



## City of Westminster

<b>Decision Maker:</b>	Cabinet
<b>Date:</b>	15 July 2019
<b>Classification:</b>	General Release
<b>Title:</b>	Adoption of Living Wage
<b>Wards Affected:</b>	All
<b>Report of:</b>	Councillor Rachael Robathan, Cabinet Member for Finance, Property and Regeneration
<b>Financial Summary:</b>	<p>Adoption of London Living Wage and National Living Wage will see cost pressures relating to wage bills as contracts are retendered over the next 3-5 years. Detailed financial modelling is required however, based on an initial survey of key contracts, the potential cost pressure could range between £3m to £6m.</p> <p>Through the competitive nature of retendering and a phased implementation approach some of the financial impact will be mitigated and spread over several years and could be further mitigated through service redesign.</p> <p>The incremental uplift in pay for Apprentices is expected to be £0.112m.</p>
<b>Report Author:</b>	Gerald Almeroth, Executive Director of Finance and Resources

## **1. Executive Summary**

- 1.1 This report sets out considerations relating to the adoption of London Living Wage/National Living Wage Policy (LLW/NLW) for Westminster City Council and its application to third parties who provide goods and services under contract. The LLW is a benchmark threshold rate of pay for workers living or working in London that is set annually by the Living Wage Foundation to reflect the increased costs of living in the capital. The current rate is £10.55 per hour in London. The Living Wage Foundation also promote the National Living Wage which is the rate used for outside of London, currently set at £9.00 per hour. These figures compare to the statutory National Minimum Wage for over 25-year olds which is £8.21 per hour.
- 1.2 The Council already pays its directly employed London staff (excluding apprentices) at least the LLW and this report sets out the benefits of working with its supply chain so that all directly contracted staff are also able to benefit from a living wage. This report recommends the Council applies for Living Wage Foundation accreditation which acts as a public demonstration of the Council's commitment to residents, employees and suppliers.
- 1.3 Legal guidance within this report notes that imposing LLW on suppliers would leave the Council vulnerable to challenge as it discriminates against bidders from EU Member states. This would not apply to contracts below the thresholds set out in the Public Contract Regulations 2015 and those that do have a 'cross border interest'. There has not been a challenge in the UK to date because Councils have been careful to apply LLW to contracts on a case by case basis, this is the approach that the Council would also propose.
- 1.4 Commercially, early adopters of LLW have seen cost pressures as a result of increased wage bills and through maintaining the salary differential between staff at different grades. However, through the competitive nature of retendering and a phased implementation approach any impact would be spread over several years and could be further mitigated through service redesign.

## **2. Recommendations**

- 2.1 That the Cabinet recommends the Council takes steps to adopt a Living Wage policy whereby staff working for contractors delivering services on behalf of the Council are paid at least the London Living Wage or the National Living Wage outside of London.
- 2.2 The Council continues to pay its own London based staff LLW and to broaden this to apply to its apprentices.
- 2.3 The Council seeks Living Wage Foundation accreditation as a public pledge of its commitment.
- 2.4 A phased approach to implementation is adopted which means that the Living Wage will be incorporated as contracts are retendered with appropriate legal advice taken on a case by case basis.

### **3. Reasons for Decision**

3.1 This recommendation directly supports the City for All priorities, specifically:

- Caring fairer City and
- City of opportunity

### **4. Background information, including policy context**

- 4.1 The London Living Wage is a benchmark threshold rate of pay for workers living or working in London that is set annually by the Living Wage Foundation to reflect the increased costs of living in the capital. The current rate is £10.55 per hour versus the statutory National Minimum Wage of £8.21. The Living Wage Foundation also calculates and promotes a National Living Wage for outside London which is currently £9.00 per hour.
- 4.2 The Living Wage Foundation publishes revised rates in November each year which accredited employers are obliged to pay. Since 2011/12 the LLW rate has increased from £8.55 to its present £10.55 hourly rate, an average increase of 2.9% per annum.
- 4.3 Currently over 5,000 employers are Living Wage Foundation accredited including 18 London Boroughs. Accreditation provides public recognition of the Council's commitment to pay the London Living Wage and provides support to the Council in its policy implementation.
- 4.4 To achieve Living Wage Foundation accreditation the Council must agree to the following:
  - (i) To pay LLW to all employees 18 and over
  - (ii) To put in place a plan so that LLW/NLW is paid by all contractors and subcontractors to their employees to the extent permitted by law. The definition of employees is those contracted staff who work 2 or more hours a day, on any day of the week, for 8 or more consecutive weeks of the year
  - (iii) To implement the revised LLW/NLW hourly rates announced each November within 6 months (Council and contracted staff)
- 4.5 LLW does not strictly apply to contractors that supply the organisation with products e.g. stationery suppliers but would apply to contractors working on WCC's behalf on WCCs' premises for example outsourced cleaning, security, catering staff etc.
- 4.6 Living Wage Foundation accreditation states that self-employed workers are treated the same as sub contracted staff as are staff with no fixed place of work like couriers and homecare workers.

- 4.7 Research from the Living Wage Foundation/Cardiff University found that 93% of employers say their business has benefitted since becoming accredited Living Wage employers. 86% point to an improved reputation of the organisation; 75% have found increased motivation and retention rates for employees and 56% say it has improved industrial relations.
- 4.8 The Council already pays its directly employed London staff (excluding apprentices) at least the LLW. There are two staff who have TUPE'd over from City West Homes whose basic salaries are slightly below the LLW however this will be addressed as part of the LLW accreditation process.
- 4.9 RBKC are also applying for accreditation, there are likely to be additional benefits from operational efficiency across Bi-borough contracts.

## **5. Financial implications**

- 5.1 The impact of the LLW is concentrated on those sectors in which a high proportion of the operating cost comprise relatively low skilled labour e.g., social care services, waste collection, catering, security services and some building related services.
- 5.2 In circumstances where the workforce is London based and discretely assigned to a WCC contract (e.g. waste collection or cleaning services) it is more likely that the supplier would seek to recover costs arising from adoption of the living wage from the Council.
- 5.3 There is also a potential impact indirectly on other more highly paid staff as pay differentials between grades are maintained. Suppliers may also seek to apply additional overhead and profit to maintain their margin position.
- 5.4 Of WCC's top 20 suppliers (£360m per annum of expenditure) only two appear to have universally adopted the LLW. Others may naturally pay in excess of the LLW or they will seek to recover any additional costs arising from adoption of the LLW from the client.
- 5.5 A survey of seven existing key WCC suppliers in August 2018 suggested a range of additional costs, from zero upwards, but cumulatively totalling around £3m p.a. Whilst not definitive (and it would be subject to further challenge and negotiation) this does suggest a potential impact of between £3-6m p.a. as an eventual potential upward cost pressure.
- 5.6 As of May 2019 18 out of 33 London local authorities are 'Living Wage Foundation' accredited employers: Brent, Camden, Croydon, City of London, Ealing, Enfield, Greenwich, Haringey, Hackney, H&F, Hounslow, Islington, Lambeth, Lewisham, Redbridge, Southwark, Tower Hamlets and Waltham Forest.
- 5.7 It is worth noting that 85% of WCC's top 20 suppliers also supply the 18 London Boroughs already committed to pay the LLW directly and in their supply chains.

- 5.8 Across the Council as a whole, the average contract length is 3.2 years. Some contracts are 5 years or more. Full adoption of LLW on a phased basis will therefore take approximately this period to work through all contracts.
- 5.9 A phased implementation approach as contracts expire and are re-procured would enable the Council to assess the issues and impact on a case by case basis, while taking advantage of competitive tendering, service redesign and technological advances which could mitigate the potential pressures over time. The Living Wage Foundation accreditation further allows and supports a phased approach to implementation
- 5.10 The Council currently has 43 apprentices at Level 3 and Level 4, the cumulative annual cost to bring them in line with the LLW would be £112,295 at current LLW rates. The figure is inclusive of National Insurance and employer's Pension Contribution.

## **6. Legal implications**

- 6.1 The Court of Justice of the European Union has held that the imposition of a wage such as the London Living Wage discriminates against contractors from Member states other than (in this case) the UK, and therefore contravenes Article 56 of TFEU (freedom to provide services). The Court's rationale for this is that imposing the LLW deprives those contractors of the competitive advantage they enjoy by having lower wage costs which advantage is necessary for them to offset the structural advantages enjoyed by domestic contractors.
- 6.2 There has not been a challenge in the UK to date because Councils have been careful to apply LLW to contracts on a case by case basis where there is little or no cross-border interest, the contract is below threshold, the Council has paid the LLW uplift itself or the risk of challenge is low.
- 6.3 Current legal advice would therefore suggest the adoption of a phased implementation approach where each procurement is assessed on a case by case basis would avoid or at least mitigate the risk. A clear Council policy on LLW would be required to support the Council's wish to seek LLW on its procurements.

## **7. Implementation and Next Steps**

- 7.1 Once a decision has been made to adopt the Living Wage and seek accreditation the Council will proceed to undertake measures to ensure a successful implementation to include:
  - i. Set up a Living Wage implementation group with representatives from procurement, finance, legal, policy, HR, communications and wider departments to develop and lead the implementation
  - ii. Develop a detailed action plan with associated timelines to assess all future procurements where Living Wage would be applicable

- iii. Review and amend all existing procurement documentation, processes and systems to ensure Living Wage requirements are considered and develop new as required
- iv. Write to existing contractors to request voluntary inclusion of Living Wage into qualifying contracts
- v. Ensure through contract management that annual Living Wage uplifts are being applied
- vi. Update apprentices pay so that new LLW rates are applicable from 1<sup>st</sup> August 2019<sup>1</sup>.

**If you have any queries about this report or wish to inspect any of the background papers, please contact: Snowia Hussain, Responsible Procurement Lead x4866**

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<sup>1</sup> New rates will either be implemented from 1<sup>st</sup> August 2019 following Cabinet sign-off, or at the appropriate date following agreement at Full Council.