

Crawley Borough Council

Report to Overview and Scrutiny Commission 2 December 2013

Report to Cabinet 4 December 2013

Living Wage

Report of the Director of Development & Resources
DIRr/044

1. Purpose

- 1.1 Council on 24 July agreed to support the principle of the Living Wage, to amend the Council's Pay Policy to reflect this, and to commit the Council to working with the Living Wage Foundation to determine the legal and financial implications of incorporating Living Wage requirements into future contracts for Council services.

2. Recommendations

2.1 To the Overview and Scrutiny Commission:

That the Commission consider the report and decide what comments, if any, it wishes to submit to the Cabinet and Full Council.

2.2 To the Cabinet

2.1 Cabinet is recommended to agree to:

- a) seek Living Wage accreditation from the Living Wage Foundation**
- b) incorporate Living Wage requirements into future relevant contracts subject to an assessment of the implications on a case by case basis.**
- c) recognise that although a commitment to the Living Wage will have no impact on the cost of current contracts or on the 2014/15 budget, it is likely that some future contracts will be more expensive.**
- d) commit to promoting the benefits of the Living Wage to Council suppliers and contractors not covered by Living Wage criteria, and to the wider business community.**

3. Reasons for the Recommendations

- 3.1 A report on the Living Wage was presented to Cabinet on 10 July and Council on 24 July. Minute 24 and 25 refer. The Director of the Living Wage Foundation made a presentation to the Environment and Prosperity Policy Development Forum on 23 July.

Council agreed that the Director of Development & Resources would present a further report to Cabinet to set out the legal and financial implications of becoming a Living Wage accredited employer.

- 3.2 This report focuses on the information that Cabinet require to make a decision on Living Wage accreditation. The final recommendation is that once accreditation is achieved, the Council seeks to use its influence to promote the Living Wage to other organisations as part of its approach to economic development and procurement. This would include suppliers and contractors not covered by Living Wage requirements as well as the wider business community. An action plan for this element would be devised once accreditation is achieved.

4. Background

- 4.1 The aim of the Living Wage is that no one should have to do a day's work for less than they can live on. The Living Wage accreditation intends to recognise the dignity of work and the importance for individuals, families and society of people being able to earn a living. Currently eleven other local authorities have been accredited as Living Wage employers.
- 4.2 The Living Wage Foundation's view is that the Living Wage can result in higher staff morale, better quality work, improved rates of staff retention, lower rates of sickness and absence, and gaining a reputation of being an ethical employer. It can mean a reduction in people claiming benefits and more money being spent by local employees in the local economy [source: LGiU The Living Wage & Local Authorities Policy Briefing].
- 4.3 There would currently be no cost to the Council to increase staff pay to the Living Wage rate of £7.65 per hour as all staff are paid above this rate in accordance with national terms and conditions (with the exception of apprentices and those under the age of 18 years of age who are exempt).
- 4.4 The procurement criteria within the Living Wage requires to the extent permitted by law, that contractors (and their subcontractors) providing a service on the organisation's behalf should pay their employees the Living Wage. The Living Wage only applies to contractor's employees who work for 2 or more hours on any day of the week for 8 or more consecutive weeks in a year providing services undertaken on the accredited organisation's premises and land. The Living Wage principles are only required to be incorporated into service contracts. Consequently, there is no expectation that this should be extended to other Council agreements such as commercial leases or construction contracts.
- 4.5 If Cabinet decides that the Council should apply for a Living Wage accreditation, the Director of Development and Resources will submit an application in December 2013.

5. Description of Issue to be resolved

- 5.1 Although the concept of the Living Wage is simple, there are complex underlying legal and financial issues for the Council and contractors. An officer project group has therefore undertaken a thorough analysis of the Council's existing contracts in order to assess the implications of accreditation.
- 5.2 The Living Wage Foundation will allow larger organisations such as local authorities to take a phased approach to implementation, whereby the Living Wage rate is

implemented across contracts on a rolling basis as they expire. If Cabinet is in favour of seeking accreditation all identified contracts will become milestones within the Council's Living Wage licence agreement, with a requirement (where relevant) for payment of the Living Wage to be explicitly made in the tender documentation and the contract conditions when contracts are re-tendered. There is no upper limit on the length of agreed milestones and the Council is not required to renegotiate any existing contracts.

- 5.3 The Director of Development & Resources Officers wrote to all the identified contractors to inform them that the Council is evaluating options of becoming a Living Wage employer. Contact was also made with other Living Wage accredited Councils in order to learn from their experience of the accreditation process and assist an implementation plan.

6 Information & Analysis Supporting Recommendation

- 6.1 The EU procurement rules and the Local Government Acts 1988 and 1999 impose restrictions which would mean that adopting a blanket policy of applying the Living Wage to all contracts would be unlawful. Conversely, the Public Services (Social Value) Act 2012 insists local authority procurers must now consider how they can improve the economic, social and environmental impact of their public service contracts before they start a procurement process.

- 6.2 The legal restrictions are recognised by the Living Wage Foundation whose licence requires the Living Wage to be considered to the extent permitted by law. This means that a decision should be taken on a case by case basis rather than a 'blanket approach' to all contracts. The Council's submission to the Living Wage Foundation would however make a presumption in favour of the Living Wage unless there is a sound reason not to.

- 6.3 Examples of the procurement approaches taken by other Living Wage accredited local authorities are set out below. The implementation of these approaches has resulted in Living Wage being built into many new contracts for these councils, and to date there have been no cases in the UK of legal challenges against councils on the basis of Living Wage. The project team are currently evaluating options for the best way to incorporate Living Wage into the Council's procurement policy.

6.4 Risk Based Approach

This model uses a single tender approach which involves applying the Living Wage principles on a case by case basis to contracts where it is considered lawful. Where procurements are below the EU threshold the requirement for payment of the Living Wage is made explicitly in the tender documentation and the contract conditions that are issued with the tender. For procurements over the EU threshold potential suppliers are asked if they would be prepared to pay the Living Wage during the pre-qualification questionnaire stage of the tender exercise. Consequently, the only time Councils could not lawfully insist on payment of the Living Wage is if all potential suppliers advise they would not be prepared to pay the Living Wage during the initial stages of the tender exercise.

6.5 Inviting a Non Living Wage and Living Wage Tender

Some local authorities have used a tender model which invites both Living Wage and non-Living Wage tenders (a 'variant bid'). This model framework suggests procuring contracts on a case by case basis by weighing up the cost of the contract against benefits of Living Wage employment terms for contractors' employees. Adopting this method would mean that a pragmatic approach could be taken when awarding certain

types of contracts, for example contracts that involve a joint procurement exercise or where the market rate is lower than Living Wage and the Council wishes to identify the exact cost of Living Wage requirements.

- 6.6 The Living Wage Foundation has advised that the local authorities already accredited use a mix of the above two approaches with the majority being slightly in favour of the risk based approach.
- 6.7 The assessment of options for incorporating Living Wage into future contracts will be led by the relevant Director or Head of Service responsible for the tender exercise, in conjunction with the Head of Legal and Democratic Services and the Head of Finance, Revenues and Benefits. The methodology will be agreed at Member level along with other elements of the contract specification.

7 Implications

- 7.1 For the majority of Council contracts, contractors already pay their staff above the Living Wage rate. For some services however incorporating Living Wage conditions into a contract is likely to make the service more expensive. In practice it will be difficult to separate out from other variables (including market conditions) unless the variant bid model is adopted, although this model could add an unnecessary level of complication to the tendering process.
- 7.3 Officers have in conjunction with contractors sought to identify the additional cost if all staff employed by contractors (and their sub-contractors) were to be paid the Living Wage, and the full financial impact was to be passed onto the Council. This analysis shows that the Council's costs would begin to increase in 2016/17 and eventually lead to increased costs of £124,000 (at current prices) by 2022. There are however a number of important qualifications to these figures:
 - a) information provided by the LGiU suggests there are examples of major contractors moving to the Living Wage and absorbing it at no increased cost to the local authority through negotiation.
 - b) conversely, there is a risk that the costs of the Living Wage could be significantly higher due to need for contractors to maintain differential pay rates between grades of staff. In at least one case, supervisory staff currently earn close to the Living Wage and would therefore have a strong case to argue for a pay increase. This could potentially have a knock on impact on other grades.
 - c) there is an added complication where a contractor has staff employed across more than one local authority area. This can happen when there is a joint procurement exercise or simply where one contractor wins more than one contract in an area. This could mean that an employee on a single contract receives the Living Wage rate whilst working at one location and a lower rate when working elsewhere. For the reason described above, a supervisor could also be earning two wage rates. To an extent this would not be a direct concern for the Council, but it may act as a deterrent to potential contractors and complicate contract management.
- 7.4 The Council would be required to pay an annual accreditation fee, currently £400, to the Living Wage Foundation. Fees are charged on a sliding scale and this amount is based on the size of the organisation and is discounted for the public sector.

8. Background Papers

[Living Wage Report](#) to Cabinet 10 July 2012

Living Wage Foundation - Guide to employers - <http://www.livingwage.org.uk/guide-employers>

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