

CHESHIRE FIRE AUTHORITY

MEETING OF: FIRE AUTHORITY
DATE: 26TH APRIL 2017
REPORT OF: DIRECTOR OF GOVERNANCE AND COMMISSIONING
AUTHOR: ANDREW LEADBETTER

SUBJECT: THE LIVING WAGE

Purpose of Report

1. To allow Members to determine the Authority's policy in relation to the Living Wage.

Recommended that Members:

- [1] Determine whether they wish to commit to pay staff no less than the Living Wage (and whether this commitment includes apprentices).
- [2] Indicate whether they wish officers to further explore the potential for the Authority to encourage and/or require the payment of the Living Wage by contractors.

Background

2. The Chair asked officers to prepare a paper concerned with the Living Wage. In order to fully understand the Living Wage the following paragraphs define various key terms.

The National Minimum Wage

3. For those below 25 years of age the statutory National Minimum Wage (NMW) applies:
 - (i) 16-17 year olds: £4.05
 - (ii) 18-20 year olds: £5.60
 - (iii) 21-24 year olds: £7.05
 - (iv) Apprentices:
Under 19 or in first year of apprenticeship: £3.40
19 or over or beyond first year of apprenticeship: NMW rates
4. The NMW is mandatory.

The National Living Wage

5. The National Living Wage (NLW) is updated by the Government every April and the current rate is £7.50 per hour. It is due to rise to £9.00 per hour in 2020. It is payable to those over the age of 25.
6. The NLW is mandatory.

The Living Wage

7. The Living Wage (LW) is an hourly rate of pay set independently and updated annually by the Living Wage Foundation. The Foundation says that the LW is calculated to reflect the basic cost of living and is based on the principle that work should pay enough to provide for the essentials of life. The Foundation also states that the LW is intended to recognise the dignity of work and the importance of individuals and families being able to earn a living and spend time together, bringing wider social benefits. Employers can apply to become accredited with the Foundation. The Foundation describes the LW as 'an independent movement of businesses, organisations and people who believe a fair day's work deserves a fair day's pay'. Information about the Foundation is attached to this report as Appendix 1.
8. The LW is adjusted every October and the current rate is £8.45 per hour. It is said to be payable to all those over 18.
9. The LW is voluntary.
10. Neither the National Living Wage or the Living Wage were meant to apply to apprentices in recognition of the fact that they are being paid to learn and organisations are investing in them to help gain qualifications whilst enhancing their skills and future employability. It is understood however, that some LW accredited employers have extended it to their apprentices.

The Living Wage and the Constituent Authorities

11. A summary of the decisions of the constituent authorities concerned with the LW is attached to this report as Appendix 2.

Information

The Living Wage and Staff Pay

12. Staff are paid in accordance with nationally agreed pay structures. The pay scales are attached to this report as Appendix 3.
13. The lowest hourly rate for operational (Grey Book) staff is the trainee firefighter rate of £10.15 per hour. The lowest hourly rate for non-operational (Green Book) posts is the bottom of Scale 2 (point 11), which

is currently £8.19 (slightly below the LW). No one is currently paid at that point.

14. The Authority also has apprentices. They are paid at a rate based on the NMW and their age, but in order to remain competitive, attract good candidates and promote retention, CFRS opted to pay 26% above the national minimum. The current rates of pay for the existing CFRS apprentices are outlined below:

Age	CFRS Apprentice Rate
Apprentice (under 19 or in first year of apprenticeship)	£4.41
18 to 20 or in second year of apprenticeship	£7.06
21 and over	£8.88
25 +	£9.45

15. Currently all apprentices are below age 21 with the majority being paid at the £4.41 rate of pay. This is significantly lower than the LW, even though it is higher than other apprentices.
16. Whilst the Authority has not formally adopted or become an accredited employer with the Living Wage Foundation, rates of pay for current employees (except apprentices) are above the LW. Members may wish to commit to pay staff (including or excluding apprentices) no less than the LW.

The Living Wage and Procurement

17. Public sector procurement is complex and subject to controls and constraints.
18. Public sector bodies have for some time included provisions in their procurement documentation to emphasise the legal requirement for contractors to pay the NMW and NLW. This can be explicit or encapsulated in a requirement to comply with the law in general. Some include provisions that allow them to monitor the activities of the contractor in this regard.
19. It is understood that in spite of a great deal of interest and deliberation no public sector bodies have gone as far as requiring the payment of the LW by contractors, yet.
20. The difficulty stems from the European-led procurement regime. The UK Regulations governing the majority of significant procurements (the principles of which are expected to be observed in lower value procurements) dictate the matters that can be taken into account in making decisions. At the selection stage (when a public body decides who to include in its tendering process) the list of matters is concerned with suitability, e.g. has the contractor committed certain offences that would lead to its exclusion? At the contract award stage the Regulations

specify that an award must be made on the basis of the offer which: is the most economically advantageous from the point of view of the public sector body, or offers the lowest price. In determining the most economically advantageous offer there is a list of criteria linked to the subject matter of the contract – there is no obvious room for giving weight to a contractors approach to the LW.

21. The Public Services (Social Value) Act 2012 placed a duty on public sector bodies (when dealing with services contracts) to consider how they could secure improvement to the economic, social and environmental wellbeing of the local area, at the 'pre-procurement stage'. The intention appears to have been to encourage public sector bodies to consider how best to secure improvements when deciding upon the strategy/process to procure the services in question. It did not introduce new criteria related to selection or award and it is not entirely clear how much impact it has had on procurements caught by its provisions.
22. The Scottish Government sought clarification from the European Commission a few years ago about the potential to make the LW a mandatory requirement in its procurements. Subsequent guidance issued by the Scottish Government (Statutory Guidance on the Selection of Tenderers and Award of Contracts – Addressing Fair Work Practices, including the Living Wage, in Procurement) made it clear that this was not considered to be possible.
23. There have been some conflicting EU cases concerned with the LW and it is possible that in limited circumstances the courts might uphold a provision requiring a contractor to pay the LW. However, this remains an area of uncertainty and is not without its practical difficulties.
24. There is no doubt that the law of procurement will change significantly in the relatively near future as the UK withdraws from the EU. Therefore, it makes sense to keep a watching brief on the issue of LW provisions in procurement.

Financial Implications

25. If a decision was made to pay the LW to all staff (excepting apprentices) then there are no immediate financial implications. If apprentices were also paid the LW there would be an additional cost for younger apprentices of between circa £4k and circa £11k per apprentice.

Legal Implications

26. The Authority is not required by law to adopt and implement the LW.
27. Given the risks associated with the introduction of a policy requiring contractors to pay the LW the Authority would need to consider expert legal advice before doing so.

Equality and Diversity Implications

28. The living wage is widely viewed as a tool to reduce inequality around wealth and income. Women and those with some disabilities are assumed to be among the groups most likely to benefit as they are likely to be in receipt of lower incomes. Certainly, within the organisation, those on lower 'green book' pay scales are more likely to be female than male. Therefore, it is to be assumed that change will have a disproportionately positive impact on women and other minority groups. The Authority undertakes comprehensive equality monitoring, including around the gender pay gap, and this will continue in the event that the Living Wage is adopted.

Environmental Implications

29. There are none.

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BACKGROUND PAPERS: NONE