



To: Leader of the Council  
Report by: Head of Legal Services  
Relevant scrutiny committee: Strategy & Resources 14/7/2014  
Scrutiny Committee  
Wards affected: Abbey Arbury Castle Cherry Hinton Coleridge  
East Chesterton King's Hedges Market Newnham  
Petersfield Queen Edith's Romsey Trumpington  
West Chesterton

## CAMBRIDGE CITY COUNCIL LIVING WAGE ACCREDITATION

### Key Decision

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#### 1. **Executive summary**

1.1 The purpose of the report is, as instructed by Members at the meeting of the Strategy and Resources Committee on 20<sup>th</sup> January 2014, to explore the options for the Council becoming a Living Wage Employer accredited by the Living Wage Foundation.

1.2 Living Wage accreditation requires the Council:

- to pay its own employees not less than the Living Wage (which the Council has done since April 2013),
- to the extent permitted by law to put plans in place to pay contracted staff (and sub-contracted staff) that provide services to or on behalf of the Council on Council premises for 2 or more hours in any given day in a week for 8 or more consecutive weeks in a year not less than the Living Wage
- commit to meeting any annual increases in the Living Wage rate (for both council and relevant contracted staff).

1.3 A decision is needed to either apply for accreditation and to amend the Council's existing policy to reflect this, or to continue to pursue the policy contained within the Pay Policy Statement 2014 confirmed by Council on 27th February 2014. The Pay Policy is reviewed annually.

1.4 If adopted, achieving accredited status would form an important part of the Council's emerging anti-poverty strategy.

## **2. Recommendations**

The Executive Councillor is recommended:

2.1 to adopt a living wage policy in respect of contractors as set out in paragraph 4.13 below to the extent permitted by law;

2.2 to authorise the Director of Business Transformation to seek accreditation from the Foundation as a UK Living Wage employer.

2.3 to authorise the Director of Business Transformation to make such minor alterations to the approach set out in this report as may be required to achieve accreditation following consultation with the Executive Councillor, Chair and Opposition Spokes;

2.4 to amend the Contract Procedure Rules accordingly.

## **3. Background**

3.1 At its meeting on 25<sup>th</sup> October 2012 Council adopted a Notice of Motion (2/57/CNLe Motion E) that stated its belief that:

- 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

3.2 Accordingly in February 2013 the Council adopted a Living Wage Policy as part of its consideration of the Pay Policy Statement 2013/14. One element of the then policy required the Council to review, within 12 months, the proposal to pay the minimum of the Living Wage to agency workers after 4 weeks of their engagement, any changes to be proposed for

the 2014 Pay Policy Statement. The review was carried out and the Policy confirmed by Council on 27<sup>th</sup> February 2014.

3.3 The current policy as contained within the Pay Policy Statement 2014/15 states:

*“The Council has adopted a Living Wage policy for staff, agency workers and contractors engaged through the Council’s procurement processes.*

*The Council will pay the national Living Wage rate for Cambridge City Council staff, by way of a supplement to pay rates.*

*The Council will pay the minimum of the national Living Wage rate to agency workers after 4 weeks of their engagement with the City Council*

*The Council will encourage contractors to adopt the Living Wage through the Council’s procurement processes”*

The Pay Policy Statement is reviewed annually in January.

3.4 In January 2014 it was agreed by the Executive Councillor for Customer Services and Resources that a report would be brought to a future meeting of the Strategy and Resources Scrutiny Committee exploring the options for accreditation by the Foundation.

3.5 The Living Wage is a commitment by an employer to pay at least the minimum hourly rate to its employees that provides the basic cost of living. It is a voluntary commitment and is separate from the National Minimum Wage which employers are required to pay by law. The UK Living Wage campaign is run by the Foundation.

3.6 Studies by the Greater London Authority (GLA) and Queen Mary’s University into the business benefits of implementing a living wage policy found that more than 80% of employers consulted believed that the living wage had enhanced 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 and felt that their reputation as an ethical employer had been enhanced as a result.

3.7 The Foundation state that a living wage affords people the opportunity to provide for themselves and their families (dignity and well-being of least well off residents is a key tenet of the Anti-Poverty Strategy) and 50% of employees felt that the living wage 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 change more quickly.

3.8 The UK Living Wage is based on the average price of a minimum basket of goods and services needed to provide a basic quality of life, including housing and childcare costs. London is excluded from the UK Living Wage and has its own, higher, figure which is calculated by the GLA.

3.9 The Living Wage is not a fixed amount and is reviewed annually to accommodate changes in the price of goods and inflation. In November 2013 it was announced that the UK Living Wage had risen from £7.45 per hour to £7.65 per hour to reflect an increase in the basic cost of living.

3.10 Cambridge experiences higher living costs than many other parts of the UK. A combination of high private sector housing costs and pockets of low wages in key sectors of the local economy means that many of the City's residents already face greater pressure to meet living costs than those in other parts of the country.

3.11 The Living Wage is an important contribution towards achieving the priorities in the Council's Vision, of "One Cambridge – Fair for all" in particular "A city which believes that the clearest measure of progress is the dignity and well-being of its least well-off residents, which prioritises tackling poverty and social exclusion, recognising that greater social and economic equality are the most important pre-conditions for the city's success".

3.12 The Council is developing an Anti-Poverty Strategy, with the ruling group stating in their annual statement that "The Council's core priority will be to share Cambridge's prosperity in order to ensure that the benefits of growth are enjoyed by all, including those who clean and staff Cambridge's shops, offices and restaurants, those who work in low-paid jobs at Addenbrookes or in the colleges...". The Council's approach to the living wage could form a key element of such a strategy, provide leadership and set an example to other employers in the City.

## **4 What Accreditation means**

4.1 Living Wage Accreditation, which is granted by the Foundation, requires an employer to pay all employees the current Living Wage as a minimum and increase this amount in line with any future annual increases in the Living Wage.

4.2 For the purposes of accreditation, employees fall into two separate groups, those who work directly for the Council and those employed by

contractors (and their sub-contractors) appointed by the Council providing services on its behalf.

4.3 Annual increases in the Living Wage will have financial implications beyond 2015-16 that can't be predicted. As a public body we have an obligation to protect our financial interests and in making the commitment to become an Accredited Employer we will review costs related to future increases in the Living Wage as part of the annual review of the Pay Policy Statement referred to above.

4.4 A growing number of organisations around the UK have already become accredited (700 in total including 30 local authorities – Harlow, Ipswich and Norwich in the East of England at the time of writing) and others are going through the process.

4.5 There will be an annual fee to the Council of £400 payable to the Foundation.

4.6 If we achieved status as an Accredited Employer we would be entitled to a licence to use the Living Wage Employer mark

#### **Living Wage Accreditation first criteria – council employees**

4.7 The Council has been paying the Living Wage to employees (and agency staff after 4 weeks of their engagement) since April 2013. The Council has led the way as far as agency staff is concerned by setting a standard that goes beyond the Foundation's requirements under which agency staff are to be paid the Living Wage after 8 weeks of their engagement.

#### **Living Wage Accreditation second criteria – procurement**

4.8 For the reasons set out below, the Council cannot lawfully adopt a blanket approach to the inclusion of the Living Wage in all of its contracts. The Council will have to assess on a case by case basis, whether there is a best value justification for including a requirement for the contractor to pay the Living Wage each time a relevant procurement is considered.

4.9 Local Authorities are prevented from taking into account of "non-commercial considerations" when letting contracts. These include the terms and conditions of employment by contractors of their workers. Regulations have relaxed the prohibition by providing that the Council can 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".

4.10 More recently the Public Services (Social Value) Act 2012 allows the Council to have regard to non-commercial matters to the extent that it considers it necessary or expedient to comply with its duty to improve the economic, social and environmental well-being of Cambridge when letting contracts but only to the extent of matters that are relevant and proportionate to what is to be procured.

4.11 The limitations of the Council's freedom to act is recognised by the Foundation. Procurement criteria within the Living Wage accreditation agreement require that, **to the extent permitted by law**, contractors (and their sub-contractors) providing a service to or on the Council's behalf should pay their employees (identified below) the living wage and also meet any annual increases in the Living Wage rate.

4.12 Therefore within the terms of the accreditation, the Council can exempt cases where it would not be lawful to consider requiring the Living Wage in a contract. In addition, the accreditation agreement stipulates that the Living Wage only applies to contractor/sub-contractor employees (other than an apprentice or intern) who work on Council premises for 2 or more hours on any day of the week for 8 or more consecutive weeks in a year ("Qualifying Staff").

4.13 The new policy would require contractors to pay at least the Living Wage to Qualifying Staff unless the contract fell within the permitted exclusions (see para 4.15) including where it would be inappropriate to do so. In order to identify those contracts for which it would not be appropriate to require the Living Wage it is proposed that the procedure set out below is followed.

4.14 The recommended procedure is:

- Assess if the Living Wage is within the scope of the procurement ie are there any potential Qualifying Staff?
- A best value assessment of the benefits or otherwise of requiring the Living Wage is made at the outset of each relevant procurement project. The assessment will cover areas such as
  - a. recruitment/reliance on agency staff and retention
  - b. turnover of staff,
  - c. quality of staff in terms of experience/qualifications,
  - d. nature of service and market sector,
  - e. feedback from any market investigations
  - f. likely cost estimated with reference to market consultations and experience from other procurement exercises

- The best value assessment will include consideration of the Council's obligations under the Social Value Act 2012 where the service contract is caught by the European Procurement directives/Public Contracts Regulations 2006. This will take into account:
  - a. Proportionality: the likely change to the staffing cost element compared to the overall value of the contract
  - b. Relevance: the contribution that payment of the Living Wage can make to achieving any social value objectives identified by the Council via its Vision, objectives or the portfolio or operational plan of the client department that are relevant to the subject matter of the contract
- The completed assessment is considered by the relevant Director, or for contracts valued at £300k or more, by the Director and the Executive Councillor following pre-scrutiny, and a decision is made about the inclusion or otherwise of a contractual condition requiring the contractor to pay the Living Wage to qualifying staff in any particular contract.
- If a decision is made to include the Living Wage, reference to the requirement is included in the advertisements/OJEU notice and tender documents for the procurement.

### Benefits

- A transparent process
- The competitive process may minimise the impact of contractors passing on a living wage price uplift
- Clear audit trail
- Clarity for potential contractors from the outset of the procurement
- Risk management. The risk of challenge by potential bidders on the basis of anti-competitiveness or breach of fiduciary duty identified before contract award for the highest risk contracts

### Risks

- Adds complexity to the procurement processes
- Financial aspect of best value assessment not based on actual costs resulting from competition
- A decision not to require the Living Wage may result in the Council compromising the terms of its accreditation

## 4.15 Exclusions

The only contracts that would be excluded from the requirement to pay the Living Wage would be

- contracts where it would be unlawful to require payment of the Living Wage
- contracts where, following evaluation, it was considered inappropriate to pay to impose the requirement

4.16 There are a number of existing contracts that have a significant remaining contract period. Where the opportunity presents itself and there is a best value case to justify it, the Living Wage will be implemented if appropriate and possible but there are some to which the Living Wage will not be applied until the contracts are renewed. This is a problem common to other authorities and has been recognised by the Foundation which offers a phased implementation option. Phased implementation allows for contracts to be brought into line on a rolling basis as they come up for renewal. Although there is no specific cut-off point the Foundation expects the bulk of contracts to move onto the Living Wage (where it would be legal to do so) within two or three years of accreditation. Very long term contracts (for example the IT management contract) are considered by the Foundation on a case by case basis.

## 5. Implications

### (a) Legal Implications

5.1 The EU procurement rules, the Public Contracts Regulations 2006 and the Local Government Acts 188 and 1999 (as amended) impose restrictions which would mean that adopting a blanket policy of applying the Living Wage to all contracts would be unlawful. This is recognised by the Living Wage Foundations whose licence requires the Living Wage to be considered “to the extent permitted by law”. For some services, in particular where there is likely to be cross border interest, a requirement to submit a Living Wage bid could be a barrier to potential suppliers. The risk can be minimised if the decision to adopt a living wage requirement is assessed on a case by case basis and made clear from the outset of the procurement. An assessment will be required in each case prior to tendering a contract as to whether a Best Value case can be made for imposing a Living Wage for a particular contract. The assessment will include linking the living wage requirement to the subject matter of the contract. An audit trail of the decision and reasons for it will need to be maintained. If Accreditation is sought, project managers will need help from the procurement and legal teams to identify which contracts it would be appropriate to apply the Living Wage to.



5.2 Where the Living Wage is to be applied, effective contract clauses and contract monitoring arrangements will need to be put in place in order to ensure that the Living Wage is applied fairly and effectively to all Qualifying Staff and that any changes to the specified Living Wage that result from the annual reviews are paid in a timely manner.

**(b) Financial Implications**

The annual fee for Living Wage accreditation is £400. This could be met from the Sharing Prosperity Fund (subject to Member approval) in the event that a decision is made to go ahead.

As far as satisfying the first accreditation criteria, the Council's staff and agency workers (after 4 weeks) are already paid the current Living Wage there will be no additional cost as a consequence of accreditation.

With regard to the second criteria, it is not possible estimate the additional cost with respect to staff employed through contracts as the pay rate information to make a calculation is not available. The financial impact for each contract going forward will be assessed as part of the Best Value assessment required at the start of the procurement. The actual impact will be identifiable once the contract is in place starting with the building cleaning procurement and over time the Council will gain experience which will inform the annual review of the policy referred to at para 4.3 above.

**(b) Staffing Implications** (if not covered in Consultations Section)

Council staff (and agency staff after 4 weeks) are already paid at least the Living Wage. The impact of any change would relate to contractor and sub-contractor staff delivering services to the Council on Council premises.

**(c) Equality and Poverty Implications**

An Equalities Impact Assessment is attached as Appendix 1 to this report. It concludes that payment of the Living Wage, as required to achieve accredited Living Wage Employer status, will have a positive impact on the Council's staff, agency workers working for the Council and Relevant Employees. Insofar as the Living Wage is calculated to provide for a basic cost of living and to enable employees to provide for themselves and their families it will contribute in a tangible way to ameliorating the financial disadvantage and difficulties of those in the lowest paid jobs.

(d) **Environmental Implications**

There are no environmental implications arising from this report.

(e) **Procurement**

The procurement implications of the Council becoming an accredited Living Wage authority are covered in the report.

(f) **Consultation and communication**

The Director of Business Transformation and the Heads of Legal, Human Resources and Corporate Strategy have been consulted on this report.

The trade unions recognised by the Council, Unison and GMB are supportive of the Living Wage and have held a national campaign to encourage employers to adopt the Living Wage. In the event that a decision is made to seek accreditation, the unions will be consulted throughout the process.

(g) **Community Safety**

There are no community safety implications arising from this report.

**6. Background papers**

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

Reports to Strategy and Resources Scrutiny Committee 21 January 2013,  
Civic Affairs, 30<sup>th</sup> January 2013, Council 21 February 2013, Strategy and  
Resources January 2014 and Council February 2014  
Equality Impact Assessment  
Living Wage Foundation – Guide for Employers

**7. Appendices**

A Equalities Impact Assessment

## 8. Inspection of papers

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

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