

**Title of meeting:** Employment Committee

**Date of meeting:** 14<sup>th</sup> January 2021

**Subject:** Living Wage Accredited Employer

**Report by:** Director of Finance & Resources

**Wards affected:**

**Key decision:** Yes/No

**Full Council decision:** Yes/No

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## **1. Purpose of report**

At Employment Committee (EC) on 22<sup>nd</sup> September 2020, Members requested further clarification on the financial impact of becoming an accredited Living Wage employer (previously known as an accredited Foundation Living Wage employer). Members wanted to understand in particular the financial impact the council would incur from its contractors

The purpose of this report is to provide Members with the estimated financial impact to enable an informed decision as to the next steps. It will also inform Members of the Real Living Wage (RLW) rate increase from 1<sup>st</sup> April 2021, (to £9.50 per hour) and to advise members of the financial impact on its pay bill.

Additionally, the report sets out the progress made by the working group in researching and understanding the requirements, challenges and risks associated with adopting the Foundation Living Wage and how they may be overcome or mitigated.

## **2. Recommendations**

Members' instructions are sought as to which of the following recommendations to adopt, noting that recommendations i) and iii) are mutually exclusive:

- i) Members agree to endorse the application of Living Wage accreditation status and seek approval from:
  - a. Full Council as part of the Annual Budget and Council Tax setting meeting, including the identification of a further £3.2m of General Fund Budget Savings covering the period 2021/22 to 2023/24
  - b. The Cabinet Member for Housing as part of the Housing Revenue Account (HRA) Budget and Rent Setting meeting, including the identification of a further £0.9m of HRA Budget Savings covering the period 2021/22 to 2023/24 (noting

that ordinarily such matters would be discussed through consultation with the housing tenants representatives)

- ii) Members agree that at this current time they wish to continue to pay all Council employees the Living Wage rate, noting that the cost of this is provided for within existing budgets
- iii) Members instruct Officers to work with the Living Wage Foundation to seek to attain Living Wage accreditation through the development of an implementation plan over a suitable period that is consistent with the Council's overall financial constraints and also accommodates any likely legal / procurement challenges; any such plan to be approved by Full Council with any financial impact commencing in 2021/22

### **3. Background**

At present Portsmouth City Council (PCC) is not an accredited living wage employer but follows the principals of the Living Wage Foundation. PCC currently pays the Real Living Wage (RLW) rate at £9.30 to all its employees including those who transferred to the council under TUPE and Local Authority maintained schools.

The RLW rate is set by the Living Wage Foundation and rises each April, it is due to rise in April 2021 to £9.50. This rate continues to sit above the National Living Wage for 23 year olds set by the government which in comparison, will rise to £8.91 in April 2021.

Whether to apply each increase of the Real Living Wage rate is reviewed annually by EC. At EC on 6<sup>th</sup> March 2020, Members approved the 2020 RLW increase and also asked for the Council to explore becoming an accredited Living Wage Employer. On 17<sup>th</sup> March 2020, the Council was placed into emergency protocol due to the global pandemic.

At EC on the 22<sup>nd</sup> September 2020, Members were presented with detail on the timeline and work required to become an accredited Living Wage Employer (this was informed through discussion with The Living Wage Foundation). Members were made aware that as part of the criteria for the council to become accredited, the council would need to require its contractors to pay the RLW to its staff who worked on behalf of PCC for 2 hours or more a week for 8 consecutive weeks. Due to the pandemic it was not possible to undertake a detailed piece of work to provide members with indicative additional costs across all contracts. However, the report did estimate that the uplift in cost for Residential and Domiciliary Care would amount to circa. £2m per annum. Adult Social Care is currently forecasting an overall Budget Deficit of circa £4.3m for 2021/22, this could be offset by a 3% Adult Social Care precept amounting to £2.5m should Full Council approve this at its upcoming Annual Council Tax Setting meeting. Nevertheless, a shortfall remains and a further £2m additional cost for Adult Social Care is unaffordable at this time.

Following discussions with other local authorities and The Living Wage Foundation, Members were also made aware 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 RLW would lead to a pass through of costs.

On 24<sup>th</sup> November 2020, a report for noting was presented to EC Members informing them that a working party had been set up and that a meeting with a representative from the Living Wage Foundation was to take place early December 2020.

Members were also appraised of the work carried out by the working group to date. This work included Finance and Procurement working through all the contracts to identify and remove any contracts that are for items such as supplies or utilities as these do not fall within the remit of this piece of work.

Finance and Procurement identified which services within PCC were likely to be more highly impacted should PCC apply for accredited status, they focussed on getting responses from these contractors first to allow for a more reasonable set of financial assumptions to be made. They also worked with Contract Managers within these services to gain an understanding of the likely impact on services.

A survey was sent out the week beginning 16<sup>th</sup> November and ran until 4<sup>th</sup> December 2020. On the 24<sup>th</sup> November 2020, Members were advised that in the first week numbers were extremely low and that the working party had sent out a further communication to those that had not participated.

Whilst it is acknowledged that Members should be made aware of the financial implications to the council by becoming an accredited Living Wage employer. It is also recognised Members would need to be aware of the challenges of implementation. The council approached another local authority who had achieved accreditation in 2013 to understand their biggest challenges which were identified as follows:

- Getting schools on-board, this continues to remain a challenge year on year.
- The requirement for the yearly increase to be signed off annually by their Members and senior officers
- Impact on the pay line, as the Living Wage rate increases beyond that of the NJC increases. This has resulted in some of their SCP's in their pay scale being of the same value. Therefore, this led to them deleting some SCP's in their lower pay bands. For example Band 1 previously had three SCP's now has one due to higher increases being applied to the Living Wage rate

Following on from this discussion a piece of work was undertaken to understand what challenges other Local Authorities faced. This work was undertaken by reading committee reports and Living Wage literature. A summary of these challenges identified through this research can be found in appendix 1.

On the 10<sup>th</sup> December 2020, Members and officers met with a representative from the Living Wage Foundation to discuss the process required to become an accredited living wage employer.

#### 4. Impact of School Decision

Members are reminded of the need for consultation with individual schools, as it is for each individual school's governing body to decide whether or not to adopt the consolidated RLW rate for their employees.

Schools have been contacted to ask for their initial thoughts on the implementation of the real living wage. Those that responded voiced that in principle they support the premise of the real living wage but their concerns were the impact on their budget in the coming years. Some schools stated that they would in principle be able to support the 2021 rise but would have to review future rises, due to budgets. A couple of schools replied that their current financial budget position would not allow for them to support the implementation of the real living wage.

Any school that chooses not to implement the RLW, will need to work with Payroll to create their own pay scale. This would then create different pay scales within the Council and could cause equal pay issues.

#### 5. Survey and Results

Procurement and Finance identified 198 high impact contracts for PCC to survey. The final response rate was 11% (22 contractors) of those that did respond 4 did not meet the criteria (i.e. would not have been impacted by a requirement to adopt the RLW). The limited survey information and targeted engagement with contract managers in the high impact areas who have considerable experience within their services has been used to inform the assumptions applied to modelling the financial impact on contract payments set out in para. 6.5

#### 6. Financial Impact

##### Financial impact of decisions already taken

Members are to note the estimated cost to the council of continuing to pay council staff the RLW and becoming an accredited Living Wage employer, is summarised as follows, all of which have been provided for within the Council's Budget:

Cost Area	Cost -Year 1	Cost - Year 2	Full Year Cost - (Yr 3)
Council Employee Uplift	£45,300	£45,300	£45,300
Council School Employee Uplift	£15,400	£15,400	£15,400
Kickstart Scheme Uplift - 1 year only	£128,000	-	-
<b>Total</b>	<b>£188,700</b>	<b>£60,700</b>	<b>£60,700</b>

Financial Implications of decisions to be made

The estimated cost over the next 3 years and thereafter of becoming a fully accredited Living Wage employer is set out below:

Cost Area	Cost Year 1	Cost Year 2	Full Year cost (Yr 3)
Accreditation Annual Fee	£480	£480	£480
Contract Uplift -General Fund	£1,058,000	£2,116,000	£3,174,000
- HRA	£300,000	£600,000	£900,000
- Schools	£26,000	£52,000	£78,000
Project implementation	£52,000		
<b>Total</b>	<b>£1,436,480</b>	<b>£2,768,480</b>	<b>£4,152,480</b>

The cost in all areas can be explained in the following paragraphs.

**6.1. Cost of Accreditation Annual Fee**

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.

**6.2. Cost of Council Employee Uplift**

At previous EC's Members have agreed to apply the RLW to the council's pay scales, where the council's hourly rate falls below the rate regardless of accreditation status. Each year EC Members are provided with the cost of implementing the rise. The increase for 2021/2022 is detailed below:

On 25<sup>th</sup> November 2020, the Government announced that there would be a public sector (excluding NHS) pay freeze. With the exception of public sector workers earning less than £24,000, who would see an increase by at least £250 per annum. This increase would apply to anyone on band 6, SCP 11 or below.

Despite this increase from the government, those on band 1, SCP 1 would continue to fall under the RLW as at 1<sup>st</sup> April 2020.

There will be approximately 48 employees (excluding schools) whose hourly rate will fall below £9.50. Of the 48, 22 are TUPE employees, 16 are apprentices

The impact of the RLW increase financially is approximately £45,300 per annum (including on costs).

**6.3. Cost of School Employees Uplift**

Since 2018, all schools have adopted to pay the RLW rate in-line with the council. Many schools have stated that in principle they will continue to follow the Council's lead if, the

Council agrees to implement the 2021/22 RLW rate. However, Members should be aware that there are schools who have stated that this is not financially viable.

There will be approximately 298 LA maintained school employees whose hourly rate will fall below £9.50.

If all LA maintained schools were to implement the RLW, the total cost to the schools would be £15,400 per annum (including on-cost).

#### **6.4. Cost of Kickstart Scheme Uplift**

The Kickstart Scheme provides funding to create new job placements for 16 to 24 year olds on Universal Credit who are at risk of long term unemployment. Employers of all sizes can apply for funding which covers:

- 100% of the National Minimum Wage (or the National Living Wage depending on the age of the participant) for 25 hours per week for a total of 6 months
- associated employer National Insurance contributions
- employer minimum automatic enrolment contributions
- Employers can spread the start date of the job placements up until the end of December 2021.

A Kickstart Scheme application must be for a minimum of 30 job placements. It has been agreed that although the scheme requires individuals to be paid the national minimum/living wage, the Council will pay them the Real Living Wage rate.

The impact of the RLW increase financially is estimated at £128,500 per annum (including on costs) for a mixed cohort of 50 placements in the 18-20 and 21-24 age groups. It should be noted that if the cohort are all under 21, the annual cost rises to £225,000 per annum. The cost of this proposal will be met from the Cabinet Portfolio Reserve.

#### **6.5. Cost of Contract Uplift**

The full year impact of requiring PCC contractors to pay the FLW is estimated at £4.2m with a potential lower and upper range of £3m and £5.5m respectively. It should be noted that the full impact would not be felt until Year 3 as contracts are re-tendered or renewed over this period.

The estimated financial impact of £4.1m can be further analysed as £3.2m on the General Fund, £0.9m on HRA and £78k on schools. In terms of the General Fund impact, the majority of this (£2.6m) relates to Care services. There is no provision for these costs within services existing revenue budgets.

It should be noted that the year by year figures stated within the table above are based upon straight line profiling across 3 years to mirror the 3 year implementation which the Council would be required to work to. Further work will be required to establish a contract by contract implementation programme which will take account of contract expiry, extension and review

dates. On this basis the actual cumulative cost increases will not follow a simple straight line but are envisaged to still rise to the estimated 3 year total stated within the table.

## 6.6. Project Implementation and Management

Under the steer of Members, the work of the group so far has focussed on engagement with the Living Wage Foundation and understanding any challenges to accreditation (i.e. Procurement, Legal and Financial) through the review of the toolkit for accreditation, engagement with other accredited Local Authorities and other available research.

Some of the key challenges identified and which the working group are seeking to overcome /mitigate are:

### Human Resources

- Getting all LA maintained schools on-board and limiting potential equal pay risks
- The impact of future Living wage increases on PCC's pay scale.

### Procurement

- Adopting LW requirements as a stated pass/fail requirement - This has been identified as a clear breach of EU law as an "unlawful barrier to entry". The LW suggest this is low risk due to there being no record of challenges in the courts. There may still be domestic law challenges to consider in mandating LW. Other authorities have attempted to overcome this through different routes although the same objections may still arise. Alternatively, a dilution of the requirements to overcome some risks may not ensure compliance and could also lead to significant inconsistencies in supplier treatment.
- Whilst the LW may be open to a level of discretion where best endeavours are evidenced with a commitment to progress, there is a clear direction that all relevant contracts should be LW compliant within 3 years of accreditation being granted either through re-tender, incorporation at extension break point or for longer term contracts mid-term negotiation.
- Extension option negotiations - Suppliers could opt to not take up the extension due to LW requirements either due to inability to agree a price uplift or 2 tier workforce issues where they also have contracts with other customers who are not mandating LW. This could mean that implementation is delayed or the contract will have to be put out to re-tender earlier than anticipated which may stretch internal resources.
- Re-tenders and tenders for new requirements - an LW mandate may make the Council less attractive to bidders due to two tier workforce issues and other complexities.

- Similarly for long term contracts it may also be difficult and legally unenforceable to make suppliers adopt LW as this will require formal contract variation which could be rejected. Implementation could be delayed on this basis or the contract could be terminated to allow for re-tender which could come at significant cost and risk to the Council (operationally and financially for strategic contracts). The Council would seek a pragmatic accommodation with the LW in such circumstances.
- Supplier Base - Adopting the LW would make the Council more attractive as potential business partner to more socially minded firms who have already incorporated LW. However, in the short term at least, it is likely to narrow rather than expand the Council's potential supplier base. Mandating LW either explicitly or implicitly could be challenged by suppliers as an unlawful barrier to entry.
- Contract Management - Breach of contract by suppliers where LW is incorporated could not be enforced through a lawful termination. Careful design, implementation and monitoring would be required but with any contract penalties being softer such as barring from future opportunities, not granting extensions, financial deductions, etc.
- Resourcing generally - Incorporating LW requirements within procurement documentation, governance processes, contract terms and contract monitoring processes. This will require up front work to complete and agree drafting which will then require a level of training to officers involved in procurement and contract management.

### Financial

- General affordability and the potential to phase any additional cost over time - the current LW tool kit implies this is 3 years
- Specifically, the additional cost to Adult Social Care which is recognised by the Living Wage Foundation "that there is no simple or cost-free fix" and is "the hardest category of contractor to crack"

It is proposed that the Council further engages with the Living Wage Foundation and other accredited local authorities to inform how full accreditation might be achieved given the identified challenges and the considerable work that is required. The following plan is proposed:

- Continue the work of the working party and expand the representatives to include officers from Comms, Trade Union and other identified internal stakeholders.
- Create a dedicated lead project officer post (subject to job evaluation this will be at an estimated cost of up to £52k, for one year initially). This project officer will work with the Living Wage Foundation to prepare an implementation plan that

accommodates the council's overall fiscal limits (in effect this means implementation would start in April 2022, at the earliest).

- Recruit to vacant Contract Management Business Partner Post - Band 10/11. Whilst not primarily driven by Procurement / Contract Management, implementation and ongoing monitoring will be heavily reliant on these functions. There is currently a vacant Band 10 / 11 Contract Management Business Partner role within Procurement which is already budgeted for within the current Procurement budget. This is in addition to the Project Officer post above but will not come at any additional cost.
- Through research into the challenges (appendix 1) that other authorities have faced, input would also be required from service areas affected, particularly social care and schools, which is likely to require service specific working groups to be set up alongside the main working group.

## **7. Reasons for recommendations**

Members requested further clarification on the financial impact of becoming an accredited Living Wage employer (previously known as an accredited Foundation Living Wage employer). Members wanted to understand in particular the financial impact the council would incur from its contractors. This paper provides Members the financial impact of accreditation as well as the challenges that need to be considered and the work so far on how that may be addressed. A range of options as to how to progress is proposed.

## **8. Integrated impact assessment**

Appendix 2

## **9. Legal implications**

Within the context of PCC's own employment base, the cost is limited. The difficulty is to align the proposed LW accreditation to external contractors.

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 will continue to increase thereby diminishing the risk of wage disparity.

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 reality 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) it is of itself a 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.

Secondly, the difficulty with regard to contractors is that current contracts 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 not want to tender 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 LW alignment then the differential cost will 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 this 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 may well 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 align to a standard that places a direct cost upon the LA, will have a budgetary affect and a direct service impact upon delivery all set as against a limited/ diminishing contractor base.

#### **10. Director of Finance's comments**

The potential full financial impact to PCC of LW accreditation is set out in para 6. With a full year cost to the General Fund expected to be £3.2m and a full year cost to the HRA of £0.9m.

Neither of these additional costs have been factored into the financial planning assumptions for the General Fund or the HRA which require the Council to make savings in 2021/22 of £1m and £1.3, respectively. Furthermore the Council is facing further unanticipated Budget Pressures, which in the main relate to the ongoing impact of the Covid-19 pandemic and which include reductions in Council Tax income, Business Rate income, Property related income and Ferry Port income but exacerbated by additional costs associated with increases of Children in Need cases and increased costs / demand for Domiciliary Care, Residential Care and Nursing Care. It is highly likely that the additional funding provided by Government for next year to cover the continuing impact of Covid 19 will be insufficient to meet these losses and costs. Any ongoing financial impact from Covid 19 will need to be factored into future years' savings requirements for the Council.

Should recommendation i) be approved, the City Council will need to approve further General Fund savings (over and above the planned £1m savings) of £3.2m over the next three years in order to fund this policy initiative. Similarly, the Cabinet Member for Housing will need to incorporate an additional cost of £0.9m into the Housing Revenue Account Budget over the next 3 years to be met by increasing Housing Rents and / or reductions in spending and be considered as part of the consultation process with council housing tenants.

Given that any approval by Full Council / Cabinet Member for Housing, commits the organisation to future spending commitments, the corresponding savings will also need to be approved covering each of the three years 2021/22 through to 2023/24.

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Signed by:

**Appendices:**

- Appendix 1 - Living Wage Challenges
- Appendix 2 - 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 .....

.....  
Signed by: