

TRAFFORD COUNCIL

Report to: Employment Committee
Date: 4th September 2023
Report for: Information
Report of: Director of Legal and Governance

Report Title

Legal Team Market Supplement Payment

Summary

The purpose of the report provides a detailed analysis and the options taken to address difficulties faced in recruitment and retention of Lawyers, recognising that the regional and national position is challenging.

This report sets out a proposal for the payment of a Market Factor Supplement (MFS) for hard to recruit Lawyers.

The MFS would be applied for a two-year period to eligible Lawyers only and will be subject to review and evaluation as to its impact on the stabilisation of the legal services work force.

Recommendation(s)

That Employment Committee note the Market Supplement payment as detailed in the report.

Implications:

Relationship to Corporate Priorities	This report aligns to the council's corporate priorities.
Relationship to GM Policy or Strategy Framework	None
Financial	financial commitment required is within overall budget envelope
Legal Implications	None
Equality/Diversity Implications	None
Sustainability Implications	None
Carbon Reduction	None
Staffing/E-Government/Asset Management Implications	None
Risk Management Implications	Not applicable

1.0 Executive Summary:

- 1.1 There have been a number of vacancies across the Legal team for some time now, this has, for many teams caused a prolonged period of instability for staff. Difficulties in recruiting to lawyer posts permanently have led to an increase in the engagement of agency staff and associated costs.
- 1.2 Trafford's Corporate Leadership Team supports the payment of a market factor supplement to Grade 8, Grade 9, Grade 10, Grade 11 and Grade 12 Lawyer posts.
- 1.3 The MFS scheme will be signed off through the scheme of delegation by the Corporate Director for Strategy and Resources.

2.0 Background Information

- 2.1 Our current Lawyer posts are graded bands 8-10. Senior Lawyers are graded band 11 and Principal Lawyer posts are graded band 12.
- 2.2 Over the past 24 -36 months, there have been a significant number of lawyers who have left the authority, leaving a significant number of vacant posts which we have been unable to recruit to.
- 2.3 The legal team have been, for approximately 2/3 years now, experiencing extreme difficulties in recruiting to all lawyer posts across all disciplines. There is clearly an issue nationally which is affecting legal resources across the public and private sectors.
- 2.4 Recruitment for each post has been attempted a number of times with either no applications received or where applications are received, they have been from unsuitable candidates.
- 2.6 The legal team have embedded a number of strategies over the years to improve recruitment and retention success – i.e. temporarily converting lawyer posts to legal assistant posts to try to encourage the development of staff who have the potential to pursue or continue legal qualifications.
- 2.7 The shortage in availability of resources has led to several posts within the team remaining vacant for long periods of time.
- 2.8 There continues to be a proactive approach to convert agency workers to permanent employees within Trafford, but the current level of remuneration is not competitive in terms of pay or perceived overall recognition and “value”.

3.0 Recruitment Attempts and Agency Appointments

Current vacant posts and Team	Locums in place	Length locum in place	Recruitment activity
Ligation lawyer x1 Corporate and Commercial Legal Team	2	Feb 2022 Sept 2023	Advertised 3 times in previous 2 years
Corporate and commercial lawyer x3 Corporate and Commercial Legal Team	3	June 2021 March 2023 June 2023	6 times in previous 2 years - twice since January 2023

Planning Lawyer x 1	1	June 2022	Twice in 13 months - no applications received
Place Legal Team Property Lawyer x 1	1	October 2017	7 times since 2017. Twice in last 24 months
Place Legal Team Principal Lawyer x 1	1	July 2023	
Place Team Adults Social Care Lawyer	2	26 Months	Two vacant adult solicitor positions have been advertised twice in the last 24 months but no applications received.
Social Care & Education Legal Team Children Social Care Lawyer	1	12 months	Two posts were recently advertised but only one permanent appointment was made.
Social Care & Education Legal Team			

4.0 Over Reliance on Agency Staff and External Legal Advice

- 4.1 The Legal Team has been heavily reliant upon agency staff to simply be able to react to the needs of our client departments when requested.
- 4.2 The continued use of agency workers has resulted in a degree of a “revolving door” of workers due to the short notice period agency workers are able to give and the competitive nature of the supply and demand across the region.
- 4.3 Our permanent workforce are impacted by the resource gap and the time it takes to recruit and also in terms of allocation / re- allocation of work that is needed as a consequence of this instability. Each agency staff member requires the same level of induction, management oversight and investment of management time, to become active case holders and with turnover being high this is a significant demand.
- 4.4 Whilst the number of agency staff across the legal team remains high, there are significant external resource spend with agency costs of £203,058.31 as reported in Q1 for April -June 2023.

5.0 Legal Team Positions

5.1 Corporate and Commercial Legal Team Specifics

5.1.1 The Corporate and Commercial Team currently has 3 corporate lawyer posts and 1 litigation lawyer post. Over the past 6 months, 4 lawyers have left the authority and all attempts to recruit to the posts on a permanent basis have been unsuccessful. We are hoping to have one corporate lawyer in post on a permanent basis in September 2023 and all other posts are currently filled with locum lawyers. Litigation advice is a demand led service and it must be able to advise and support the various Council services for them to meet their statutory and non-statutory functions and respond to any urgent matters. The complexity, duration and volume of cases have steadily increased over the years. The impact of this is that cases are having to be worked on by the litigation lawyer with a greater level of depth. In the past 12 months there has been a sharp increase in the level of support required from the legal

team around employment matters. The expansion of STAR Procurement will also see two additional LA partners on-boarding which will significantly increase the demand for commercial and procurement advice within the team.

5.2 Place Legal Team Specifics

5.2.1 Based on current resources, the place legal team is not able to meet the demands which will flow from the planned programme of works across place and therefore will hinder the Capital Programme. There is an urgency to initiate preparatory works against projects to ensure that the programme of works can be completed on time and within the determined works scope. A significant amount of property and planning work is currently outsourced due to limited capacity or expertise within the team. The issues have been highlighted in meetings of the capital programme, development teams and with Planning.

5.3 Social Care & Education Legal Team Specifics

5.3.1 The Children, Adults & Education Legal Team provides advice, guidance and support to children's social care, adult social care and education services, enabling and empowering them to fulfil their statutory obligations and to minimise risk to the Council. The risk to the Council of these statutory functions not being met is significant, first and foremost to the children and adults who require protection but also to the reputation of the Council and in terms of the financial risk inherent in claims under the Human Rights Act, in negligence, Judicial Review and out of the Information Commissioners Office.

6.0 Risks

6.1 The way in which the Legal Team is operating currently presents a risk to the Council. The overall impact of these issues is reliance upon counsel, locum and agency workers and an increased external spend. Continued reliance upon locum/agency staff and external resource, to enable the team to respond to service demand, will continue at significant expense to the Council and is not sustainable in the long term.

6.2 If the current and future work cannot be managed by the in-house legal team, the only options will be to either outsource the work to an external law firm or to cease to undertake the activities which then generate the need for legal proceedings. These options will create levels of risk and financial implications for the Council.

7.0 MFS Payment - proposal

7.1 The consequence of the Council's legal team structure is that it restricts variability in pay. In general, this is manageable however there may be roles which from time to time attract a premium in the market. Where there is a significant difference between the pay rates offered by the Council (as determined by general market data) and specific market pressures this means that the Council may experience recruitment and/or retention difficulties for specific posts.

- 7.2 Skill shortages in key areas will then restrict the Council's capacity and capability to deliver services. In these circumstances it may be appropriate to increase the rate of pay to attract and/or retain the knowledge, skills and experience required by the Council. The most appropriate way to control this is through payment of a market supplement.
- 7.3 A Market Forces Supplement (MFS) is sought in addition to the pay of all lawyer posts within the legal team for a period of 2 years, due to market pressures which are preventing us from being able to recruit or retain staff for the post(s) concerned at the salary determined by the normal job evaluation and pay arrangements.
- 7.4 The Market Forces Supplements are requested to mitigate risks to the organisation, increase retention success and improve recruitment attempts.

8.0 Proposed MFS Payments

- 8.1 A detailed workforce analysis undertaken by HR colleagues and the service in 2022/23, has provided an understanding of the root causes and the actions that need to be taken to address the workforce challenges, which in turn are adversely impacting upon the delivery of legal services.
- 8.2 The methodology adopted included: analysis of retention rates, exit interviews and employment data, benchmarking of salaries and other benefits across the region in the hard to retain and recruit roles.
- 8.3 Benchmarking data demonstrates that Trafford are behind in the grading of lawyer posts when compared to other GM Authorities. When compared to national figures, the gap increases significantly. Data also evidences that most of the GM Authorities already have MFS payments in place for all or some of their lawyer posts.
- 8.4 Based on the analysis of Trafford's salaries compared with the GM and UK national markets, the following MFS rate would address the immediate recruitment and retention challenge. It would bring Trafford rates of pay in line with the GM average to improve Trafford's position to the first or second highest payer in GM providing a competitive advantage:

Lawyer Post	Proposed MFS Rate	No. Of Posts
Band 8	£1,750	17
Band 9	£1,790	
Band 10	£2,080	
Band 11	£3,220	2
Band 12	£3,230	3

- 8.6 For the purposes of calculating the total cost of MFS payments, and because most Lawyers in the team are currently on Band 10, all posts graded at Bands 8, 9 and 10 have been collated (17) and costed at the proposed Band 10 MFS rate (£2,080).
- 8.7 The principle aim is to avoid more costly agency staff but reap the benefits as outlined in the report of a more stable workforce. However there is a cost with MFS as outlined below:-
- 8.7.1 The total cost of MFS payments per annum is £51,490 plus on-costs and £102,980, plus on-costs for a two-year period.

8.8 The Market Forces Supplements will be reviewed prior to the expiry of the two-year term. Payment of the MFS will be withdrawn, shall remain or the value adjusted, where objective reasons no longer exist to justify continued payment.

8.9 This would not be or in any way form a permanent contractual change. Under the MFS policy there is no right for this to continue beyond 2 years or review date whichever is the earlier.

9.0 Future Strategy

9.1 Work is continuing with HR and OD colleagues and the service to enhance and develop an effective recruitment and retention strategy. Alternative and more diverse ways of advertising are being developed.

9.1.1 We are developing partnerships with Manchester Metropolitan University to explore how we can improve our recruitment offer and foster strong connections for graduates.

9.2 A review of Legal and Governance has demonstrated:

9.2.1 A number of ways in which we need to develop supportive career options to help our staff to learn and progress their careers within Trafford. A new structure has been developed to provide more internal opportunities for colleagues to grow and progress at Trafford. This will help us retain our workforce and in turn create new opportunities to secure our talent pipeline for the future;

9.2.2 a number of other areas to address to making Trafford an employer of choice such as enhancing the induction process, student experience, having a vibrant learning and development offer and career progression pathways. This is being incorporated into the refreshed recruitment and retention strategy and improvement plan for the service.

10.0 Conclusion

10.1 That Employment Committee note the decision to pay a market supplement to all Lawyer Posts (graded from band 8 to 12 inclusive) as detailed in the report for a period of 2 years with an annual review.