

Report for: Cabinet

Date of Meeting:	9 th December 2021
Subject:	Application to the Living Wage Foundation to become an accredited authority
Key Decision:	Yes- the recommendations set out in this report will affect more than one ward.
Responsible Officer:	Dawn Calvert - Director of Finance & Assurance
Portfolio Holder:	Councillor Natasha Proctor - Deputy Leader and Portfolio Holder for Finance and Resources
Exempt:	Yes – Appendix 1 to the report contains exempt information under paragraph 3 relating to the financial or business affairs of the Council.
Decision subject to Call-in:	Yes
Wards affected:	ALL
Enclosures:	Appendix 1 Real Living Wage Transition Plan (EXEMPT)

Section 1 – Summary and Recommendations

This report seeks a recommendation to apply to the Living Wage Foundation (LWF) to become a ¹Real Living Wage (RLW) accredited authority and develop a plan to introduce the RLW into our supply chain.

Recommendations:

Cabinet is requested to:

1. Approve the submission of an application to the Living Wage Foundation for Harrow Council to become an accredited Real Living Wage payer which incorporates a transition plan to ensure that our supply chain pays the Real Living Wage to their employees.
2. Delegate authority to the Corporate Director of Resources following consultation with the Director of Finance & Assurance and the Portfolio Holder for Finance and Resources to take all decisions pertaining to the finalisation of the application to become accredited by the Living Wage Foundation.
3. Delegate authority to the Corporate Director of Resources following consultation with the Director of Finance & Assurance and the Portfolio Holder for Finance and Resources to take all decisions pertaining to ensuring all our employees are paid the London Living Wage (LLW) as a minimum and to implement a transition plan that ensures that our supply chain pays the Real Living Wage to their employees.
4. Note the estimated financial impact on the Council of our transition plan to ensure our suppliers to pay the Real Living Wage to their employees and the budget provided for in the draft Medium-Term Financial Strategy.

Reason: (for recommendations)

To be recognised, through successful accreditation, by the LWF as a LLW employer and put in place a plan to implement the payment of the RLW into the supply chain to support the Council priorities of:

- Tackling poverty and inequality;
- Addressing health and social care inequality; and
- Building a thriving economy.

Section 2 – Report

Options considered

The options considered are:

1. To apply for accreditation from the Living Wage Foundation as a LLW employer and develop a plan to introduce the RLW into our supply chain. OR
2. To only continue to be a LLW Employer and not seek living wage accredited body status and therefore not introduce it into our supply chain.

In support of the Council's priorities as detailed in the Borough Plan and further reinforced by the Council's Living Wage motion in November 2020, option one is supported by the recommendations of this report.

Background

The Real Living Wage and the Living Wage Foundation

The RLW is a UK wage rate that is based on the actual cost of living. It is paid voluntarily by employers who believe workers deserve a wage that allows them and their family to meet everyday needs. Unlike the National Minimum Wage, the RLW is not required to be paid by law. The RLW rate is announced every November independently calculated based on what people need to live on. The rates for 2021/2022 were announced in November 2021 and have increased the London Living Wage by 20p from the current £10.85 to the new rate of £11.05. The UK Living Wage has increased by 40p from the current £9.50 to a new rate of £9.90.

Paying the RLW is regarded as a strong solution to eliminating financial poverty, child hunger, homelessness and modern slavery. Paying the RLW has a significant multiplier effect on the local economy as people with more money in their pockets will spend more, supporting local business growth. It leads to a positive cycle of economic and social improvements within society. Therefore, as part of our Council's vision to continue its journey of creating a fairer future for all, this paper is requesting cabinet to approve the recommendations within this report that seek to contribute to a higher wage economy by planning to introduce the RLW into our supply chain.

The RLW accreditation is managed by Citizens UK. The accreditation is open to employers, like Harrow Council who are already paying the LLW to their directly employed staff. Employers who pay the RLW have enhanced reputations as being ethical employers and have seen improved staff recruitment and retention, motivation, productivity and morale improvements.

¹ Real Living Wage is currently £10.85 in London (more widely known as the London Living Wage) and £9.50 across the United Kingdom. In November 2021 the new rates of £11.05 for London and £9.90 for the rest of the UK were announced. These must be paid from April 2022.

The accreditation itself is a signed licence between Harrow Council and the LWF. On receipt of our submission the foundation seeks to process it within 10 working days.

The table below explains the UK wage rates in a simple way.

Explaining UK Wage Rates			
	THE MINIMUM WAGE <small>Government minimum for under 23s</small>	NATIONAL LIVING WAGE <small>Government minimum for over 23s</small>	REAL LIVING WAGE <small>The only wage rate based on what people need to live</small>
WHAT IS IT?	£8.36	£8.91	£9.90 across the UK £11.05 in London
IS IT THE LAW?	Statutory	Statutory	Voluntary
WHAT AGE GROUP IS COVERED?	21 and older	23 and older	18 and older
HOW IS IT SET?	Negotiated settlement based on recommendations from businesses and trade unions	A % of medium earnings, it aims to reach 66% of median earnings by 2024.	Calculation made according to the cost of living, based on a basket of household goods and services
IS THERE A LONDON WEIGHTING?	No London Weighting	No London Weighting	Yes - Separate higher rate for London

Why a change is needed

Already a London Living Wage employer, Harrow Council now recognises the next step on the journey is to incrementally and over several years plan to introduce the RLW into the vast supply chain that the Council engage.

Harrow Council spent just under £397m in 2020/2021 on third party contracting to deliver goods, works and services. Consequently, this gives us the ability to use our significant spending power to deliver social and economic benefits into the borough and support wider social and economic priorities.

There exists a real tension between knowing and 'believing in' the social and economic value the payment of the RLW can deliver on the one hand and being able to afford the additional financial pressure that introducing it into our third-party contracts brings. It is understood and accepted by most that paying a fair living wage is a key contributor to creating wider social and economic benefits. The potential to reduce food and fuel poverty, poor living conditions and social inequality stems from paying a fair living wage.

The Council's objectives to tackle poverty and inequality, as stated in the Borough Plan are:

1. All children are able to live in homes where the family has the opportunity of earning a good household income

2. Everyone has a home suitable for their needs
3. All people wanting to work, have a job that pays above RLW and are employed on a contract that meets their requirements
4. Households live free of unsustainable debt

Current Position at Harrow

As part of our Council's vision to create a fairer future, the Council have since 2013 adopted, as a minimum the payment of the LLW to all employees. Over subsequent years, when necessary, the Council have deleted the lower points on the pay scale to uplift staff to the prevailing LLW. Harrow schools adopted the scales for non-teaching staff and therefore also pay the LLW as an hourly minimum. In total over 5800 Harrow employees are benefitting from receiving a salary consistent with a fair wage to be able to live on.

The uplift in the LLW takes place in November of each year and the Council implements any uplift by the April of the following year. As of today, the current LLW rate is £10.85 and the lowest point on our pay scale pays £10.89. However, the 2021/2022 LLW rate has been announced as £11.05 so the Council will implement the new rate in April 2022.

At a meeting of Council on the 26th November 2020 a motion was agreed as follows:

This Council resolves to:

- Seek accreditation as a Living Wage employer with the Living Wage Foundation
- Ensure all staff employed by the Council are paid the Real Living Wage
- Develop a plan for all contractors to pay their staff the Real Living Wage over time, recognising the dependency on the Council's budget settlement from central government for 2021/22 and beyond.

The recommendations set out at the front of this report seek to deliver the intent of this motion.

Our Supply Chain and the Real Living Wage:

Harrow Council spent just under £397m in 2020/2021 on third party contracting to deliver goods, works and services. Consequently, this gives us the ability to use our significant spending power to deliver macro and micro social and economic benefits into the borough and support wider national social and economic priorities through the introduction of paying the RLW into our supply chain.

Extensive work has been undertaken to review the Council's current contracts and place them in one of the following categories:

Category	Category	Number	Comment
1	Contracts already paying the LLW		The Council have 152 number of contracts identified as paying the LLW. Though some of them were consciously tendered on a living wage most of them are services of a professional nature where everyone working on the contract is paid well above LLW rates.
2	Contracts that are not paying the LLW that are in-scope of the move to pay the RLW		It is this category that fall into the scope of recommendation 1. An implementation plan that will be submitted with our accreditation application to the LWF. It is set over a 7-year programme of implementation.
3	Contracts that are out of scope of the move to pay the London Living Wage (contracts outside the UK, or short term or which do not use regular labour i.e.2 hours per week for 8 weeks)		There a 121contracts that fall out of scope of paying the living wage. These are primarily for software licencing, utilities, insurance and the supply of goods only

The purpose of this review was to obtain an accurate picture as possible on all category 2 contracts. The methodology used to maximise accuracy was an interrogation of the contracts register, the procurement programme and other contract documentation to sort contracts into one of the above 3 categories based on available data. The second phase of review engaged all directorates on the scoping work, so commissioners and contract managers could provide further knowledge and information to allow the initial sorting and scoping to be further improved by 'moving contracts around the categories' based on new information and adding totally new contracts or future commissioning activity.

All the above scoping work was to allow for the most important part of the review to be undertaken and that was understanding the financial impact of implementing the RLW into scope 2 contracts. The financial implications section of this report will detail the financial impact of introducing the RLW.

1. The plan that is to be submitted to the LWF (App1) has detailed a list of milestones over a period of 7 years. The milestones include an early years' plan. The early years proposal of 'what the Council does first' is based on a combination of affordability and ease of implementation.

Implications of the Recommendation

1. The introduction of a requirement for suppliers to the council to pay their employees the RLW requires careful consideration of the implementation and on-going contract management process. (Please see procurement implications section for more detail)

Resources costs

No additional non-financial resource is required in order to implement the recommendations of this report.

Staffing/workforce

No additional resource will be required as a result of the recommendations of this report. Officers within commissioning, procurement, contract management, legal and finance will be the lead stakeholders in the successful implementation of the real living wage into the Council's procurement process.

Ward Councillors' comments

An early copy of this report was tabled with Administration Members who were supportive of the recommendations.

Risk Management Implications

Risks included on corporate or directorate risk register? **No**

Separate risk register in place? **Yes**

The relevant risks contained in the register are attached/summarised below.
Yes

The following key risks should be taken into account when agreeing the recommendations in this report:

Risk no	Risk Description	Mitigations	RAG Status
1	<p>Contracts where Harrow Council is not the only customer. This is predominantly in the residential and nursing care services sector. It is difficult to implement the RLW in a setting where care staff are used across numerous clients from different placing councils.</p> <p>Staff involved in these contracts will effectively work across more than one local authority and any attempt to apply RLW may cause 'bidding wars' with other local authorities. Suppliers may well reserve beds for the highest payer.</p>	<ul style="list-style-type: none">▪ Working together with the WLA and other councils to understand the makeup of establishments where Harrow Council are not the only commissioner placing clients.▪ Working alongside the adult services commissioning strategy in relation to the mixture of block/spot contracts.▪ There will be no introduction of the RLW into these settings until a viable way forward has been identified. These could include multi borough agreement or an increased use of block contracts.	Amber

2	That the additional contract value paid to suppliers for the implementation is not used to raise the wages of the workforce to the RLW	<ul style="list-style-type: none"> ▪ The Council will contractually require the provider to pay the RLW where they have tendered to do so. ▪ The Council will through contract management require them to provide evidence that they are paying it to all staff employed on the delivery of the contract. 	Green
3	That the cost impact is greater than anticipated as the Council receives prices in tender submissions.	<ul style="list-style-type: none"> ▪ In the pre procurement commissioning phase of a tendering project the Council would look to understand the market and make-up of the service in question with a view to getting an accurate picture as possible on the impact of paying the RLW. ▪ All our invitation to tender documents allows the authority to exercise its right not to make an award or to make a partial award following a tender. So, if prices were unaffordable the Council could withdraw from the process. 	Amber
4	Quality of services delivered do not see quantifiable improvement as a result of paying the RLW	<ul style="list-style-type: none"> ▪ Through contract management the Council would work to identify improvements that correlate with the payment of a higher wage. Such things as reduced turnover in staff, higher customer satisfaction rates of for example residents in a care setting, improvements in CQC reports. 	Amber

5	Staff retention continues to be a problem for suppliers as other sectors continue to outstrip pay rates in sectors like social care	<ul style="list-style-type: none"> ▪ The economic environment creates a real challenge for sectors like the care industry. With a shortage of labour in many other sectors it is very possible that even with paying the RLW that the care sector continues to lose staff to higher paying sectors. 	Amber
6	Suppliers are reluctant to tender for Harrow contracts	<ul style="list-style-type: none"> ▪ Phased approach is to allow the Council to take a considered approach to the implementation process. ▪ It is possible that providers may not want to tender for a service where rates paid to the staff, they employ on that specific service is higher than the rest of its workforce, thereby creating potential industrial relations issues. 	Amber
7	Contract Monitoring and enforcement could become complex and onerous and doesn't give the Council the information needed to mitigate risks identified in this report.	<ul style="list-style-type: none"> ▪ The Council understand what we want to achieve and will enhance our contract management and monitoring to be able to create measurable key indicators to gauge success. 	Green
8	There is a legal challenge to the plans for breach of public contracts regulations. That is, under procurement law it is unlawful to include the payment of the RLW as a qualifying criterion.	<ul style="list-style-type: none"> ▪ The risks of challenge to the application of the RLW into tendering are medium. There are 16 London Boroughs already on this journey and none have had a challenge to date. ▪ Procurement and Legal will continue to 	Amber

		work together on a tender by tender basis to minimize risk of challenge.	
9	The proposal is unaffordable	<ul style="list-style-type: none"> ▪ The 2022/2023 draft budget and three-year draft MTFS includes a budget provision of £450k in years 2022/2023 which is intended to cover the implementation of the wage in the early years. The MTFS will be refreshed as the implementation plan proceeds. 	Amber

Procurement Implications

The introduction of the RLW into our supply chain comes with several non-financial challenges and will require changes to the way the Council commission, procure and contract manage suppliers that are paid the living wage.

At the pre procurement phase commissioning and procurement must develop the procurement documents in a way that ensures that the market is clear that the Council will be seeking submissions that reflect as a minimum the payment of the RLW. A review the Council's terms and conditions of contract will also be undertaken to ensure there are clauses in them that are clear that the supplier must pay the RLW and that the Council will, through contract management, require evidence that this is happening.

The Council are part of joint commissioning with other West London Alliance boroughs for social care. All WLA boroughs use common homes and call off the same frameworks and Dynamic Purchasing Systems to spot place clients. Harrow Council will need to understand if our actions could have a wider economic issue/impact on the WLA if Harrow Council go ahead and pay the RLW to common suppliers of residential and nursing services. In many cases the staff involved in these contracts will effectively work across more than one local authority and any attempt to apply RLW may cause 'bidding wars' with other local authorities. Suppliers may well reserve beds for the highest payer. These issues may effectively exclude Harrow from using such joint arrangements, which it currently relies on to fulfil its care obligations.

A commissioning strategy which looks to create more block contracting arrangements for our residential and nursing services would be required as a part solution to the above-mentioned issues.

If the Council require our supply chain to pay the RLW then the benefit of doing so must be measurable. The Council would expect a higher level of

service and contract delivery and be able to measure this. Commissioning would need to ensure specifications and KPIs look to capture quality improvements. Similarly, our active contract management would need to improve to ensure improvements can be evidenced as a result of paying the RLW.

No	Action	Start	End	Action By
1	Submit application to the Living Wage Foundation for Accreditation	Dec 2021	Dec 2021	HOP
2	Review Procurement Programme at directorate procurement boards to ensure identified services from the implementation plan are retendered on the RLW	Jan 2022	Mar 2022	HOP and Chairs of DPBs
3	Review Terms and Conditions of Contract to ensure clauses are robust and clear on paying staff the RLW	Jan 2022	Mar 2022	HOP and HB Law
4	Review all procurement tendering documents including price submission templates to ensure they reflect the payment of the RLW	Jan 2022	Mar 2022	HOP and FBP's
5	Review of commissioning strategy for adult social care residential and nursing services	Dec 2021	Apr 2023	People Services
6	Monitoring of contracts to ensure the Council continue to pay the RLW consistent with the annual uplift	On going	On going	Contract Managers and FBP's

Legal Implications

The plan to encourage our suppliers to pay their employees the RLW needs to take account of the public procurement legal landscape.

The council is a contracting authority under public procurement rules. Government policy is that contracting authorities must ensure that suppliers comply with relevant social, environmental and labour laws in delivering public contracts, and the public procurement rules reflect this, i.e. the Council can require suppliers to comply with the law.

Regulation 57(1) to (4) of the Public Contracts Regulations 2015 (PCR) requires the exclusion of suppliers which have listed convictions. Discretionary grounds for exclusion include violations of environmental, social and labour laws. The mandatory standard Selection Questionnaire that contracting authorities must use sets out these mandatory and discretionary exclusion grounds and suppliers must certify that they have not breached any of the exclusion grounds.

The rules in regulation 58 of the PCR 2015 limit selection criteria to economic and financial standing and technical and professional ability. The Council can only exclude suppliers who lack the technical or professional ability to perform the contract.

Also, the Local Government Act 1988 (LGA 1988) imposes restrictions on taking account of non-commercial considerations in public procurement decisions.

Non-commercial matters include 'Workforce matters' (defined as including the terms and conditions of employment or the composition of a contractors' workforce, arrangements for promotion, transfer or training of or other opportunities for their workforces).

The LGA 1988 also provides that any matter which would be a non-commercial matter if it referred to a provider, will also be a non-commercial matter where referable to any a supplier, customer, subcontractor or associated body of the provider, a sub-contractor of an associated body or their respective suppliers or customers.

The courts have said, in the context of considering provisions such as pay and hours of work, that the LGA 1988 restrictions are not intended to prohibit a local authority from including in its contract's provisions requiring the contractor to comply with the general law. And it does not prevent an authority from exercising procurement functions with reference to a non-commercial matter to comply with the general equality duty under section 149 of the Equality Act, or to comply with the Social Value Act, which imposes a general duty on contracting authorities to consider how they might use their procurement activity to improve the economic, social and environmental well-being of their area, or to comply with its duties of best value under the Local Government Act 1999.

It is also possible, where relevant to the delivery of a contract, to take account of a bidder's approach to fair work practices. Fair work practices can and would normally be expected to include fair and equal pay, including the living wage as part of a package of positive fair work practices to be delivered for the duration of the contract. The Public Services (Social Value) Act 2011 requires that the council, when it is commissioning public services, to think about how it can secure wider social, economic, and environmental benefits. So, to encourage and achieve compliance by potential service providers to pay the RLW to employees for new services contracts, the council could allocate a relatively high percentage of the scoring allocation to social value.

So, currently while the Council can insist that suppliers comply with employment law (and so for example pay the minimum wage to their employees), and that they have financial standing and the technical or professional ability to perform the contract, the Council need to work with suppliers and encourage them to pay their employees the RLW, rather than seeking to exclude them from doing business with the council for not doing so because this is not currently a legal requirement. Compliance with equality, social value and best value obligations do not allow us to act in breach of public procurement rules, but the Council can have policies and introduce procurement procedures that reflect the letter and intent of equality, social value and best value legislation to achieve those policy objectives compliantly with the PCR.

It should be noted that the Cabinet Office published a National Procurement Policy Statement in June 2021 which requires contracting authorities to have regard to national strategic priorities when exercising their functions relating to public procurement. The national priorities relate to social value, commercial and procurement delivery and skills and capability for procurement. A new Procurement Bill is also expected to be introduced and become law in 2023 which will need to be considered.

Financial Implications

The approval of the recommendations of this report will have potential significant financial implications over the coming years. It is in recognition of the financial impact alongside the Council challenging financial circumstances of paying the RLW into our supply chain that a period of 7 years has been agreed with the Living Wage Foundation to give the Council time to transition as per the 7-year plan appended.

This plan has been designed to allow the Council in the early years to re-tender services that have a low financial impact considering the financial challenges and also to allow the Council to considered approach to implementation for those services falling into the mid and later years of the plan.

The following tables show the estimated cost impact of introducing RLW in the supply chain from 1 April 2022, including a predicted 2% increase in RLW rates. Not all contracts are impacted in year 1. Depending on when contracts are re-tendered the impact may not fall until years 2 – 5.

YEAR BY YEAR LOOK AT IMPACT OF INTRODUCING THE RLW INTO OUR SUPPLY CHAIN WITHOUT SC SPOT CONTRACTS (£M)

Year	1	2	3	4	5	6	7
	£0.305	£0.555	£0.695	£0.859	£0.943	£0.966	£0.985

*These rates are based on the 2021 RLW rates.

AN INCREMENTAL APPROACH WITH SOCIAL CARE SPOT CONTRACTING BACKENDED IN THE PLAN TO YEAR 6-7 (£M)

Year	1	2	3	4	5	6	7
	£0.305	£0.555	£0.695	£0.859	£0.943	£7.721	£14.771

The 2022/2023 draft budget and three-year draft MTFS which is subject to a report elsewhere on this agenda includes a budget provision of £450k in years 2022/2023 and 2023/2024 which is intended to cover the implementation of the wage in the early years. The MTFS will be refreshed as the implementation plan proceeds.

Equalities implications / Public Sector Equality Duty

An Equalities Impact Assessment was completed, and the outcome was positive.

Council Priorities

The Council's leadership has made a strong commitment to promoting a fairer future for all residents in the Borough Plan. Through implementing the recommendations set out in this report, the Council will be able to further deliver against the priorities of tackling poverty and inequality; addressing health and social care inequality and building a strong local economy.

1. Improving the environment and addressing climate change
2. Tackling poverty and inequality
3. Building homes and infrastructure
4. Addressing health and social care inequality
5. Thriving economy

Section 3 - Statutory Officer Clearance

Statutory Officer:

Signed by the Chief Financial Officer
Dawn Calvert
Date: 24 November 2021

Statutory Officer:

Signed on behalf of the Monitoring Officer
Stephen Dorrian
Date: 23 November 2021

Chief Officer:

Signed off by the Corporate Director
Charlie Stewart
Date: 23 November 2021

Head of Procurement:

Signed by the Head of Procurement
Nimesh Mehta
Date: 23 November 2021

Head of Internal Audit:

Signed by the Head of Internal Audit
Susan Dixon
Date: 24 November 2021

Mandatory Checks

Ward Councillors notified: NO, as it impacts on all Wards

EqlA carried out: YES

Section 4 - Contact Details and Background Papers

Contact:

Nimesh Mehta Head of Procurement, 07949 054 739
nimesh.mehta@harrow.gov.uk

Background Papers: None

Call-in waived by the Chair of Overview and Scrutiny Committee: NO