

COMMITTEE: ADMINISTRATION AND REGULATION

DATE: 25 FEBRUARY 2020

SUBJECT: THE LIVING WAGE

REPORT BY: SERVICE DIRECTOR, HR & MONITORING OFFICER

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IMPLICATIONS:

LEGAL	✓	COMMUNITY SAFETY	
EQUALITIES	✓	ENVIRONMENT	
FINANCIAL	✓	CONSULTATIONS	✓
STAFFING	✓	OTHER	

WARDS AFFECTED: NONE

PURPOSE

1. To consider whether to apply the new real Living Wage rate of £9.30 per hour from 1 April 2020.

RECOMMENDATION

2. Administration and Regulation Committee is recommended to consider three options and to decide which they wish to agree:
 - i) That from 1st April 2020 the new real Living Wage rate of £9.30 per hour be adopted by the council, by applying a pay supplement to the lowest two spinal column points (SCPs 1 and 2) on the NJC pay spine and that schools be encouraged to pay the same.
 - ii) Or: That the council awaits the outcome of the NJC national pay negotiations (effective from 1st April 2020) before determining any

pay supplements to align to the Living Wage.

- iii) **Or: That the Council does not pay a supplement to match the real Living Wage rate and maintains pay at £9 per hour/£9.18 per hour, at the base of the NJC pay spine until such time as the uplifted NJC pay spine is implemented.**

BACKGROUND

3. The lowest point on the NJC pay spine from April 2019 was equal to the Living Wage - £9 per hour. Therefore, for 2019/20 the council paid no supplement to match the Living Wage rate. In previous years, a supplement had been paid following the council's decision to adopt the Living Wage with effect from 1 October 2014. At that time, the Council decided that it would annually review the new rate for the real Living Wage announced each November and decide whether to adopt the increase with effect from the following April.
4. There are separate hourly rates for the National Minimum Wage (NMW) and National Living Wage (NLW) depending on age and for apprentice pay. With effect from 1 April 2020, the National Minimum Wage will increase to £4.55 per hour (under 18), £6.45 per hour (18 – 20 years) and £8.20 per hour (21 – 24 years). Employees from age 25 are entitled to the National Living Wage which will increase to £8.72 per hour. Apprentices aged under 19, aged 19 or over in their first year of their apprenticeship will be entitled to receive £4.15 per hour. The Council's lowest spinal column point (SCP 1) is currently £9 per hour, which is greater than the prospective NMW or NLW.
5. From April 2019 all Luton 'maintained' community schools paid £9 per hour as a minimum, which effectively dispensed with the previous picture whereby some schools had not adopted the Living Wage and paid a lower minimum hourly rate. The council encourages its community schools to adopt the real Living Wage.
6. Due to the General Election, national pay negotiations have been delayed and it is uncertain whether the pay award for the NJC pay spine will be agreed before 1st April 2020. If the NJC pay uplift is not implemented on time, the council must decide if it wishes to apply a pay supplement to match the Living Wage, pending the national pay award.
7. The pay supplement can be adjusted or removed depending on the agreed NJC pay uplift, which will increase the hourly rates at the base of the pay spine.
8. The real Living Wage, uplifted to £9.30 per hour, if agreed by Committee, will entail a pay supplement of 30p per hour on SCP 1 (currently £9 per hour L1a)

and a supplement of 12p per hour on SCP 2 (currently £9.18 per hour L1b) based on the 2019/20 pay spine.

9. All of the extra costs associated with the Living Wage pay supplement for directly employed council staff will be covered by the salaries estimates for 2020/21, which include provision for an hourly rate of £9.47 at SCP 1 and £9.70 at SCP 2 (that is, pay rates in excess of the Living Wage).

REPORT

10. On 11 November 2019 the Living Wage Foundation announced a 3.33% increase in the real Living Wage for the UK from £9 per hour to £9.30 per hour.
11. If agreed by the council, the new real Living Wage supplement will apply to employees in grade L1a (SCP 1) and L1b (SCP 2 only), based on the 2019/20 NJC pay spine. The pay supplement will apply until such time as the pay award takes effect. The next point on the pay spine is currently £9.36 per hour and sits above the Living Wage.
12. There are currently in post, 227 employees (84 full time equivalents - FTEs) on SCP 1 and 2, directly employed by the council. Provision has been made within salaries estimates for 2020/21 to pay these employees the Living Wage as a minimum.
13. There are currently 40 community schools, all of which use the NJC pay spine which details £9 per hour as the lowest hourly rate. Of these, there are 3 community schools that do not use the council's payroll service and may have some employees on SCP 1 and 2. One school has no employees at this pay level. There are 36 schools for which the council holds payroll details that employ staff at SCP 1 and SCP 2. Within these community schools there are 741 employees (161.53 full time equivalents – FTEs) on SCP 1 and 2.

PROPOSAL/OPTION

14. That from the 1st April 2020 the new real Living Wage rate of £9.30 per hour be adopted by the council by applying a pay supplement to the lowest two spinal column points (SCPs 1 and 2) on the NJC pay spine and that schools be encouraged to pay the same.

Or: That the council awaits the outcome of the NJC national pay negotiations (effective from 1st April 2020) before determining any pay supplements to align to the Living Wage.

Or: That the Council does not pay a supplement to match the real Living Wage rate and maintains pay at £9 per hour/£9.18 per hour, at the base of the NJC pay spine until such time as the uplifted NJC pay spine is implemented.

LEGAL IMPLICATIONS

15. The implementation of a Living Wage will give rise to equal pay risks. To ensure that any potential Equal Pay risks are mitigated it is essential that the principles of the real Living Wage are applied consistently across the council for directly employed staff and for those (non-teaching) employees within Luton's maintained community schools whose pay is determined by the schools' Boards of Governors.
16. In order for the council to continue to justify and defend challenges to its current Job Evaluation Scheme it is essential that the current grading structure, including the current scale points matched against current job scoring is maintained. The application of the real Living Wage should also be reviewed periodically to ensure that any anomalies can be addressed.
17. The application of the real Living Wage has the effect of uplifting those currently on L1a (SCP 1) onto the pay rate equivalent to grade L1b. An employee whose job content has been evaluated at grade L1a is in fact 'paid' at an hourly rate equivalent to grade L1b as a result of receiving a pay supplement to equal the real Living Wage. Uplifting employees currently on L1b (SCP 2) to the Living Wage maintains the integrity of the Job Evaluation Scheme as their pay remains within L1b - the top of L1b being £9.36 per hour.
18. On the balance of probabilities it is more likely than not, that the council will be able to justify the differential treatment compared to other employees. Paying the Living Wage is a national initiative and represents a proportionate means of achieving a legitimate aim. It addresses poverty – a key strategic priority for the council. However, there is no binding case law on this subject at the moment and therefore it is not possible to say with any degree of certainty that such a defence would succeed in an employment tribunal.
19. Boards of Governors in the council's maintained community schools should be strongly encouraged to apply the same real Living Wage in schools for those non-teaching staff whose pay is determined by the Board of Governors. This ensures that the minimum wage paid by the school to these staff is at the same minimum level as the council pays to its directly employed workforce. Ensuring that neither the school nor the council is subject to equal pay litigation is the key consideration.
20. Maintaining pay equity within community schools is more important than ever following some schools' decisions to transfer staff from LBC Catering Service to their main staffing budgets. Staff who transfer under these arrangements maintain their existing employment contracts, including that their pay remains the same at the point of transfer. However, new staff to these schools' catering teams are employed on contracts where their pay is determined by the Board of Governors. Over time, some schools may have staff, whose pay

is determined by the Board of Governors, who work alongside staff in identical roles, whose pay is higher because they received a pay supplement to match the Living Wage, as determined by the council, before the transfer date. Put simply, paying the Living Wage supplement to one Kitchen Assistant and not to another, who work alongside one another in the same school, is likely to present a significant risk to the council and the school.

Agreed with Jasbir Josen, Senior Solicitor on 20th January 2020.

STAFFING IMPLICATIONS

21. Staffing implications are detailed within the report.
22. Agreed with Angela Claridge, Service Director, HR & Monitoring Officer on 20th January 2020.

EQUALITIES IMPLICATIONS

23. An equality analysis was undertaken prior to the introduction of the voluntary Living Wage, which identified that the proposal benefited the lowest paid employees within the Council who are predominantly female and part time. If the Living Wage rate was increased this would continue to be the case.
24. 89% of the 227 directly employed council staff who are paid on spinal points 1 and 2 are female. 97% of the 741 employees who are paid on spinal points 1 and 2 in Luton's maintained community schools are female.

FINANCIAL IMPLICATIONS

24. General Fund

For directly employed council staff, any additional costs associated with paying the necessary pay supplements to align SCP 1 and 2 to the Living Wage can be contained within the estimated salaries costs allowed for 2020/21. Therefore, there is no additional cost to the General Fund, over and above that which has been agreed for draft budgets 2020/21, if the council agrees to pay the Living Wage for its workforce.

25. **School Catering service** - The employees of the Schools Catering Service are directly employed staff and are now funded from the General Fund. These employees will receive the Living Wage if agreed by this committee.

Dedicated Schools Grant funded posts

26. **Pay determined by Boards of Governors** - In total, there are approximately 161.53 full time equivalent employees across all 36 Luton maintained community schools who are on spinal column points 1 (155.87 FTEs) and spinal column point 2 (5.66 FTEs). Assuming that all 36 schools paid £9.30 per hour as their lowest hourly rate, the total estimated cost of applying the real Living Wage to all 161.53 FTEs would be approximately the following,

excluding on costs, depending on the increase in the NJC pay scales:

% increase in NJC pay scales	Additional cost to schools of applying the Living Wage
0.0%	£91k
0.5%	£77k
1.0%	£63k
1.5%	£49k
2.0%	£36k

Agreed with Dev Gopal, Service Director, Finance, Audit and Section 151 Officer on 3rd February 2020.

CONSULTATION IMPLICATIONS

27. Luton Schools Forum

Consultation on the proposed increase has taken place with the Schools Forum. As previously, the Forum expressed concerns about the impact the increase will have on their budgets. Some schools who might choose to adopt the Living Wage predicted that their staffing numbers might decrease in order for this to be affordable. Schools Forum was concerned that this might restrict pathways into entry-level jobs in schools. For many years, schools' budgets have been under pressure and in 2018/19 when pay supplements were last required to match the Living Wage, the majority of community schools chose not to adopt the increase.

28. Trade Unions

The Trade Unions believe that workers should earn no less than the real Living Wage rate and therefore support the proposal to agree this increase.

APPENDIX

None

LIST OF BACKGROUND PAPERS

LOCAL GOVERNMENT ACT 1972, SECTION 100D

None