

Title of meeting: Employment Committee

Date of meeting: 22nd September 2020

Subject: The Living Wage Accreditation

Report by: Director of Corporate Services

Wards affected: None

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1. This report is in response to a request from Members on 6th March 2020 to consider the Council becoming an accredited Foundation Living Wage (FLW) employer.

2. Recommendations

- 2.1. It is recommended that:
- a) The committee notes the requirements associated with becoming an accredited FLW employer
 - b) The committee notes that to become fully accredited, there is a requirement for the Council's contractors and their sub-contractors to pay their employees the FLW, which would likely be passed on the Council
 - c) The committee notes that to quantify the likely cost, a detailed review of over 650 contracts would need to be undertaken which could include writing to contractors and sub-contractors to determine the extent to which adopting the FLW would lead to a pass through of costs
 - d) The committee notes that some of the contracts most likely to be affected are in the Care Sector and it is estimated that the uplift in cost for Residential and Domiciliary Care would amount to circa £2m per annum, which is currently beyond the cash limit for Adult Social Care

3. Background

- 3.1. In 2014, the Council agreed to apply a non-consolidated top-up payment to all employees whose hourly rate fell below the Foundation Living Wage (FLW) rate. The Council recognised that school governing bodies would need to agree to adopt the FLW rate and consulted with all local maintained schools on the issue and encouraged them to adopt the principal of the FLW. In 2014, only 4 schools opted not to adopt the FLW rate.
- 3.2. In 2015, the rate was frozen at £7.85 per hour and referred to as the Portsmouth Living Wage (PLW). The intention was that the payment would continue to be made until the National Living Wage overtook the PLW.
- 3.3. In 2018, the PLW rate was reviewed and increased to £8.75 in line with the 2018 FLW rate. It was also agreed that this payment would be consolidated for all employees paid on the PCC bandings. Those that had TUPE'd into the Council continued to receive a non-consolidated top-up payment based on the current rate. Schools were again consulted and all schools agreed to adopt the increased FLW rate.
- 3.4. From 1st April 2020 the FLW increased to £9.30. The report that went to EC on 6th March 2020, informed the committee that the increase would impact 328 employees (18 TUPE and 295 school employees). The impact of the FLW increase financially is approximately £32,097 per annum (including on costs and schools), this figure excludes any pending pay award.
- 3.5. The NJC pay award has been negotiated and agreed nationally at 2.75%. When the 2020/21 pay award is implemented this will reduce the number of employees impacted by the FLW increase to 44 employees (18 TUPE and 26 Schools), 88% of which are female. The impact of the FLW increase financially is approximately £7,213 per annum (including on costs and schools).

4. Foundation Living Wage Accreditation

- 4.1. There are currently 6538 accredited FLW employers across all sectors within the UK. Accreditation is undertaken by the Living Wage Foundation, a charity which was formed in 2011 through the work of campaigners and employers, and which is an initiative of Citizens UK. The Living Wage Foundation works with employers to help them implement the Living Wage. Those who receive accreditation are awarded with the Living Wage Employer mark.
- 4.2. Out of the UK's 428 Council's more than 118 are accredited Real Living Wage Employers, with a reported 11 within Southern England, including councils such as Brighton and Hove Council, Oxford City Council and Reading Borough Council to name a few.
- 4.3. The Living Wage Foundation has published results from its survey on the benefits of being accredited. Of the local authorities that have sought accreditation;

- 86% said it had enhanced the organisation's corporate reputation
- 84% said it had enhanced the organisations reputation as an employer
- 77% said it had improved relations with public bodies or politicians
- 74% said it had increased the motivation of employees
- 67% said it had improved employee retention
- 67% said it had improved the recruitment into Living Wage jobs.

5. Implications of being an accredited Foundation Living Wage

5.1. Accreditation

- 5.1.1. Accreditation by the Living Wage Foundation is at an annual cost of £480 plus VAT for public sector organisations with 250 or more employees, including third party. To meet the criteria the Living Wage would need to be implemented from the 1st April 2021 for all council employees. To gain accreditation we would have to uplift the pay of those we have the "authority" to affect, this includes local maintained schools.
- 5.1.2. The Living Wage Foundation will work with the Council to agree a plan that works for them, this is reviewed annually at the point of its anniversary. The Living Wage Foundation identifies in the 'Living Wage Local Authority Toolkit' (appendix 1), four main stages to becoming an accredited employer and beyond.
- 5.1.3. Having looked at these stages, there will be a large piece of work to be undertaken, only some of which is identified in the toolkit. The Living Wage Foundation recommends that an internal working group will need to be created for the Council to achieve and maintain accreditation. This group should comprise of representatives from HR, Procurement, Care Commissioners, Communications, Finance and Trade Unions. The council may want to require a representative from Education to support with work needing to be undertaken with the Local Authority (LA) Schools and Academies. Appendix 2 identifies some of the work required, how it might be achieved and by whom.
- 5.1.4. The Living Wage Foundation acknowledges that achieving accreditation can be challenging for Adult social care commissioned services, particularly in relation to residential care, domiciliary care and direct payments, as well as in Education.

5.2. Schools

- 5.2.1. Members are reminded that it is for individual school governing bodies to decide whether to adopt the Foundation Living Wage rate (subject to meeting the statutory requirement to at least pay the National Living Wage rate). However, in order to gain and maintain accreditation, all Local Maintained (LA) schools must adopt the FLW rate.
- 5.2.2. The Council will need to engage with all LA maintained schools and governing bodies to ensure all schools adopt the FLW rate. With tightening school budgets

and over half of employees receiving the FLW rate in schools this will require consultation and further discussions.

- 5.2.3. With regards to academies within the Council boundaries, the Council will also need to demonstrate that they have actively engaged with them and is actively encouraging them to adopt the FLW rate and become an accredited employer.

5.3. PCC Pay Scale

- 5.3.1. Consideration must be given to the impact of the FLW rate on the Council's pay scale. The current FLW rate of £9.30 per hour, currently combines SCP 1 & 2, this means that anyone on pay band 1 will never see an incremental rise and will only see an increase through the increase of the FLW or annual pay award which ever was greater. The application of the FLW to our current pay scale results in employees in band 1 being paid the same as those in band 2.

- 5.3.2. Members will need to be aware that in the current economic climate the FLW rate significantly over takes that of any pay award, which may result in those in a lower band being paid the same rate as those in a much higher band. This was previously the case when the FLW rate was first introduced in PCC and those in pay band 1 where paid the same rate as those in pay band 4. This could lead to employees in higher bands feeling disengaged as the banding attributed to the post is deemed a higher level of responsibility but they are paid the same as those on a lower banded role.

- 5.3.3. It is recommended that members are advised each year of the impact the increases to the FLW rate have on PCC's pay structure.

5.4. Contractors

- 5.4.1. The accreditation also covers procurement practice stating that contractors and their subcontractors providing a service on the council's behalf should pay their employees the Living Wage and also meet any annual increases in the Living Wage Rate, but only where employees work for more than 2 or more hours a week or 8 or more weeks in the year.

- 5.4.2. The difference between the FLW and NLW/NMW varies dependent upon age of the employee. FLW is £9.30 for any employee over 18 whereas for NLW/NMW is £8.72 for employees who are 25 and over, £8.20 for 21 to 24 year olds and £6.45 for 18 to 20 olds.

- 5.4.3. Should FLW accreditation be considered for implementation across its supply chain, in excess of 650 contracts would be covered by the scope of the accreditation. As an example, the uplift in cost across Residential and Domiciliary Care contracts alone is estimated to be circa £2m.

- 5.4.4. Further detailed analysis will be required in collaboration with affected services as well as the contractors and sub-contractors direct in order to provide a reliable estimate of the likely additional cost to the Council.
- 5.4.5. FLW accreditation is not prescriptive in respect of timescales for implementation but runs to a general best practice implementation timescale of 3 years, although it should be noted that the Living Wage Authority Toolkit attached at Appendix 1 refers to a number of other councils who have achieved accreditation but are struggling to implement fully, particularly in respect of social care, indicating a level of flexibility in respect of timescales for implementation.
- 5.4.6. FLW increases would take place at re-tender or natural break points in the contract - e.g. a decision on taking up an extension option, application of cost review clauses, etc. The majority of the Council's service contracts run on a standard term of 3 years with option to extend by a further 2 years. However, there has been a move towards letting contracts with a base term of 5 years, particularly in respect of higher value contracts which have higher upfront costs for contractors. However, the full impact once all contracts have been "re-newed" is the primary financial consideration.
- 5.4.7. The Council's PFI contracts runs on a much longer term (15 - 25 years) and are much more difficult to renegotiate on a cost basis.

5.5. Financial implications

- 5.5.1. There is an annual subscription and mandatory commitment to pay the FLW rate increase year on year. Failure to do so would result in the Council being derecognised. This would require the Council to consult with LA Maintained schools and their governing bodies annually, to gain their support in adopting the FLW.
- 5.5.2. It was reported on 6th March 2020 that the Council and all LA maintained schools currently pay the 2020/21 FLW rate of £9.30 and the financial impact of the 2020 FLW increase would be approximately £32,097 per annum (including on costs and schools). At the time there was an assumption that the national pay award would be 2% however, the final agreed pay award is 2.75% which will reduce the annual cost from £32,097 to £7,213, as some of the cost will be subsumed (based on data provided on 6th March 2020).
- 5.5.3. The cost of requiring all contractors/sub-contractors/ self-employed and workers will be substantial.

6. Reasons for Recommendation

- 6.1. Members have requested that the option for PCC to become an accredited FLW employer be explored. This paper provides Members with the benefits and implications of becoming an accredited employer.

7. Integrated impact assessment (IIA)

7.1. Appendix 3

8. Legal implications

The current recommendation of the reports shows that within the context of PCC and its own employment base the cost is limited- the difficulty is that in attempting to obtain FLW accreditation the aim would be to obtain alignment of PCC external contractors to the process.

Dealing first with the PCC employment base the cost is limited and the risk of a potential equal pay claim or some claim based upon discrimination is remote as the actual rate of inclusion continues to increase thereby diminishing those who are enhanced by the adoption of the FLW.

There are risks in an operational sense with respect to bandings which will potentially cause problems with regard to equality and the ability of managers to direct their staff in that the higher the banding the more that is expected from the colleague being undermined by the position that a person is paid the same for what the employer says is a differently banded job. Whilst not illegal(absent an equal pay claim) of itself a real problem in the sense of simple leadership and motivation - inevitably there will be salary creep and less engagement from higher banded colleagues paid the same as lower banded colleagues.

The greater threat is in a contractual sense in that current contracts that are in train cannot absent agreement be varied to impose an obligation upon a third party contractor to align its own employee terms and conditions.

New contractors will either not want to contract or more likely cry shy as they will not want a work force that is paid higher than their own terms and conditions imposed by PCC the contracting party (it is to be remembered that the contractor and their own staff have agreed their own contractual nexus that on the face of it is not something that PCC can interfere with).The corollary is that if, as a primary term PCC insists upon FLW alignment then the differential cost will simply be added on, additionally it would be easy to ascribe a greater primary total overall cost to a contract than just higher salary cost so in essence in allowing the pay cost to be added to the PCC direct cost of the contract such a position would potentially encourage contractors to inflate the true overall project cost.

Whilst the above is not of itself illegal it is probably contrary to the concept of obtaining best value and in a procurement sense a problem in that the contracting pool will diminish as contractors simply say that they are priced out of the job and do not tender- that might lead to a tangible challenge in that theoretically it might be challengeable to argue that a reasonable LA would not seek to ascribe to a standard that places a direct cost upon the LA, will have a budgetary affect and a direct service impact upon service delivery all set as against a limited/ diminishing contractor base.

9. Director of Finance’s comments

- 9.1 The costs of continuing to pay the FLW to the workforce is affordable within the Council's current budget.
- 9.2 The additional cost of becoming an accredited Foundation Living Wage (FLW) employer with its associated requirements to require contractors and sub-contractors across the Council's supply chain are substantial and significantly in excess of the Council's budget. Residential and Domiciliary Care contracts alone are expected to increase by an estimated £2m. Further detailed review into the Council's other 650 plus contracts would be required to establish a reliable estimate for the overall increase in cost across all contracts.
- 9.3 Should the Committee ultimately endorse the application of accredited FLW, the financial impact of this would need to be considered by Full Council as part of the Annual Budget and Council Tax setting process before it could be adopted alongside all other budget pressures and savings.

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Signed by:

Appendices:

- Appendix 1: Living Wage Local Authority Toolkit
- Appendix 2: Four steps of accreditation and beyond#
- Appendix 3: Integrated Impact Assessment

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/

Rejected by on

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Signed by: