

POLICY AND RESOURCES COMMITTEE

Wednesday, 17 March 2021

REPORT TITLE:	CONSIDERATION OF GAINING REAL LIVING WAGE ACCREDITATION
REPORT OF:	DIRECTOR OF RESOURCES

REPORT SUMMARY

This report provides a further summary of the work being undertaken to explore gaining accreditation with the Living Wage Foundation.

This matter affects all wards within the Borough.

This is not a key decision.

This follows from the report considered by Cabinet on the 27th July 2020 which resolved that:

- (1) The activity undertaken so far in working towards gaining accreditation to the Living Wage Foundation and the next steps and further analysis to be undertaken be noted;
- (2) A further report be submitted to the Policy and Resources Committee that recommends seeking accreditation from the Living Wage Foundation if the further work undertaken confirms this; and
- (3) It be noted that approval has already been made to the Care Sector under the Covid-19 response for providers to be sufficiently funded to pay their employees who are engaged on Wirral Council contracts the Real Living Wage.

This initiative supports all 5 components of the Wirral Council Plan 2020 - 25 as our contracts support all services.

- Safe and Pleasant Communities
- Sustainable Environment
- Active and Healthy Lives
- Brighter Futures
- Inclusive Economy

The requirement to provide the National Minimum Wage or National Living Wage is a statutory requirement and thus is already included in the Council's contracts.

The Living Wage Foundation is an independent organisation that recognises the leadership of responsible employers who choose to pay a Real Living Wage based on the cost of living, not just the government minimum.

There are three key reasons why it matters to pay the Real Living Wage:

- **Safeguarding workers from in-work poverty:** It is only through accreditation that local authorities can ensure that all the money they spend is being used to pay people the Real Living Wage. There is however a risk that employers will respond by employing fewer low wage employees once they become more expensive.
- **Investing in the local economy:** The cumulative impact of local authorities paying the Real Living Wage. When workers earn enough to live, they have more income to spend in the local economy provided they reside in the local area and provided local employers are not disadvantaged in competing for contracts outside the local authority by having to pay wages above the statutory minimum.
- **Demonstrating Civic Leadership:** Strong and visible leadership is important to the growth of the Real Living Wage and there is a huge opportunity for local authorities to play an even greater role, beyond their own workers, in tackling in-work poverty in their communities. If, however, contractors pass on higher wage costs to the local authority this will come at a cost to local taxpayers. Furthermore, the benefits would accrue also to those employees of local government contractors who live outside the area.

RECOMMENDATION/S

The Policy and Resources Committee are recommended to:

1. Note the further activity undertaken in working towards accreditation to the Living Wage Foundation.
2. Note that a further report will be submitted to the Policy and Resources Committee after further information is gathered in order to enable the Council to assess more accurately the costs and benefits of seeking accreditation from the Living Wage Foundation.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 To confirm the Council's continued interest in adopting the Real Living Wage, which is reported by the Living Wage Foundation as being good for society and for business.
- 1.2 Improving wages plays a significant role in building an inclusive economy, therefore the Real Living Wage is an important tool because it provides a level of pay that adequately allows workers to provide for themselves and their families. As such, the Real Living Wage can help tackle inequality. Paying a Real Living Wage can also boost the local economy by giving workers more money to spend on goods and services, but this will come at the expense of either the local authority or the local employer or a mixture of both.
- 1.3 Accredited employers are able to display the Living Wage Employer Mark to recognise their commitment to the Real Living Wage. This includes a plaque, merchandise and digital assets to demonstrate that they are a responsible employer to their staff and networks. The employer will also be listed on the Living Wage Foundation website and employer map, with their accreditation often recognised in the media.
- 1.4 The Living Wage Foundation recognises and celebrates the leadership shown by Living Wage employers across the UK. The aim is to increase the number of employers in the UK who are recognised for paying their staff the Real Living Wage. The Real Living Wage is an hourly rate set independently and updated annually.
- 1.5 If the Council decides to apply for formal accreditation, it would require providers/suppliers to the Council, including sub-contractors, to all pay the Real Living Wage, in addition to that rate being paid for directly employed staff. The Public Contract Regulations 2015 do not, however, allow local authorities to evaluate tenders or exclude tenderers by reference to the wages paid to their employees. Regulation 70 does, however, allow local authorities to lay down special conditions including social and employment-related considerations, but they must be linked to the subject matter of the public contract. This means that any obligation imposed upon a contractor to pay the Living Wage would have to be limited to those workers who were employed on the contract and could not extend beyond the period of the contract.
- 1.6 Phased accreditation recognises that full compliance won't be made at the outset, and the Council will have three years to achieve this, which is in line with the approach that other Councils have taken. The report includes proposals to develop a three year milestone plan with an ambition to secure full compliance within that time.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Council could decide not to apply for accreditation, and to continue to work with our suppliers and providers on an informal and unaccredited basis but this is likely to

prove difficult to apply without the esteem and recognition that the accreditation offers.

- 2.2 The Council could decide that having regard to its current financial condition this is not the time to incur higher procurement costs.

3.0 BACKGROUND INFORMATION

- 3.1 Contact has been re-established with the Living Wage Foundation who were able to give more details on some issues to prepare for a submission for application. Contracts entered into collaboratively with other Councils, as joint contracting authorities or within national frameworks would be excluded as Wirral Council would not be able to set the minimum salaries for those employees, although we would be expected to use our influence to try and encourage payment of the Real Living Wage.
- 3.2 The Council is able to apply to the Living Wage Foundation for phased accreditation. This approach provides a three year period during which the Council can work towards achieving full compliance. This is in line with the approach that other Councils such as Oldham, Salford and Blackpool have taken. On making a successful application for phased accreditation, employers are then licensed to use publicly the mark of a Living Wage employer.
- 3.3 In order to achieve full accreditation at the end of this three year period all providers and suppliers to the Council, including sub-contractors, would be required to pay the Foundation Real Living Wage, in addition to that rate being paid for directly employed staff aged over eighteen (excluding apprentices and interns, but not trainees) but subject to the qualifications in paragraph 1.5 above.
- 3.4 In order to secure Living Wage accreditation, the Council needs to:
- Ensure all Wirral staff are paid the Foundation Real Living Wage. For Directorate staff, there is already an ongoing commitment to increase the minimum hourly rate in line with the Living Wage Foundation, effective from April each year.
 - Develop the Milestone Plan for the Council, highlighting which contracts are currently compliant with the Real Living Wage and which contracts will need to be reviewed over the next three years (this work is ongoing).
- 3.5 Community and voluntary controlled schools would also have to pay their staff the Real Living Wage. The Council may have to remind schools where they have an alternative payroll provider that the uplift will need to be applied. Academies are outside of scope for consideration however, we would anticipate having discussions with Academies taking a borough-wide approach to building an inclusive economy.
- 3.6 We would also need to work with our wholly and partly owned companies, Wirral Evolutions and Edsential to identify the implications of paying the Real Living Wage to all of their staff.
- 3.7 The Corporate Procurement Team would liaise with all of the suppliers identified in the scoping exercise requesting them to pay the living wage voluntarily. The relevant Commissioning teams would also need to be involved for contracts in their specific

areas. The outcome of those enquiries would better enable the Council to assess the effects of adopting the Living Wage.

- 3.8 Contracts entered into with other Councils, either on a collaborative basis or through national frameworks would be excluded as the Council would not be able to set the minimum salaries for those employees, however, we would be expected to use our influence to try and encourage payment of the Real Living Wage.
- 3.9 The Living Wage Foundation is clear in its 'frequently asked questions' regarding the issue of contractors who refuse to pay the Real Living Wage, and states that the next tender process should be used to find someone who will. As the Council has contracts going beyond the three year maximum of the milestone plan timescale, it is possible that some existing suppliers may refuse to pay the Real Living Wage particularly in these times of economic distress caused by the pandemic
- 3.10 Detailed work has commenced to fully understand the implications of applying for accreditation and to develop a milestone plan that includes the steps that would be taken in order to achieve accreditation over the course of the next three years. It is this milestone plan that would form the basis of our application to the Living Wage Foundation. Additionally, this work would establish the budget implications of working towards full accreditation over that three year period and therefore better inform the Council of the consequences before it reaches a decision to apply for accreditation.
- 3.11 Given the research undertaken and the implementation models adopted by other Local Authorities, there are high hopes that the Council's application for accreditation would be approved by the Living Wage Foundation but the accreditation could not compel the Council to treat contractors in ways that were not permitted by the public procurement legislation.
- 3.12 Wirral Council would be the first council in the Liverpool City Region to apply for accreditation with the Living Wage Foundation.
- 3.13 The Living Wage Foundation explicitly acknowledges the difficulties Local Authorities encounter when they try to drive the Real Living Wage throughout their contracted adult social care workforce and that there is no simple or cost-free fix. Nonetheless, significant progress is being made by determined councils nationwide. The Foundation does not exclude adult social care workers from its requirement that all council contractors be paid at least the Real Living Wage, but it does accept that in many cases this will be the hardest category of contractor to resolve, and likely the one which will take the longest. Higher wage costs could be passed on to those in need of social care and be a further strain on adult social services budgets.
- 3.14 To make a real impact in this area, the Living Wage Foundation takes a proactive approach:
 - Locally – advising on the steps required to achieve the Real Living Wage for the social care sector.
 - Regionally - fostering collaboration and joint commissioning between local authorities within regions to implement the Real Living Wage where this is practicable.

3.15 The Living Wage Foundation advises that Real Living Wage accredited Local Authorities have not found that providers have become uncompetitive as a result of implementing the Real Living Wage in their procurement processes. In most cases, contractors still compete and bid for their work as they did before. By implication however, the findings were that some contractors did withdraw from local authority contracting so the Council should carry out further enquiries e.g. through the Wirral Chamber of Commerce on the impact on small and medium sized enterprises (SME's)

3.16 To achieve accreditation the Council will need to:

- Identify all relevant contracts that need the Real Living Wage embedded, with target dates for implementation.
- Build Real Living Wage into all terms and conditions, qualification questionnaires and future supplier communications subject to the constraints of the public procurement legislation.
- Plan how this will be managed and reported annually to the Living Wage Foundation.
- Establish which contracts would not be suited such as supply contracts.
- Collate all third-party contracts and identify which would fall within scope of the Real Living Wage licence agreement. The Living Wage Foundation will assist us to review this to make sure all relevant staff are covered.
- Budget for the Real Living Wage in all new and renewal of such contracts. This will be easier for some contracts than others.
- Work with the Living Wage Foundation to set target dates for when the Real Living Wage would be implemented in each contract. These target dates should be within three years of accreditation and would form 'milestones' that are continually monitored. Once this has been agreed, the local authority could become an accredited Real Living Wage employer.
- Include the Real Living Wage in our procurement approach and as part of standard terms and conditions as a permanent requirement.
- Record how many workers have their wages uplifted in each council contract.
- For contracts where the application of the Real Living Wage is expected to be more problematic in terms of the financial implications and pressures, these contracts would be included in the final term of the three year plan to ensure that sufficient time was available to address the financial issues. The Living Wage Foundation has granted extensions beyond the three year term if the Council can demonstrate that it is continuing to work with suppliers to deal with financial pressures.

3.17 The National Living Wage as announced at the 2021 budget and effective from the 1st April is £8.91. The Real Living Wage is currently £9.50.

3.18 The Chancellor has increased the Living Wage from £8.72 to £8.91 but this is unlikely to lead to additional costs in existing contracts because of the controls within our existing terms and conditions. It is more likely to have an effect on new contracts but it is not possible to forecast this impact presently. The increase in the Living Wage does not have an impact as yet on the Real Living Wage accreditation process.

4.0 FINANCIAL IMPLICATIONS

- 4.1 As this report is not seeking approval to proceed, there are no direct financial implications, however, the introduction of a requirement for the Council's contractors to pay the Real Living Wage may increase contractors' costs which Small and Medium Enterprises (SMEs) would have a lower capacity to bear than larger companies and thus could be disadvantaged in competitive procurements. In our consultations with other Local Authorities who were already applying the Real Living Wage, there was no evidence that SME's were affected in their ability or interest in submitting bids to the Council. SME's in Wirral could be directly consulted on the likely effects through the Wirral Chamber of Commerce
- 4.2 It is estimated that the total cost to the Council of implementing the Real Living Wage is between £630k and £1.2m, (excluding care contracts) however individual contracts would be subject to discussion and would be managed according to procurement and contract management principles to deliver best value. A further report to the Committee would contain more information on those costs and the extent to which they could be mitigated
- 4.3 The Impact of applying the Real Living Wage in social care indicates further significant budget pressure.
- 4.4 The current budget position of the Council continues to be complex and challenging and if the Committee were to agree a future recommendation to apply for the accredited status, offsetting savings would have to be found in advance to enable a growth item to be included in the Medium Term Financial Plan over three year period to ensure a balanced position can be reported.

5.0 LEGAL IMPLICATIONS

- 5.1 The position with regard to the Council as an employer is straightforward in that it can make a decision to pay at least the Real Living Wage to its employees, having regard to the Council's fiduciary duty and duties in respect of equalities and employment legislation.
- 5.2 Blanket requirements leading to the exclusion or marking down of tenderers who did not pay the Living Wage would be unlawful under the Public Contracts Regulations 2015
- 5.3 Section 17 of the Local Government Act 1988 and Regulations 18 of the Public Contract Regulations 2015 requires contracting authorities to treat economic operators equally and without discrimination including discrimination in terms of the terms and conditions that are in operation by those contracts. Terms and conditions of employment can only be taken into account in so far as they promote Social or Best Value i.e. greater efficiency, economy and effectiveness in the delivery of local services. This in turn requires a cost benefit analysis to be undertaken. This could be included in a further report.
- 5.4 The Public Services (Social Value) Act 2011 requires that the Council, when it is commissioning public services, should think about how it can also secure wider

social, economic, and environmental benefits for the Council's area. In many cases the beneficiaries will include the workforce of contractors based outside the Borough and any benefit to the workforce of a local contractor may be offset by the increased cost to the local employer or taxpayer. This is a factor to be taken into account before reaching any decision.

- 5.5 In respect of fair procurement practices and anti-competition legislation, caselaw in respect of cross-border tendering has determined that imposing a measure that sets a minimum wage on contractors or sub-contractors of a tenderer can constitute an unfair "additional economic burden that may prohibit, impede or render less attractive the provision of their services", which would make that measure unlawful. This case law is complicated but would still apply after Brexit since the EU/UK Trade and Co-operation Agreement prohibits discrimination against EU providers and that would probably include low wage EU providers offering services to be delivered remotely by employees in their home countries. There are some measures that are justifiable, and it is clear from consultation with other local authorities who are already applying the Real Living Wage to contracts that it is not imposed on suppliers and bids are not excluded or discounted if tenderers are unable to comply with a request to include the Real Living Wage.
- 5.6 Alongside discussions held with other authorities, the Government and LGA, further consideration needs to be given as to whether the steps available to the Council would practically enable it to achieve full accreditation as a Real Living Wage employer under the current requirements of the Living Wage Foundation.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 The Council already pays the Real Living Wage to staff. This includes apprentices and is therefore fully compliant with this requirement.

7.0 RELEVANT RISKS

- 7.1 The financial challenge of gaining accreditation will be too great for the Council to address and full accreditation at the end of the planned programme will not be achieved.
- 7.2 Schools may choose not to pay the RLW. The foundation have assured us that this would not prevent the Council from gaining accreditation but they would expect the appropriate approach to schools to be made as part of the application process
- 7.3 Contractors may choose not to pay the Real Living Wage and the Council cannot force them to do so. The Living Wage Foundation accepts that this may be the case and that not all contractors will agree and therefore the accreditation process would not be affected. For this reason, this should not affect the Community Wealth Building Strategy
- 7.4 The costs of applying the Real Living Wage may be greater or less than the estimated value from the survey. A greater cost would place additional pressure on budgets.

- 7.5 Suppliers may consider that the Real Living Wage would be a barrier to the submission of bids, however, as the the payment of the Real Living Wage is optional, it is unlikely that suppliers would choose not to bid for contracts,
- 7.6 The three year plan to implement the Real Living Wage may be insufficient time to complete the application of the Real Living Wage into the nominated contracts. If the three year term expires without completion, the Living Wage Foundation would be approached to grant an extension.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 A survey of 50 contracts and 40 providers has been conducted to support the details of this report, details of which were included in the previous report to Cabinet on the 27th July 2020.

9.0 EQUALITY IMPLICATIONS

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment has not been completed because internal, direct employees of the Council are already being paid the Living Wage. As this report focuses more on the external situation with suppliers, there are not yet sufficient data available to be able to undertake any meaningful analysis with respect to equality impact. It would not be practical to request this type of data from suppliers, particularly as many are smaller suppliers, where giving details of protected characteristics of employees would mean that they are personally identifiable.
- 9.2 Applying the Real Living Wage to tendered contracts will help improve socio economic conditions for all including those with protected characteristics. but could have an adverse effect on the elderly and the disabled if the cost of social care rises as a result. To the extent that women and young people are disproportionately represented in the low paid, they would benefit provided they did not lose their employment because e.g. they were employed by an SME that had to reduce its workforce in order to meet the cost of the Living Wage.
- 9.3 Before any decision was made the Council would be required by law to carry out a full and proper equality impact assessment of the likely implications of the Living Wage for persons with protected characteristics. This could be undertaken in a further report

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 The content and recommendations contained within this report are expected to have no impact on emissions of greenhouse gases.

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APPENDICES

None

BACKGROUND PAPERS

Supplier Survey

Living Wage Foundation guidance documents

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet	27 July 2020