

EMPLOYMENT COMMITTEE

MINUTES OF THE MEETING of the Employment Committee held on Thursday, 14 January 2021 at 1.00 pm as a Virtual Remote Meeting

(NB These minutes should be read in conjunction with the agenda for the meeting which can be found at www.portsmouth.gov.uk.)

Present

Councillor Ben Dowling (in the chair)
Councillor Donna Jones (Vice-Chair)
Councillor Matthew Atkins
Councillor Cal Corkery
Councillor Darren Sanders
Councillor Gerald Vernon-Jackson CBE

Officers Present

David Williams, Chief Executive
Natasha Edmunds, Director of Corporate Services
Peter Baulf, City Solicitor
Sue Page, Finance Manager
Rochelle Kneller, Assistant Director HR
Richard Lock, Acting Procurement Manager
Shaun Tetley, Payroll and Pensions Manager

1. Apologies for Absence (AI 1)

The Chair, Councillor Ben Dowling, welcomed everyone to the meeting and advised that it was being held virtually because of restrictions imposed following the outbreak of Covid 19.

There were no apologies for absence, but apologies for lateness were given on behalf of Councillor Atkins who was on his way.

Councillor Udy attended the meeting as an observer.

2. Declarations of Members' Interests (AI 2)

There were no declarations of Members' interests.

3. Minutes of the meeting held on 24 November 2020 (AI 3)

RESOLVED that the minutes of the meeting held on 24 November 2020 be confirmed and signed by the Chair as a correct record.

4. Living Wage (AI 4)

(TAKE IN REPORT)

Natasha Edmunds introduced the report advising that at a meeting of the Employment Committee on 22nd 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 1st 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 challenges and risks associated with adopting the Foundation Living Wage and how they may be overcome or mitigated.

Sue Page, Finance Manager was invited to outline the financial impact. She said that the report included two tables; the first showed the financial impact on PCC staff of the uplift in pay and the second the additional estimated cost over the next 3 years and thereafter of becoming a fully accredited Living Wage employer. The methodology used was set out in paragraph 3. She said that officers had hoped for a greater response from the survey of contractors but in lieu of that they had had consultations with experienced contract managers in the relevant fields. They had focused on areas that were likely to be more highly impacted should PCC apply for accredited status and focused on getting responses from those contractors first to allow for a more reasonable set of financial assumptions to be made. The second table shows the impact of contractor uplift on general fund services over the 3 year period. So an estimated cost of £3.2m would be incurred to renew all those contracts by year 3. Within that, it should be noted that £2.6m related to care services. Members should also note that if this is moved forward, an experienced project manager would be needed to facilitate the process - at least for the first year.

The Finance Manager also drew attention to the Finance comments in the report and the need to identify funding if Members wanted to proceed with this proposal.

Richard Lock, Acting Procurement Manager, was then invited to provide an overview of any procurement issues. He first said that although the non-compatibility of EU law comment (that had not been removed from the report prior to publication) was not now relevant, most of the procurement legislation will stay the same for the time being but will be on a domestic basis. In order to progress implementation, he considered the best way would be to make it part of PCC's tendering requirements. This would be fair to all contractors as it would make it clear to all what was expected. However there would be implications of doing this

- Although implementation would not be difficult to introduce - as long as there was training in place - monitoring what actually happens would require resources.
- Suppliers may well experience difficulty in mandating the Living Wage across its organisation because they may have contracts with more than one authority such as often happens in social care. There may be difficulties where an employer is moving in and out of various contracts and tendering may be difficult.
- There are likely to be HR and Union aspects to consider.

Mr Lock said it was much easier to implement the LW where there are partnerships in place across several organisations with similar policies - but PCC does not have those partnerships in place.

With regard to re-tendering, the Living Wage would have to be paid for all new contracts. This would also apply to extension options. So where there is a contract for 3 years with an option to then extend to 5 years, it would be at that point that the Living Wage would have to be paid. He anticipated that it would be difficult to expect PCC's contractors to absorb that cost.

There may also be legal issues around mandating the Living Wage into the contracts.

With regard to longer term contracts - those for 10 years or more - the Living Wage Foundation has an expectation that the Living Wage would be fully implemented within 3 years. Although more work is required on this, it is likely to mean that Adult Social Care would be impacted and also the Housing Revenue Account and sheltered housing.

Mr Lock said that PCC wrote to all high impact suppliers and consolidated attention on 200 suppliers. These were all care contracts. However, despite reminders the response rate was very low and there was nothing that could be done to improve that. Consequently, he worked with Sue Page to produce an overall analysis of responses having spoken to contract managers and finance colleagues.

With regard to contract management, work would be needed to consider how the contract terms could be enforced and what sanctions would be appropriate. These would need to be built into contract terms and agreed. Contract management would be necessary so the existing vacancy for a contract manager would need to be recruited to and filled quickly to ensure all LW milestones are met.

The City Solicitor, Peter Baulf was then invited to provide information on the legal aspects and said there was nothing illegal about signing up to become an accredited LW employer.

He said there would be some matters to consider

- In relation to existing contracts, he considered it would be unlikely that contractors would bear the cost of implementing the living wage for its employees.
- Obtaining tenders in the future would be likely to be impacted as contractors would need to pay artificially high wages as compared with their other employees. This will narrow the market of those wanting to contract with PCC.

- There may be a reasonableness challenge in how an authority behaves in terms of how it sets out its tenders, as some local contractors may not be able to tender if they were unable to pay the LW
- There may be difficulties in how to enforce the LW over the term of the contract to deliver a primary service, because as soon as there is a contractual variation there are likely to be arguments about termination of contract as care still has to be delivered.
- There may be difficulties with salary creep in terms of bandings becoming narrower.
- Shared contracts were also likely to be problematic
- He considered that equal pay claims would be a minor risk

The Chair thanked everyone for their comments.

Councillor Atkins, apologised for being a little late and confirmed he had no declarations of interest.

At this point in the meeting, the deputation that had been previously circulated from Jon Woods was read out by the Chair. This can be heard in full at [Special Employment Committee, 14 January 2021 on Livestream](#)

On behalf of the Committee, the Chair thanked Jon Woods for his deputation.

The Chair then invited comments from members.

Councillor Vernon-Jackson said that he had had a useful meeting with a lady from the Living Wage Foundation who advised that to progress matters a working group should be set up. A working group was now up and running. It was not necessary to do everything at once to become a FLW employer so there was no need to find all the money immediately. He believed an in principle decision could be taken with work continuing with the LWF to become accredited over time. He would support option iii) on the report.

During discussion

- A query was raised about whether any comparisons had been made relating to costs faced by other local authorities where the FLW had been introduced? Salford's costs appeared to be around £1m for all outsourced carers. The Finance Manager said that the costs included in the report had been calculated by the Finance Team and Procurement and then separately by the Social Care Finance Team and both figures were about the same. Richard Lock said that the figures included in the report covered all care services - residential and domiciliary - that is all social care contracting activity. In the toolkit that Living Wage produced, there are useful case studies. When compared with a limited number of other authorities the cost figures were similar, but it was important to note that the figures included in the report represented the best estimate. The information received from the various contractors varied in its completeness. Also when re-checking with some contractors, the information was different from the original return. Another matter to be

borne in mind is that the value of contracts is sometimes dictated by demand.

However, when looking at PCC's spend, we do not have much in-sourcing and he confirmed that he is comfortable that the figures included in the report are what he would expect to see. He said that the figures shown were on a "straight-line" basis whereas in fact there would be variances at different times.

Although costs are often negotiated year on year, where contractors are under increased pressure there is limited room for them to absorb increased costs ie to pay the FLW. This is very likely to lead them to pass on the increased cost to PCC.

- With regard to a query raised as to whether there were any PCC contractors who already paid the FLW to their employees, Members were advised that although this was included in the questionnaire sent to all contractors, this question was not answered and PCC could not force them to disclose that information. However, Richard Lock said that when a re-tender exercise happened, there is a TUPE obligation to disclose pay rates. From looking at these, it was possible to see where contractors paid the National Living Wage and not the Foundation Living Wage. He had not seen any examples of contractors paying the FLW.
- In response to a comment that the Integrated Impact Assessment did not appear to include much information, Natasha Edmunds explained that this was as complete as it could be at this time, but it was a "living document" and would be updated as matters progressed.
- In response to a comment about there not being much in the report about the advantages of all PCC contractors becoming FLW employers, Natasha Edmunds said that these had been considered and would clearly be part of the programme going forward.
- A comment was made that if all PCC contractors became FLW employers, this could lead to staff staying in post longer which could have beneficial knock-on effects such as improvements to service and delivery quality.
- A further comment was made that the benefits of becoming a FLW employer have been discussed many times over a period of 4 to 5 years but affordability was a big issue.
- In response to a query about whether any provision had been made to cover the cost of the proposal in recommendation i) in the budget about to be presented to Council, Councillor Vernon-Jackson said no provision had been made in this budget and he believed PCC should move forwards gradually. He said an in principle decision could be taken today with an intention to look at how it could be afforded - probably on an annual basis.
- In response to a query about whether it was contrary to the Constitution to approve the recommendations in the report when they did not identify the required funding, it was confirmed by the Chief Executive (and agreed by the Finance Manager) that recommendation iii) had been carefully worded to satisfy the Director of Finance and so included the words "consistent with the Council's overall financial constraints." The Chair advised that full implementation would be a

future decision for Cabinet and Council. The Employment Committee resolution would just move things forward.

- A comment was made that carers are at the forefront of dealing with the pandemic and a debt of gratitude is owed to them. They should therefore be given the FLW as soon as possible
- Several comments were made about affordability including that before agreeing to the FLW being paid, consideration of what would be required to find the money would need to be communicated and that information was not currently available to members. For example what other services would have to be cut or would there be a need to increase Council Tax?

It was proposed by
Councillor Gerald Vernon-Jackson
Seconded by Councillor Darren Sanders

(ii) that 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

Upon being put to the vote this was CARRIED by assent.

It was proposed by
Councillor Gerald Vernon-Jackson
Seconded by Councillor Darren Sanders

(iii) That 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

Upon being put to a roll call vote, this was CARRIED by a majority.

Members of the Committee were advised that where recommendations are mutually exclusive, the first of them to receive a majority would be CARRIED and the other recommendation would FALL.

RESOLVED that

- (1) Members agreed 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**
- (2) Members instructed 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

(Although at the meeting a proposal by Councillor Corkery and seconded by Councillor Atkins to adopt recommendation (i) of the report was also put to the vote and was LOST, this was superfluous as the decision had already been taken and would have been of no effect whatever the outcome because recommendations (i) and (iii) of the report were mutually exclusive).

The meeting concluded at 2.30 pm.

Councillor Ben Dowling
Chair