p>
9	<p>The post of Civil Enforcement Officer has been out for recruitment three times in the past year. The response rate has not been problematic. The response rate was as follows:</p> <p style="padding-left: 40px;">March 2012 – 9 applications received, one offer made but she withdrew at the last minute due to being offered another job (no mention of salary being an issue)</p> <p style="padding-left: 40px;">June 2012 – 14 applications received, three people appointed</p> <p style="padding-left: 40px;">November 2012 – 10 applications received, one offer made and awaiting pre employment checks</p>
10	<p>Explanation of Equal Pay.</p> <p>Some employees in ICT have stated that equal pay legislation does not apply because they undertake a unique role without a direct comparator. However this is a misunderstanding of the legislation with compares pay for posts of 'equal value'. Explanations of equal pay legislation are quoted below:</p> <p>Excerpt from Xpert HR Employment Law Manual</p> <p>To claim equal pay under the equality of terms provisions of the Equality Act 2010, a claimant must generally prove that there is a person of the opposite sex (the comparator) who is employed by her employer or an associated employer, at the same establishment or at another establishment where common terms apply, and who is doing equal work,</p>

	<p>but with better contractual pay and/or other contractual benefits.</p> <p>Except taken from IRS Employment Review 2011</p> <p>When premia are paid, they are usually reviewed after a set and relatively short period (e.g. every two or three years) to ensure they are both a necessary and proportional way of dealing with the problem, and so can be objectively justified. If they cannot, they should be removed to preserve the integrity of a job-evaluated pay and grading system to ensure it does not become tainted by discrimination.</p> <p>Excerpt taken from Unison Fact Sheet on market supplements</p> <p>Under Equal Pay legislation, employers must justify using market supplements by showing that there is a real skill shortage and that no other less discriminatory option could have been used to attract and retain staff. Employers must also prove that the difference in the pay rate is 'proportional' to the additional amount needed to secure the skills required. In other words, a £5000 a year 'market supplement' would not be justified, if a £500 a year premium would have been sufficient to attract qualified applicants for the job.</p>
11	<p>Some employees state that salary benchmarking should be carried out against other local authorities in the area.</p> <p>HR contacted four local authority HR departments in the area (Reading, Bracknell, Wokingham and Slough) in October 2012 and received a response from three. In the responses that we received none of the roles could be compared across all three authorities as in each case at least one of the authorities did not have a comparable role. See Appendix F.</p>
12	<p>Some employees state that there have been problems recruiting in the Trading Standards team.</p> <p>Currently with the trading standards team there are 4 posts that are vacant. Two of the posts have been vacant since the autumn of 2012 and HR Recruitment has not been advised to start recruitment. The remaining two posts have been advertised and are currently at the shortlisting stage and we have had 8 applicants in total. The posts have been advertised without a market supplement.</p>