

ABERDEEN CITY COUNCIL

COMMITTEE	Council
DATE	11 th May 2016
DIRECTOR	Interim Director of Corporate Governance
TITLE OF REPORT	Living Wage Accreditation
REPORT NUMBER	CG16/044
CHECKLIST COMPLETED	Yes

1. PURPOSE OF REPORT

The Chief Executive was instructed by the Council to bring forward proposals to Council meeting in May 2016 on how the Council can become an accredited Living Wage employer. This report details the steps required to achieve accreditation.

2. RECOMMENDATION(S)

It is recommended that the Council:

- (i) Approves the application of the Scottish Government Guidelines as detailed in the Scottish Procurement Policy.
- (ii) Approves the application of the Living Wage (as publicised by The Poverty Alliance) as a minimum hourly rate for agency workers.
- (iii) Instructs the Interim Director of Corporate Governance to proceed with application for accreditation on that basis.

3. FINANCIAL IMPLICATIONS

There is an annual charge, which is currently £400, associated with the licence to use the Living Wage trade mark.

There are three further aspects to the financial implications arising from these recommendations.

1. Additional costs associated with agency workers
2. Potential higher costs of procurement.

3. Annual increases to the wage bill which can be expected to be higher than would otherwise be the case (accepting that the Council currently pays the 'Living Wage').

It is not possible to quantify the potential additional cost in regard to procurement as the impact will be variable for each contract.

The cost in regard to agency workers or Council employees will be variable dependent on the annual increase in the Living Wage. As an indication, the Finance Section estimated that the additional increase in basic pay associated with the Living Wage implementation in April 2015 was £50,000.

The most recent financial settlement with the Scottish Government included an allocation of £9.5M where 50% of that figure was to be used to help to deliver the Living Wage for all Social Care workers by 1st October 2016.

4. OTHER IMPLICATIONS

Where the Living Wage increases at a rate higher than national pay awards, pay differentials at the lower end of the grade structure are necessarily eroded.

5. BACKGROUND/MAIN ISSUES

Benefits of Paying the Living Wage

The Poverty Alliance makes the case for paying the Living Wage on the following grounds:

Social – increasing the wages of the lowest paid employees and reducing the level of in-work poverty. Improving access to goods and services for the lowest paid staff.

Business – increases in productivity, cost savings as a result of improved retention and reduced sickness absence, improved morale, motivation and commitment.

Public Policy – increased tax revenue for the UK Treasury, potential economic improvements as a result of the money multiplier effect, potential to narrow or plug the gap in productivity between the UK and other G7 countries.

In addition to these benefits, paying the Living Wage will potentially enable workers to reduce the number of hours they have to work in order to earn a sufficient income, allowing them to spend more time with their families with resultant social benefits. Any additional

disposable income may also be spent on goods and services in the local area providing a broader economic benefit to the City.

Dis-Benefits

Accreditation as a Living Wage employer takes a degree of control over the Council's reward systems and employee costs out of the hands of the Council and places it into the hands of an unelected and unaccountable third party.

Past experience indicates that the Living Wage rises at a rate higher than the rate of inflation and considerably higher than national pay awards, leading to difficulties in implementation, compression of grade scales and additional cost to the Council.

Accreditation

In order to be accredited, employers must comply with the stipulations in a licence agreement. Those stipulations, as they would apply to Aberdeen City Council, are as follows.

1. A fee of £400 per annum would be payable to the Centre of Civil Society Limited.
2. All employees aged 18 or over must be paid not less than the UK Living Wage.

The Council can meet this requirement. The only employees not currently receiving at least Living Wage are Craft apprentices. All trainees and interns in the Council are paid on an evaluated grade which would place them above the Living Wage threshold, irrespective of age. Accreditation requirements recognise that groups such as apprentices may be paid at a lower rate

3. The employer must undertake to increase the amount it pays to affected employees by the same amount as any increase to the UK Living Wage within 6 months of the date on which the increase is announced.

The increase to the Living Wage is announced in November. Normally any increase would be implemented along with any national pay award with effect from 1st April, which is within the 6 month period. Where the pay award is delayed (as for 2015) an undertaking to backdate the implementation of the Living Wage to 1st May at the latest would be required in order to meet this stipulation.

4. The employer must notify all affected employees of the date of the next increase within one month of the official announcement, unless

the employees have been previously notified about the date on which they will receive at least the increase in the Living Wage.

There are options which might allow the Council to comply with this stipulation.

- Make an express statement that the pay of affected employees will be increased at least to the level of the Living Wage at the same time as the national pay award is implemented.
- Issue communication through the zone and through Communication Champions in each Directorate each November, confirming the figure and the expected date of implementation.

An express statement is likely to be the simplest method and the Poverty Alliance been asked to confirm whether that method is acceptable.

5. There are a number of stipulations in regard to contractors. Specifically the licence states that the licensee shall ensure to the extent permitted by law that any of its contractors which supply an employee shall also pay the Living Wage.

This stipulation applies where workers not directly employed by the Council work on Council premises regularly (more than 2 hours per day) providing services.

At the moment agency staff may be paid less than the equivalent Council employee until they have worked for at least 12 weeks, at which time their rate of pay increases to be in line with any of our own employees carrying out the same work. The Commercial and Procurement Service have previously reported difficulty in obtaining agency staff at the lower rates of pay and have begun to investigate the impact of paying at least the Living Wage from the start of the contract. The licence allows for phased implementation of the Living Wage and, if we were to continue working towards paying the Living Wage to all agency staff with a specified delivery date, the Council would be able to comply with this aspect of the licence.

For other contractors, guidance issued by the Scottish Government (Appendix 1) applies. That guidance demonstrates how this stipulation could be met within the limits of the law. Confirmation from the Commercial and Procurement Service that they either currently follow, or intend to follow, this guidance would be required. Similar confirmation would be required in regard to any sub-contractors.

It should be noted that it would be the Council's responsibility to do everything possible within the limits of the law to promote the payment of the Living Wage by Contractors. In complying with procurement legislation it would be possible for a contract to be

awarded to a bidder who did not pay the Living Wage. The accreditation requirements recognise this situation and would not prevent accreditation provided that the proper procurement guidelines had been followed.

6. The licensee must agree to provide the licensor with information to confirm that they are meeting the conditions of the licence. If the licensor is not satisfied with the information they would have the right to request additional information, meet with Trades Union representatives or contact employees or contractors directly to obtain additional information.

The Arm's Length External Organisations associated with the Council are not required to apply for accreditation in order for the Council to meet the licence requirements. Accreditation has been discussed with Bon Accord Care however and they have expressed an interest in making their own application.

Conclusion

In general it should be possible for Aberdeen City Council to meet and comply with the licence conditions. The majority of the accreditation requirements can be met at present. If it is determined that the Council should seek accreditation then the Commercial and Procurement Service and Human Resource and Customer Services will need to work together to ensure there is a clear timetable for the remainder of the requirement to be met.

6. IMPACT

Improving Customer Experience –

Any increases in productivity, reduced sickness absence, improved morale, motivation and commitment would impact positively on the level and quality of service available to customers.

Improving Staff Experience –

Increasing the wages of the lowest paid employees would be a step towards reducing the level of in-work poverty. The lowest paid employees would be enabled to have better access to goods and services contributing to improvements in their financial circumstances. Such improvement should positively impact on recruitment and retention and on staff engagement.

Improving our use of Resources –

The proposal has the potential to generate some cost savings as a result of improved retention and reduced sickness absence. It will however result in cost increases as the Living Wage has historically

increased at a much higher rate than the rate of inflation or of national pay awards.

Corporate –

The Council's Strategic Priorities refer to the need for a flexible, skilled and motivated workforce and one of the Strategic Workforce Priorities is to ensure that the Council's status as an 'employer of choice' is enhanced and that the principles and spirit of equal opportunities are evident in all aspects of the Council's employment processes.

Accreditation as a Living Wage employer would demonstrate the Council's commitment to its workforce; particularly the lower paid, and would contribute to both of these strategic aims. This outcome would be consistent with the Council's Regional Economic Strategy theme of inclusive growth – tackling inequality through support for the Living Wage.

Public –

Accreditation as a Living Wage employer will impact mainly on a relatively small number of Council employees. As such this report is likely to be of limited interest to the public.

7. MANAGEMENT OF RISK

The principal risk is that the Council would be giving up any control or influence over staffing costs at the lower end of the grade structure. This will lead to increases in the pay bill beyond the level agreed as part of national bargaining. To date it has been possible to absorb these additional costs within annual budgets.

8. BACKGROUND PAPERS

Living Wage, a Guide for Employers (published by The Poverty Alliance in association with the Living Wage Foundation and the Scottish Government).

9. COMMENTS FOLLOWING CONSULTATION

Comments have been received from the GMB representative to the effect that they are supportive of continuing to pay the Living Wage, but that the costs and restrictions associated with accreditation may not be justified. (Appendix 2)

10. REPORT AUTHOR DETAILS

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Scottish Procurement

Scottish Procurement Policy

Note

SPPN 1/ 2015

Date 4 February 2015

Evaluating employment practices and workforce matters, including living wage, in public contracts

Purpose

1. This note provides information on how and when employment practices and 'workforce matters', including payment of the living wage, should be considered in the course of a public procurement exercise as a key driver of service quality and contract delivery. It is issued in advance of the full implementation of the provisions of the Procurement Reform (Scotland) Act 2014 and the Statutory Guidance to be published under the Act.

Key Points

- A bidder's employment practices and its approach to its workforce can have a direct impact on the quality of service it delivers and, sometimes, of the goods it supplies and works performed;
- Wherever it can be deemed relevant to quality of service or goods or delivery/performance of the contract, it is important to ensure that a bidder's employment practices and approach to the workforce it will engage to perform the contract is evaluated as part of the procurement exercise;
- Fair pay, including payment of the living wage, is one of the ways a bidder can demonstrate that it takes a positive approach to its workforce;
- Consideration of the bidder's approach to employment practices and workforce matters must be proportionate and based on the nature, scope, size and place of the performance of the contract.

- The purchaser must consider the bidder's overall approach to employment practices and workforce matters – this should include all relevant evidence, including remuneration and employee representation, demonstrating the employer's approach to being a good employer delivering good quality services.

Background

2. The Scottish Government values the delivery of high quality services and recognises that service levels are often critically dependent on the quality and engagement of the workforce engaged in delivering public contracts. We expect those who deliver public contracts to adopt fair employment practices for all workers engaged on delivering the contract. This includes not only workers they directly employ but workers who they will engage with through, for example, employment agencies and/or “umbrella” companies. We believe that workers who are treated fairly, who are well-rewarded, well-motivated, well-led and who have appropriate opportunities for training and skills development are likely to deliver a higher quality of service and that good relationships between the contractor and the workforce contribute importantly to sustainable economic growth.

3. The Scottish Government considers the payment of the living wage to be a significant indicator of employer commitment in this regard. The Scottish Government has obtained clarification from the European Commission that public bodies are unable to make payment of the living wage a mandatory requirement as part of a competitive procurement process, (see SPPN 4/ 2012). It is therefore not possible to reserve any element of the overall tender score solely to the payment of a living wage. It is, however, possible to encourage suppliers to pay a living wage as part of a procurement exercise and the Scottish Government has recently successfully piloted this approach in a tender exercise; see paragraphs 7 and 8 below.

4. It is right to expect those who deliver public contracts to adopt fair employment practices. This includes, for example, no inappropriate use of zero hour's contracts and ensuring that workers receive fair terms and conditions and a fair pay. This also applies where an employment agency is used to supply workers to perform the contract who are employed by an umbrella company. In this context, an “umbrella” company is one which acts as an employer to agency workers who work under fixed term contract assignment. Inappropriate use of an umbrella company could include, but not be limited to, engaging staff employed by the company to exploit workers through excessive administrative charges, issuing incomplete or confusing pay slips, moving staff on to the “umbrella” company without their prior knowledge and consent and using them as a device to reduce workers' pay or conditions. The Freelancer & Contractor Services Association (FCSA) has established a code of conduct which includes provisions aimed at promoting good practice in this area. Where a contractor may use agency staff in the performance of the contract, we recommend that purchasers consider making it a condition of contract that the contractor complies with FCSA's code of conduct.

5. The Scottish Government has a range of internal policies in place to support a well-rewarded, well-motivated, well-led workforce. Details at Annex A include a pay policy that includes a commitment to supporting the living wage for the duration of this parliament, fair employment practices, no inappropriate use of zero hours contracts and the encouragement of staff to join an appropriate Trade

Union and to play an active part in it, making sure their views are represented. In order to ensure the highest standards of service quality in public service contracts, contractors are expected to demonstrate a similarly positive approach to workforce-related matters as part of a fair and equitable employment and reward package.

6. The Procurement Reform (Scotland) Act 2014 allows Ministers to publish statutory guidance on the selection of bidders and the award of contracts. Scottish Ministers will consult on the content of such statutory guidance including addressing issues associated with fair employment practices and how to promote the living wage in public tender exercises in the context of a package of workforce matters this month. This Scottish Procurement Policy Note (SPPN) is issued pending the commencement of the relevant provisions and publication of statutory guidance, which we expect to publish following consultation with stakeholders in late 2015.

Pilot approach - Workforce Matters Invitation to Tender Question

7. The recent Scottish Government pilot focussed on the use of an Invitation to Tender (ITT) question on 'workforce matters' in the tender exercise for catering services on its premises. Following completion of the selection stage of the procurement process, the ITT described the Government's approach to 'workforce matters' and asked bidders to demonstrate their own approach. On this occasion, we reserved 10% of the overall quality scoring for the responses to the question. It is important, however, that the amount of marks allocated is proportionate and takes account of the likely impact on quality for that particular contract. In some cases, e.g. personal social care, the impact on quality will merit a high score. In other cases, where workforce matters may be relatively less important to quality, the amount of marks may need to be lower. Each procurement must be considered on its own merits.

8. In the catering services procurement, evaluations were undertaken on the basis of the comprehensiveness and quality of the overall package of measures (i.e. not focussing solely on one aspect of workforce matters). The award of this contract guarantees that all those working on it will benefit from a package of positive workforce measures, which will include payment of the living wage.

9. The text at Annex A is how we recommend purchasers address workforce matters at the contract award stage of relevant procurement procedures. It has been developed in light of our experience in relation to the catering contract pilot.

Considerations in applying this approach in public contracts

10. Any decision to include a question on 'workforce matters' in a tender exercise should be made on a case by case basis and the question should be framed in a way that is consistent with the principles deriving from the Treaty on the Functioning of the European Union: transparency, equal treatment, non-discrimination, proportionality and mutual recognition. The following factors should also be considered:

- In a tender exercise the selection and award criterion must be relevant to the subject matter of the contract; therefore it is important to consider the

extent to which a contractor's approach to its workforce is related to the subject matter of the contract;

- Workforce matters are most likely to be relevant in relation to contracts involving services and construction;
- It is right to expect all suppliers who deliver public contracts to adopt fair employment practices;
- When weighting the 'workforce matters' question, it is important to be proportionate and take into account the relevance of workforce to the subject matter and quality of the service delivery, goods supplied or the delivery of the contract;
- When evaluating bidders' responses to this question it is important to take into account the comprehensiveness and quality of the complete package of measures in general and not to treat any individual element more favourably than any other.

11. In deciding whether or not workforce matters are relevant to the quality delivered under a contract, purchasers should consider, for that particular type of contract, whether:

- the purchaser has any previous experience of workforce matters or poor employment practices, including pay and conditions, impacting on the quality of service to be delivered;
- there is any history of low pay in that sector;
- there is a risk that those working on the contract might be exploited in any way, e.g. through the inappropriate use of zero hours contracts or as a result of being employed by an umbrella company;
- contractors might seek to cut their costs through driving down workers' terms and conditions, including pay;
- the contractor's workers will be required to interact directly with the public body's employees and/or members of the public and whether they will spend any time on the public body's premises.

If the answer to any of the above questions is "yes", then workforce matters are likely to be a relevant consideration for the contract in question. This is not, though, an exhaustive list and other factors may be relevant depending on the specifics of an individual contract.

Existing contracts

12. Public bodies may have existing contracts where workforce matters are an issue, for example low pay or the inappropriate use of zero hours contracts. In such instances, it may be feasible to address these issues by varying the terms of the existing contract, but caution should be exercised and account should be taken of a range of factors.

13. Where a contract has been awarded which includes a provision to amend the contract, then provided the variation takes place within the parameters set by the contract there should be little or no risk of legal challenge.

14. Where there is no power to vary the contract, some adjustments may be still be possible without risk of challenge, but significant variations to contracts do bring a risk of challenge. Caselaw on this matter (*Presstext Nachrichtenagentur v Republik Österreich* C-454/06) confirms that an amendment of a contract which is significant will amount to the illegal direct award of new contract without competition. Economic advantage given to a contractor as a result of variation will, prima facie, be considered significant as will any amendment which could have distorted competition or have a discriminatory effect and lead to a different outcome in the procurement. A simple obligation on the part of the contractor to make payment of no less than the living wage whilst not making any consequent changes to employees' contractual terms is unlikely to be controversial in this respect.

15. The new EU Procurement Directive provides what may be described as a "safe harbour" in relation to variations of contract, with an upper limit in relation to variations of not more than 10% by value for services contracts and 15% for works contracts, provided that in each case the value of the variation remains less than the applicable EU threshold value for a contract of the relevant type. Where the contract is below the EU threshold or otherwise exempt, there is likely to be less risk of challenge to any variation. 16. It should again be emphasised that a contract condition or any other measure that would make payment of at least the living wage mandatory cannot be included as a requirement of a competitive procurement which is subject to EU law.

17. The Scottish Government has recently reviewed its current contracts where the contractor's workers routinely work on Government premises. In the case of three contracts where not all workers were currently receiving at least the living wage, a variation has been applied to ensure that all individuals performing these contracts on Government premises are to be paid an hourly rate at least equal to the living wage, whilst maintaining other workforce benefits and avoiding any reduction in contract performance standards.

Action Required

18. Public bodies are asked to note the advice in this policy note and are asked to adopt it, wherever it is legally possible to do so, in their own procurement procedures. If you are in any doubt as to whether adopting the measures proposed are legally possible you should take appropriate legal advice.

ANNEX A

Workforce Matters Invitation to Tender Question The Scottish Government (SG) is persuaded by evidence which shows that the delivery of high quality public services is critically dependent on a workforce that is well-motivated, well led and has appropriate opportunities for training and skills development. These factors are also important for workforce recruitment and retention, and thus continuity of service. SG itself has adopted workforce policies to meet these requirements. These policies include:

- a pay policy that includes a commitment to supporting the living wage for the duration of this parliament;
- fair employment practices;
- clear managerial responsibility to nurture talent and help individuals fulfil their potential;
- a strong commitment to Modern Apprenticeships and to the development of Scotland's young workforce;
- support for learning and development;
- no inappropriate use of zero hours contracts;
- no inappropriate use of "umbrella" companies
- flexible working;
- flexi-time; and
- career breaks.

The Scottish Government also attaches importance to ensuring effective consultation and involvement of staff and Scottish Government management work in partnership with the trade union. While it is, of course, a personal decision whether or not to join a Trade Union, the Scottish Government encourages its staff to join an appropriate Union and to play an active part within it, making sure their views are represented.

In order to ensure the highest standards of service quality in this contract we expect contractors whose workers work alongside ours to take a similarly positive approach to workforce-related matters as part of a fair and equitable employment and reward package.

Workforce Matters (X%*)

Q - Please describe how your organisation proposes to commit to being a best practice employer in this respect in the delivery of this contract. Answers need not be constrained to or be reflective of any of examples given alongside this question.

Good answers will reassure evaluators that your company takes the engagement and empowerment of workers seriously; takes a positive approach to rewarding workers at a level that can help tackle poverty (e.g. through a commitment to paying at least the living wage), adopts fair employment practices, provides skills and training which help workers fulfil their potential, that you do not exploit workers (e.g. in relation to matters such as the inappropriate use of zero hours contracts or "umbrella" companies); and that your company will demonstrate organisational integrity with regards to the delivery of those policies, including having arrangements in place to ensure effective employee representation. This reassurance should be achieved by providing tangible and measurable examples that can be monitored and reported during contract management procedures.

Insert response here

Comments Received from GMB Representative

As a Trade Union Representative I am supportive of the living wage, however there appears to be a lot of restraints or conditions applied to this plus an annual cost, I anticipate that due to costs Aberdeen City may put a moratorium on awards and accreditations that cost the council, however it is just a thought I have on the matter.

ACC apply the Living wage anyway so going through an outside body to be accredited with something we do and at our cost does not seem to sit right.

Surely a statement on application forms stating the fact we pay the living wage should satisfy the applicant.

As was said this is not something the public would be interested in and to be accountable to a third party appears a bit at odds with ACC's own controls.

Although I support the Living wage I have reservations over the need to be accredited, I am sure we do not need to accrue Brownie Points to demonstrate fair practices, the demonstration is in the pay packet.