



## Executive

### Report from the Director of Strategy, Partnerships & Improvement and Deputy Director of Finance

Wards Affected:  
ALL

## London Living Wage

### 1.0 Summary

- 1.1 This report sets out recommendations for the Council to pursue implementation of becoming an accredited London Living Wage (LLW) organisation. It sets out the policy context and reasons for this commitment.

It also explains the necessary caveats and conditions the Council will need to apply in order to protect the integrity of its' financial position.

### 2.0 Recommendations

- 2.1 That the Executive agrees to the Council seeking Accreditation as a London Living Wage Employer.
- 2.2 That the Executive agrees to the take positive steps to review its existing contracts over a three year period on a case by case basis to wherever possible apply LLW criteria.
- 2.3 That Social Care Social Care contracts are examined with the London Living Wage Foundation and other LLW Boroughs to explore the application of LLW.
- 2.4 That the Executive agrees that Officers should act to promote the application of the LLW to schools, businesses and other organisations within Brent.
- 2.5 The Executive agrees that subject to Finance, Procurement and Legal advice officers seek to apply the LLW consideration when tendering.

2.6 That Members note the comments of the Deputy Director of Finance regarding the potential cost of applying LLW.

### **3.0 Context**

3.1 In the light of further and deepening cuts to public services and the increasing impact of the economic crises on individual residents and communities the Administration is reviewing its Policy Priorities to take cognisance of these changes.

3.2 When the Administration set out its Policy Priorities in 2010 this was on the basis of a more optimistic view for all Governmental and independent agencies about the path and duration of the recession. Since then economic conditions and their impact on residents have both worsened and halfway though the Administration is the right time to reprioritise in the light of these circumstances.

3.3 The drive towards London Living Wage compliance is the first aspect of this re-evaluation of priorities.

3.4 Income is one of the key determinants of building in individual and community resilience to these unprecedented economic circumstances. Brent is described as a 'low income' Borough and its' patterns of occupations have been in sectors where pay is lower than average. By signing up to the London Living Wage the Council can by its actions show commitment and Leadership to lift the incomes of both its residents and people who work for it.

3.5 The main benefits which have been so far experienced by both Public and Private Sectors in applying the London Living Wage have been:

- lower staff turnover
- improved productivity
- lower sickness absence

3.6 In addition by applying and extending London Living Wage the Council would be in a position to help encourage employers who pay low wages to set a minimum pay rate that enables employees to provide the essentials of life. It will also fit squarely with the Councils vision and values and promote the recruitment and retention of a high quality workforce to deliver for the Council and its Communities.

### **4.0 What is the London Living Wage?**

4.1 The Living Wage is an hourly wage rate, set independently and updated annually. In London, the rate is calculated independently by the Living Wage Unit within the Greater London Authority (GLA) and outside London by the Centre for Research in Social Policy.

4.2 The Living Wage is calculated according to cost of living and was created to "give the minimum pay rate required for a worker to provide their family with

the essentials of life.” Unlike the National Minimum Wage (NMW), the Living Wage has no legal status and is therefore reliant on the commitment of individual employers.

4.3 All cost estimates in this report are based on the current London Living Wage (LLW) rate as detailed below:

- The current rate of £8.30 per hour. Announced on 2 May 2011, it will continue to be applied until 31 March 2013. The Mayor has now announced an uplift to £8.55
- Outside London the current Living Wage rate is £7.20
- For comparison, the current NMW is £6.08 (for over 21s)

4.4 The formula for the LLW is based on a number of factors and the most recent analysis took the following into consideration:

- Household types and working patterns, including estimates of basic living costs
- Price Indexation changes from RPI to CPI for tax credits and benefits
- The effect of changes to taxes and benefits introduced in the 2010 Budget Report
- Income and wage distribution

4.5 The Living Wage Foundation’s analysis suggested that if means-tested benefits were not taken into account (that is, tax credits, housing benefits and council tax benefits) the Living Wage would be approximately £10.40 per hour. However their position is that in-work benefits and tax credits must be taken into account, as the tax and benefit system is redistributive.

4.6 The full report: “A Fairer London: The 2011 Living Wage in London” is a public document which sets out the detailed methodology and calculations. The same approach was applied when setting a LLW rate for 2013, which meant that any welfare changes were taken into consideration.

## **5.0 Accreditation**

5.1 As part of the process of adopting a London Living Wage policy organisations in London may seek accreditations from the London Living Wage Foundation, the industry standard accreditation managed by Citizens UK. The assured licence cost is currently £400 per annum and allows the Council to publicly state it is a Living Wage Employer.

5.2 Accreditation is on the basis that the following tenets apply or that there is an agreed plan to implement it. These are:

- a) That LLW is paid to all employees (18+)
- b) LLW is paid to all contractors and sub-contractors to the extent permitted by law. The depiction extends to ‘anyone providing a service to or on behalf of the Council involving 2 or more hours of work in any given day or week, for more than 8 or more consecutive weeks’ and extends to agency staff and

casual workers.

5.3 The Living Wage Foundation summarises its accreditation requirements in May of this year as:-

The Living Wage Foundation will accredit Local Authorities on the basis of a phased implementation plan over a reasonable timescale. In particular

- a clear political commitment
- a deadline for implementation with clear milestones as particular contracts are renewed

Whilst setting no formal deadlines the LWF recommends that contracts are reviewed within 3 years to include LLW if possible.

5.4 Officers from Brent held a preliminary meeting with representatives from the Living Wage Foundation. The position of the Council is not undertaking anything which could jeopardise the integrity of our financial position; our duties of 'Best Value' in current legislation and the special circumstances of Social Care Contracts were set out. The Foundation will use its best efforts to work with all LLW Councils to look at possible solutions for this.

## **6.0 Implementing LLW in Brent**

6.1 The vast majority of Brent Directly Employed Staff were already recipients of the London Living Wage and General Purposes Committee agreed in July that this would be 100% by 1st October this year. This extends to Agency Workers.

6.2 If Members agree the recommendations then the Council will commit to examining all its contracts with a positive intent to make them LLW contracts over a 3 year period.

6.3 Given the Councils obligations in law to seek Best Value, although this report advocate 'positive intent' when examining contracts or entering into contracts. The Council will treat these on a case by case basis.

6.4 In line with the 'understanding' reached with the LLW Foundation all Social Care Contracts will be considered under a collaborative process with other LLW Boroughs.

6.5 As contracts are re-let application of the LLW will be considered as part of the tender preparation.

6.6 There are two options in applying LLW as part of the tender process. These are:

- a) issuing tenders on the basis of LLW as a requirement after justifying best value in advance on a case by case basis or
- b) seek the sets of prices and justify LLW on the basis of best value.

The former approach appears the most logical but will be guided by further advice from Legal, Procurement and Finance.

## **7.0 Financial Implications**

7.1 The financial implications of LLW accreditation can only be determined on a case by case basis.

7.2 The cost difference between current wage levels and LLW within existing contracts is estimated to be approximately £9.1m.

7.3 The actual impact will be dependent upon:

- Timing of contract renewals over the agreed period
- Extent to which the procurement process identifies improvements through better retention/training of contractor staff that leads to efficiencies
- Whether any significant cost increases as a result of LLW can be justified as providing best value.

## **8.0 Legal Considerations**

8.1 Sections 17(5) and 19(10) of the Local Government Act 1988 effectively prohibit local authorities from including conditions in contracts for works, services and supplies which relate to "non commercial matters". "Non commercial matters" included the composition, conditions of employment and training of a contractor's workforce" (i.e. workforce matters) and therefore covered wage rates.

8.2 The Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 relaxed the above prohibition thereby enabling local authorities to consider workforce matters (including terms and conditions of employments such as wage rates) but only in so far as necessary to permit or facilitate compliance with the local authority's best value duty. The best value duty requires local authorities to secure continuous improvement in the way in which they exercise their functions having regard to a combination of economy, efficiency and effectiveness.

8.3 Councils have a legal duty to ensure that their contracts represent value best value / value for money. Accordingly, before applying the LLW requirement to a contract, the council must be reasonably satisfied that it is necessary to do so in order to facilitate its best value duty in respect of the services / works being delivered under that contract.

8.4 Section 17 of the Local Government Act 1988 has been further relaxed by the new Public Services (Social Value) Act 2012 (the "2012 Act"). The 2012 Act has inserted provision into the Local Government Act 1988 making it clear that

an authority is not prohibited from taking into account non-commercial matters to the extent necessary to comply with section 1 of the 2012 Act (this section is not yet in force but likely to be brought into force imminently). Section 1(3) of the 2012 Act states that the authority must consider how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area and how in the process of the procurement it might act with a view to securing that improvement. Section 1(6) of the 2012 Act says that when considering these matters the authority must consider only matters that are relevant to what is proposed to be procured and in doing so the extent to which it is proportionate in all the circumstances to take those matters into account.

- 8.5 It follows that it would be unlawful for the council to fetter its discretion by adopting a 'blanket' policy of applying a requirement that all its contractors pay the LLW to their employees. The decision whether to apply such a requirement must be considered on a 'contract by contract' basis.
- 8.6 In practice the council would need to be in a position to demonstrate that payment of the LLW to the contractor's workforce would be likely to result in an enhanced performance and have a positive effect on the timeliness and quality of the services / works through the workforce being more contented and better skilled / trained. The council would be paying more for the services than it would otherwise have to and therefore would need to demonstrate the additional benefits to the customers in respect of those services including but not limited to those customers, who pay wholly or partly for those services for example by the imposition of higher performance standards / targets or improved output. The council would also need to weigh up and balance these perceived benefits against the additional costs and the impact on council tax payers.
- 8.7 A robust report needs to be produced for each contract where a decision is taken to apply the LLW requirement so that there is an audit trail in the event of a challenge.
- 8.8 There are a number of other legal issues that require consideration:
- The application of a LLW requirement could be challenged on the basis that it is anti-competitive under EC procurement legislation. Such a challenge could be mounted by contractors who are based outside London or in Europe and whose employees do not reside in the London area. It therefore needs to be assessed whether the organisations expressing an interest in a contract are likely to employ mainly workers living in Greater London. This is likely to be the case in respect of services such as school catering, cleaning, home care, housing repairs etc. In the case of a service contract which could be performed outside of Brent / Greater London then the employees are unlikely to reside in Greater London and therefore a requirement to pay the LLW would not appear justifiable and could be open to challenge e.g. the running of a call centre.

- The imposition of a LLW requirement on a contractor could result in the contractor paying differential rates to employees undertaking similar services but for different local authorities / other bodies. Indeed, it is possible to envisage a situation where a contractor's employee is providing services pursuant to two different contracts only one of which has a LLW requirement. Is the member of staff to be paid at different rates according to which contract they are working on, on any particular day? This is an area fraught with difficulties and could result in the contractor facing equal pay claims. No doubt the prudent contractor in such a situation would look to the local authority imposing the LLW requirement to provide an indemnity against the risk of such claims.

8.9 It is also necessary to have regard to relevant case law of the European Court of Justice, in particular, the recent case of Ruffert where the ECJ ruled in favour of a Polish Subcontractor operating in Germany paying its construction workers less than required by the relevant German collective agreement. In summary, that case subordinated collective labour law rights to the economic freedom to provide services under the EC Treaty.

## **9.0 Other Considerations**

9.1 In the case of Schools, the Council would need agreement with Schools as they have their own governing bodies and delegated budgets. Whilst the Council could encourage Schools in this direction, Schools are not subject to Council policies and procedures.

9.2 Notwithstanding the particular pressures on Brent's private businesses and the high proportion of very small enterprises the Council will use its best efforts to persuade other businesses and organisations about the benefits of the LLW.

## **10.0 Summary**

10.1 This report argues that the Council should seek accreditation as a London Living Wage Employer. It agrees to build LLW into the procurement process for contracts and over a three year period review the bulk of its contracts with a positive view to apply LLW. The two caveats on this are first that the Council has to view each contract on a case by case basis so that the legal responsibilities of 'best value' can be fulfilled and second. It is also explicit that all Social Care contracts will be dealt with as part of a collaborative approach and the Council will commit to working with the Foundation and other Councils to explore ways to include these.

This report argues that London Living Wage is a positive step and one of a number of initiatives the Council is taking to support local peoples income and resilience in this most testing of economic times.

### **Contact Officers**

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