



To: Executive Councillor for Customer Services and Resources
Report by: Head of Human Resources
Relevant scrutiny committee: Strategy and Resources Scrutiny Committee 21 January 2013
Wards affected: All

Report Title: **Living Wage**

Key Decision: **Yes**

Open

1. **Executive summary**

1.1 This report sets out consideration of the Council's approach to the Living Wage for staff, agency workers and contractors engaged through the Council's procurement processes.

2. **Recommendations**

2.1 The Executive Councillor is recommended to:

2.1.1 Endorse the proposal to pay the Living Wage for Cambridge City Council staff, by way of a supplement to current pay rates.

2.1.2 Endorse the proposal to pay the minimum of the Living Wage to agency workers after 4 weeks of their engagement with the City Council

2.1.3 Agree to a review within 12 months of the proposal to pay the minimum of the Living Wage to agency workers after 4 weeks of their engagement and for any changes to be proposed for the 2014 Pay Policy Statement.

2.1.4 Encourage contractors to adopt the Living Wage through the Council's procurement processes

2.1.5 Include the recommendations of this Committee, as they relate to staff and agency workers, in the Council's proposed Pay Policy Statement, to be considered by Civic Affairs on 30th January 2013.

3. Background

3.1 Purpose

3.1.1 This report outlines the considerations for the Council in proposing to adopt a Living Wage policy for employees, agency workers and in relation to contractors engaged through the council's procurement processes.

3.2 Council Notice of Motion

3.2.1 This report responds to the Notice of Motion adopted by Council on 25 October 2012, as set out below, 2/57/CNLe Motion E:

Resolved (unanimously) that:

Council notes:

- A living wage was first established in the UK in 2001
- Currently the living wage rate is £7.20p per hour outside London (the "Living Wage"), calculated using incomes and prices data on a system developed and maintained by the Centre for Research and Social Policy at Loughborough University
- According to charity Barnardo's over 58% of children who live in poverty in the UK have at least one parent in paid work
- The Living Wage Foundation estimates over 10,000 families have been helped out of working poverty across the UK as a result of the living wage
- Recent tax changes put in place by the Liberal Democrats as part of the Coalition Government that provided a tax cut of £220 per year for low paid individuals has lifted many of the low paid out of the tax threshold
- That key components of the cost of living (food and utilities) continue to be challenging for residents of the city
- The Living Wage Week during 4th – 10th November 2012 will actively promote the living wage across the UK

Council believes:

- The national minimum wage was an important development to ensure a basic level of income for the lowest paid
- However, given the cost of living in Cambridge the minimum wage is not enough for an individual or a family to avoid living in poverty with all the ill effects that has

- A living wage is considered the minimum wage needed to provide 'adequate income' to ensure social inclusion for an individual or their family
- As one of the City's biggest employers, the City Council can help promote the living wage in Cambridge by becoming a 'living wage employer'
- That the procurement strategy of the City Council can influence and encourage our partners in service delivery to uphold the same approach as ours

Council requests that the Executive Councillor for Customer Services & Resources:

- Bring forward proposals that:

- o Ensure all employees receive at least the Living Wage as soon as practicable and by no later than April 2013; and

- o Ensure all agency and temporary staff receive the Living Wage as part of the Budget process for 2013/2014; and

- o Explore changing the Council's procurement processes to encourage contractors to adopt a similar position and as legislation permits insist that contractors meet the living wage obligation

Writes to the MPs in Cambridge seeking their support and asking them to campaign for the living wage in the City.

3.3 The Living Wage

3.3.1 The Living Wage Foundation state on their website that work should be the surest way out of poverty and that paying the Living Wage is good for business, good for the individual and good for society.

3.3.2 The Living Wage is an hourly rate set independently and updated annually, calculated by the Centre for Research in Social Policy at Loughborough University (outside London) and the Greater London Authority (London) and is calculated according to the basic cost of living in the UK. The Living Wage is reviewed each November and in November 2012, rose from £7.20 (outside London) and £8.30 (London) to £7.45 and £8.55 respectively. Employers choose to pay the Living Wage on a voluntary basis

- 3.3.3 An independent study of the business benefits of implementing a Living Wage policy in London found that more than 80% of employers believe that the Living Wage had enhanced the quality of the work of their staff, while absenteeism had fallen by approximately 25%. Two thirds of employers reported a significant impact on recruitment and retention within their organisation. 70% of employers felt that the Living Wage had increased consumer awareness of their organisation's commitment to be an ethical employer.
- 3.3.4 The Living Wage Foundation state that a living wage affords people the opportunity to provide for themselves and their families. 50% of employees felt that the Living Wage had made them more willing to implement changes in their working practices; enabled them to require fewer concessions to effect change; and made them more likely to adopt changes more quickly.
- 3.3.5 The Living Wage campaign was launched in 2001 by parents in East London, who were frustrated that working two minimum wage jobs left no time for family life. The Living Wage campaign has since grown into a national movement.
- 3.3.6 Where an employer becomes an Accredited employer they are entitled to a licence to use the Living Wage Employer mark.

3.4 The National Minimum Wage

3.4.1. The Living Wage is a voluntary rate but the national minimum wage is a statutory requirement. There are currently three aged based national minimum wage rates and an apprentice rate, which are usually updated in October each year. The rates that apply from 1 October 2012 are as follows:

- for workers aged 21 years or more: £6.19 per hour
- for workers aged 18 to 20 inclusive: £4.98 per hour
- for workers aged under 18 (but above compulsory school age): £3.68 per hour
- for apprentices aged under 19: £2.65 per hour
- for apprentices aged 19 and over, but in the first year of their apprenticeship: £2.65 per hour

Apprentices aged 19 or over who have completed one year of their apprenticeship are entitled to receive the national minimum wage rate applicable to their age.

3.4.2 The Council pays the national minimum wage of £6.19 to some agency workers (e.g. folk festival, stewards, cleaners, catering assistants) and includes provision in its' procurement contracts for compliance with the statutory minimum rates.

3.5 City Council Staff

3.5.1 The Council has 1026 staff, paid in nine bands (Bands 1-9) and four senior management grades; JNC1, JNC2, Director and Chief Executive. The minimum pay rate for City Council staff is currently £7.04.

3.5.2 The proposal to pay the equivalent of the Living Wage would impact on six City Council staff currently paid on Band 1, (£13,589 - £15,725), equivalent to £7.04 per hour to £8.15 per hour. There are four staff paid at £7.04 and two at £7.19.

Band 1, the bottom grade in the Council's Pay Structure, has a six pay point scale with equivalent hourly rates of: £7.04, £7.19, £7.63, £7.79, £8.00 and £8.15. Staff progress through the pay scale by way of performance related progression, assessed at an annual performance review. There are 14 staff on this pay band

3.5.3 The posts on this band are: Café Assistant, Publicity Assistant, Facilities Assistant, Administrative Support, Cleaner across a range of services including, Community Development, Arts and Recreation, Specialist Services and Streets and open Spaces.

3.5.4 The living wage is reviewed by the Living Wage Foundation each year in November and could increase each year. In November 2012 the outside London rate increased from £7.20 to £7.45. Neither of these rates accord directly with a council pay scale point

3.5.5 The proposed approach is to continue to maintain the City Council pay Band 1 as it is currently set out, with six points, as above, but to ensure that current staff are paid the equivalent of £7.45 per hour by way of a supplementary payment and that no member of staff is paid less than this. The supplement will be pensionable.

3.5.6 The Council's pay scale points are set as part of the national pay bargaining but the Band 1 scale is locally determined and was changed in June 2012 to a six point scale as part of the Review of Pay, Terms and Conditions. If a national pay award changes the pay points as set out above, the amount of the supplement will be

reduced to reflect the new difference between the pay scale point and the living wage, maintaining the living wage.

3.5.7 One alternative approach to a supplement approach would be to change one pay scale point to match the Living Wage. However, this would need to be reviewed each November, negotiated with the trade unions and changed through Civic Affairs and Council each year when the rate is changed.

3.5.8 Should the Living Wage exceed £8.52, the current bottom pay point of Band 2, we would need to consider the equal pay implications of paying staff more than a Band 1 equivalent rate.

3.5.9 At the Joint Staff Employer Forum meeting on 10 December 2012, GMB proposed a third option of moving to the pay point £7.63, currently above the Living Wage, and removing pay points £7.04 and £7.19 (below the Living Wage) from Band 1. This would not require the use of a supplement and would maintain the national pay scales but is the most costly option for staff and agency workers. Unison have also asked about this option.

3.5.10 The National Joint Council Trade Union Side has submitted the following claim for a pay increase for 2013 – 2014 to the national employers:

“A substantial flat rate increase on all scale points as a step towards the longer term objective of restoring pay levels and achieving the living wage as the bottom NJC spinal column point”

The Joint Trade Union Side have called for a longer term objective of restoring pay levels and achieving the living wage as the bottom NJC spinal column point. The national employers and national trade unions are currently in negotiations about the pay claim.

3.5.11 There will need to be further negotiation with the trade unions about any proposed changes to the Council's pay policies in relation to the Living Wage and the payment of a supplement. Unison and GMB are supportive of proposals to pay the Living Wage to staff and agency workers. Unison had raised this matter with the Chief Executive and Head of Human Resources as part of their national campaign to encourage employers to adopt the Living Wage. Unison made a presentation to the Joint Staff Employer Forum (JSEF) on the 21 August 2012 on the Living Wage. GMB have also indicated their support. The matter was discussed further at the JSEF meeting on 10th December 2012 where the three options outlined above were considered.

3.5.12 It is proposed that all city council employees receive at least the Living Wage, the approximate cost of this proposal, at basic salary only, is approximately £3,100. It is not proposed that the living wage rate is paid for apprentice level posts.

3.6 Agency workers

3.6.1 Approximately 390 agency workers were engaged in 2011/12 at rates (now equivalent to the minimum wage) of £6.19 to below £7.20 (November 2011 Living Wage rate). This included people working at the Folk Festival, a four day event (approximately 192), for short term demand as stewards/crew (86) at the Corn Exchange and events and for short term cover in posts such as cleaners and for seasonal work like grass cutting (65).

3.6.2 The Council currently pay Band 1 equivalent rates for Band 1 jobs from the 12 week Agency Worker Regulation qualifying date.

For temporary agency workers, the Agency Worker Directive 2011 requires equal treatment in respect of the 'relevant terms and conditions' ordinarily incorporated into the contracts of those working for the hirer. These rights are subject to a 12-week qualifying period.

Relevant terms and conditions' are defined as:

- pay (pay, plus any fee, bonus, commission, or other payment directly referable to the employment, such as overtime or unsocial hours payments);
- the duration of working time, night work, rest periods, rest breaks and annual leave.

3.6.3 The options for considering when payment of the Living Wage for agency workers should apply include:

- from Day 1
- from Week 12 in accordance with the Agency Worker Regulations (2011)
- from a point between Day 1 and Week 12

3.6.4 The proposal is to pay a minimum of £7.45 after 4 weeks of engagement for agency workers. This is an enhancement on the statutory requirement of 12 weeks.

3.6.5 A number of agency workers are engaged for short term assignments such as the Folk Festival, where approximately 230 people were engaged over 4 days, or on an ad hoc basis for short term demand, i.e as stewards. Of the 314 temporary workers engaged other than for the Folk Festival in 2011/12, 61 were engaged for less than two weeks, 41 for between two and four weeks and over 210 for more than four weeks. This pattern of usage of agency workers for all posts was similar in the previous year. In light of this it is proposed that the after 4 weeks qualifying period is put in place for 2013/14. This will be monitored and reviewed at the same time as a review of the usage of agency workers is undertaken.

3.6.5 It is proposed that the proposal to pay agency workers a minimum of £7.45 after 4 weeks of their engagement is reviewed with the next 12 months and that any changes are incorporated into the 2014 Pay Policy Statement.

3.7 The Legal Position

3.7.1 The City Council has obtained detailed legal advice on the scope for requiring contractors to pay the living wage. A summary of the advice will be shared on a confidential basis with the Executive Councillor and members of the Scrutiny Committee. If members wish to receive detailed legal advice at this meeting, they are advised first to exclude the press and public. The legal position with regard to procurement is not straightforward but the key points are summarised below.

3.7.2 Section 17 of the Local Government Act 1988 prevents authorities from taking account of what it terms “non-commercial considerations” in letting contracts. These include “the terms and conditions of employment by contractors of their workers”. Regulations made under the Act relax this prohibition by providing that “the Council may take account of terms and conditions of employment to the extent that it considers it necessary or expedient, in order to meet its “best value” duty; i.e. the Council’s obligation to “secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”.

3.7.3 The Public Services (Social Value) Act 2012 will allow the Council to have regard to non-commercial matters to the extent that it considers necessary or expedient to comply with its new duty to improve the economic, social and environmental well-being of

Cambridge when letting contracts. However, this provision is not yet in force. When it takes effect, it will allow consideration only of “matters that are relevant to what is proposed to be procured” and the Council “must consider the extent to which it is proportionate in all the circumstances to take those matters into account”.

3.7.4 The Council also has an obligation to comply with EU procurement law, in particular the Public Contract Regulations 2006. EU procurement law requires that evaluation criteria must relate to the subject matter of the contract. This means that it is difficult to use commitment to the living wage as an evaluation criterion. There may be more scope for making payment of a living wage a contractual requirement but there would still be a need to demonstrate that this would achieve “best value”. There would also be a need to take care to avoid any cross-border anti-competitiveness.

3.7.5 Overall, there is a significant risk of legal challenge in relation to procurement of services if the City Council either uses commitment to pay the living wage as an evaluation criterion or requires payment of the living wage as a contractual requirement.

3.7.6 This view is supported by the conclusions of a report by the Scottish Parliament’s Local Government and Regeneration Committee into “The Living Wage in Scotland”. This reviewed practice and legal views on the living wage and procurement and concluded:

“Taken together, this evidence would seem to the Committee to suggest some potentially serious challenges in relation to any attempt to include the living wage as a condition of the award of local government contracts.”

3.7.7 In consequence, this report explores the alternative approach of encouraging tenderers to make a commitment to the living wage and of seeking to identify and evaluate the benefits to the Council associated with payment of the living wage.

3.8 Council’s Procurement Processes

3.8.1 The Council does not have pay rate policies applicable to contractors. The requirement to pay the minimum wage is enforced by national legislation.

3.8.2 The legal position is set out in section 3.7 of this report.

3.8.3 Whilst there are legal difficulties in the Council using payment of the living wage as an evaluation criterion or as a contractual requirement, the Council can be clear about its own support for the Living Wage and the benefits arising from it. It can exhort contractors that we do business with to consider implementation of the living wage in their businesses and ask (for information) whether a bidder is living wage employer. Words to this effect can be built into the Council's procurement policy and standard documentation.

3.8.4 Where a contract for services means that a contractor will be employing a dedicated team of staff to deliver those services to the Council (whether full time or part time) it's suggested that the team responsible for the procurement:

- a) identify the factors that will contribute to the delivery of a Best Value service; and
- b) assess where payment of the Living Wage and the benefits flowing from it might contribute to the delivery of those factors.
- c) get Member support for the approach when asking for authority to undertake the procurement.

An evaluation scheme can then be devised that assesses, as part of the overall best value assessment, the performance of bidders in those particular areas.

3.8.5 This approach has most recently been adopted in the procurement for the new Leisure Management service, as considered by the Community Services Scrutiny Committee on 5 December 2012 and bidders for the IT contract have been asked to outline their approach to the Living Wage (the responses to this question will not be considered for the purposes of the tender evaluation but will provide information that the Council will find useful in formulating future policy and documentation).

3.8.6 Organisations that have started paying the Living Wage have reported a number of benefits. These include:

- Improved recruitment and retention, reducing recruitment costs
- Better attendance
- Better productivity, motivation and loyalty
- Employees more willing to implement and adopt changes
- Better quality of service
- A workforce that has higher levels of experience, competence and training

3.8.7 Major procurements the Council will be undertaking in the next 12-18 months include :

- Cleaning Services
- Maintenance of the Council's Built Assets
- Inspection and maintenance of the Council's tree stocks

3.9 Annual review of Pay Policy through Civic Affairs and Council

3.9.1 The Localism Act required the Council to have considered, approved and published a pay policy statement by 31st March 2012 and to review the statement each financial year. The pay policy statement covers posts designated 'chief officer'. The Localism Act also requires the statement to define the lowest paid employees and the ratio to the highest earning employee. The lowest paid employees are in Band 1.

3.9.2 It is therefore proposed to include a statement about the Living Wage as a pay policy within the Pay Policy Statement. The Pay Policy Statement will be considered by Civic Affairs, at the meeting on 30th January 2013, and by Full Council at the February meeting.

3.10 Proposals

3.10.1 Outlined below are the proposals for adoption of a Living Wage by Cambridge City Council:

3.10.1.1 That all Cambridge City Council employees are paid a minimum of the Living Wage, currently £7.45, by way of a supplement to their pay point at £7.04 or £7.19.

3.10.1.2 That all agency workers are paid a minimum the Living Wage, currently £7.45, after 4 weeks of their engagement.

3.10.1.3 That a review is undertaken within 12 months of the proposal to pay the Living Wage to agency workers after 4 weeks of their engagement, and for any changes to be proposed for the 2014 Pay Policy Statement.

3.10.1.4 That the City Council encourage contractors to adopt the Living Wage through the relevant procurement processes

3.10.1.5 That the recommendations of this Committee, as they relate to staff and agency workers, are included in the Council's proposed Pay Policy Statement, to be considered by Civic Affairs on 30th January 2013.

4. Implications

(a) Financial Implications

A Priority Policy Fund (PPF) bid of £43,000 has been submitted as part of the Councils budget setting process for 2013/2014 in relation to the proposed additional costs for employees and agency workers.

Assuming the same level of agency worker usage as for 2011/12 for costing purposes, the increase in costs will relate mainly to Arts and Recreation for the Folk Festival and for stewarding at the Corn Exchange and other events and for Streets and Open Spaces in respect of cleaners and seasonal work, with small impact on a further eight service areas.

(b) Staffing Implications

The proposals in this report impact on six City Council staff currently paid on pay rates of £7.04 and £7.19 and approximately 390 agency workers engaged to work on the Folk Festival, as stewards at the Corn Exchange and other events and for short term work in posts equivalent to Band 1 under the Council's pay scales.

(c) Equal Opportunities Implications

An Equalities Impact Assessment has been undertaken and is attached as Appendix 1 to this report.

(d) Environmental Implications

There are no environmental implications arising from this report which relates to payment levels for staff, agency workers and contractors.

(e) Procurement

The procurement implications are set out in section 3.8 of this report.

(f) Consultation and communication

Consultation has taken place with the Leader of the Council, the Executive Councillors for Customer Services and Resources and Arts, Sport and Public Places, and the trade unions via the Joint Staff Employer Forum.

Unison and GMB are supportive of proposals to pay the Living Wage to staff and agency workers. Unison had raised this matter with the Chief Executive and Head of Human Resources as part of their national campaign to encourage employers to adopt the Living Wage. Unison made a presentation to the Joint Staff Employer Forum on the 21 August 2012 on the Living Wage. GMB have also indicated their support.

Further consultation will need to take place with the trade unions on the pay policy implications.

(g) **Community Safety**

There are no community safety implications arising from this report.

5. Background papers

These background papers were used in the preparation of this report:

- An Equality impact Assessment
- The Living Wage Foundation website www.livingwage.org.uk
- Minutes of Council 25 October 2012
- The Scottish Parliament's Local Government and Regeneration Committee: Report on the Living Wage in Scotland
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/46601.aspx>

6. Appendices

Appendix 1 - Equality Impact Assessment

7. Inspection of papers

To inspect the background papers or if you have a query on the report please contact:

Author's Name: Deborah Simpson
Author's Phone Number: 01223 458101
Author's Email: Deborah.Simpson@cambridge.gov.uk