

**COMMITTEE:** ADMINISTRATION AND REGULATION

**DATE:** 19 JANUARY 2015

**SUBJECT:** THE LIVING WAGE

**REPORT BY:** HEAD OF HR & MONITORING OFFICER

**CONTACT OFFICER:** SHEILA MARTIN 546330

**IMPLICATIONS:**

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

**WARDS AFFECTED: NONE**

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**PURPOSE**

1. To consider whether to apply the new UK Living Wage rate of £7.85 from 1 April 2015.
2. To revisit whether the Living Wage rate should continue to be paid as a supplement or consolidated into basic pay as requested by 2 September 2014 Administration and Regulation Committee.

**RECOMMENDATION**

3. Administration and Regulation Committee is recommended to consider the two proposals and to decide which options they wish to agree:
4. Proposal 1
5. Either: that the new UK living wage rate of £7.85 be adopted by the Council and schools be encouraged to pay the same

6. Or: that the Council does not increase the current Living Wage rate of £7.65 to the new UK Living wage rate of £7.85
7. Proposal 2
8. Either: that the Living Wage (whether it continues at £7.65 or increased to £7.85) is paid as a supplement to basic pay.
9. Or that the Living Wage supplement is consolidated into basic pay for spinal column points 5 – 10.

## **BACKGROUND**

10. The 22 April 2014 Administration and Regulation Committee agreed that the Living Wage be implemented as a supplementary allowance to basic pay to directly employed Council employees whose hourly rate is less than the current Living Wage hourly rate of £7.65 with effect from 1 October 2014 and that schools be encouraged to adopt the same.
11. It was also agreed that the Administration and Regulation Committee would review the financial implications of the new UK Living Wage rate and if agreed by the Committee, it would be applied from the following April.
12. The 2 September Administration and Regulation Committee also asked that the options to pay the Living Wage as a supplement or to consolidate it into base pay be considered again when the Committee reviewed the new Living Wage rate.

## **REPORT**

### **Implementation**

13. The Living Wage of £7.65 was paid as a supplement to directly employed staff with effect from 1 October 2014.
14. The majority of schools and academies have also chosen to adopt the Living Wage supplement of £7.65 and this will be paid in the January 2015 pay backdated to 1 October 2014. Two maintained schools have decided not to apply it and one has yet to make a decision. In addition one Academy and one foundation school have yet to make a decision.

### **Review of rate**

15. The Living Wage presents financial implications that cannot be accurately predicted as it is determined by a body that sits outside the national pay award framework and the Council can have no influence on the way it is calculated. To protect the Council's financial interests the Committee agreed

that it would review and reassure itself on cost related to future increases in the Living Wage after the new rate was announced in November and before it is applied in the following April as any future increases will need to be absorbed within existing budgets.

16. This timescale fits in with the Living Wage Foundation's aspiration that any annual increase is passed on within six months of the new rate being announced.
17. The new UK Living Wage rate announced on 3 November 2014 is £7.85, an increase of 20p per hour.
18. The pay award for local government employees on Green Book conditions has finally been settled and the pay increase is effective from 1 January 2015 with the agreement lasting until April 2016. The percentage pay increase for those spinal column points uplifted by the Living Wage supplement ranged from 8.56% to 2.32%, with the lowest spinal point receiving the largest increase thus reducing the level of supplement needed to pay employees the Living Wage.
19. The table below sets out the new hourly rates and the Living Wage supplement which would apply if the rate remained at £7.65 and also if it was increased to the new Living Wage rate of £7.85.

Grade	scp	Hourly rate Jan 2015	LW supplement £7.65	LW supplement £7.85
L1a	5	£7.00*	65p	85p
	6	£7.06	59p	79p
	7	£7.10	55p	75p
L1b	8	£7.19	46p	66p
	9	£7.29	36p	56p
	10	£7.43	22p	42p
	11	£7.88	0	0

\*will be deleted in October 2015

20. The national pay award applies until April 2016 and any increase in the UK Living Wage that is announced in November 2015 would not apply to Council staff until April 2016 if the council chose to adopt it. This provides greater clarity of salary cost pressures for the year 2015/16 than in 2014/15.
21. There are approximately 268 employees directly employed by the Council who fall within the Living Wage uplift, 241 of whom are employed within the school catering service. The additional cost of paying a Living Wage of £7.85 for the year 2015/16 would be £146,686 including on costs. The additional cost of continuing to pay £7.65 would be £108,802, a difference of £37,884. Although the Catering Manager is supportive of the Living Wage, the increased labour costs have the potential to impact on the school catering services' ability to increase its customer base both within and outside of the borough. The increase would also make the service more vulnerable to competition and increase the risk of losing schools to private providers.

22. Based on current staffing levels and the spinal points they are currently paid at and without taking into account the removal of scp 5 in October 2015, the total estimated cost including on costs of applying the UK Living Wage of £7.85 to schools would be £446,669 for the year 2015/16. If it remained at the current rate of £7.65 the total estimated cost to schools including on costs is £327,655. Therefore the annual cost of increasing the Living Wage to £7.85 would be £118,695.
23. The total estimated cost including on costs of applying the UK Living Wage of £7.85 to Academies and Free schools would be £64,484 for the year 2015/16. If it remained at the current rate of £7.65 the total estimated cost to Academies and Free schools including on costs is £47,160. Therefore the annual cost of increasing the Living Wage to £7.85 would be £17,324.
24. The actual additional costs vary from school to school/ academy to academy depending on the number of staff employed on those grades and where they are paid on the salary scale.
25. The views of the schools concerning the proposed increase of the Living wage are attached as appendices to this report.
26. As the Council wishes to be seen as a Living Wage employer and to set an example to the community the Administration and Regulation Committee may wish to adopt the new UK Living Wage rate. The previous decision of the Committee did provide for the new rate announced by the Living Wage Foundation not to be automatically adopted and for the Council to reassure itself on the costs before deciding to apply it. The main impact of the increase will fall on schools and the Dedicated Support Grant funded posts rather than General Funded posts.
27. There is a potential equal pay risk if the schools do not adopt any increase the Council agrees. The financial liability for this lies with the school.

#### **Review of payment as a supplement**

28. The recommendation to pay the Living Wage as a supplementary allowance was made following research into other Councils' practices and advice from the Local Government Association.
- 29.. Following the decision of the 22 April Administration and Regulation Committee to pay the Living wage as a supplement, changes were made to the payroll system and payslips to accommodate this and the changes of particulars sent to staff benefiting from the uplift also included that the payment was to be made as a supplement.
30. Some councils have paid the Living Wage as a consolidated sum by, for example, creating a pay point that matches the Living Wage. This option was presented to the Administration and Regulation Committee but was not put forward as the preferred option for reasons set out below.

31. Paying the Living Wage as a supplement allows for integrity of the job evaluation process to continue and the existing pay and grading structure to remain. The Living Wage currently impacts on two of the Council's grades, L1a and L1b. As a result employees on both grades are paid the same apart from those who are on the top point of L1b. Paying the additional payment as an easily identifiable Living Wage supplement potentially strengthens the Council's justification for doing this.
32. An alternative to this would be to merge L1a and L1b into one grade and have a spot salary of scp 11, £7.88 or a two point scale, the bottom being the Living Wage, £7.65 or £7.85 and the second point scp 11, £7.88. Either way it would involve additional costs over and above the cost of paying the Living Wage as all employees on this new grade would be eligible to progress to scp 11 which is higher than the Living Wage. This would particularly impact on the Catering Service and schools where most of the staff benefiting from the uplift are currently graded L1a.
33. Taking into account the increases in the Living Wage rates in the last few years compared to the Local Government pay awards it is likely that scp 11 will also fall below the Living Wage rate in the near future and it potentially could impact on the bottom of L2 as well. Any changes to the grading structure need to be properly costed and future proofed as best as possible.

### **PROPOSAL/OPTION**

34. Proposal 1
35. Option 1 - that the new UK living wage rate be adopted by the Council and schools be encouraged to pay the same
36. Option 2 - that the Council does not increase the current Living Wage rate of £7.65 to the new UK Living wage rate of £7.85
37. Proposal 2
38. Option 1 - That the Living Wage (whether it continues at £7.65 or increased to £7.85) is paid as a supplement to basic pay
39. Option 2 - That the Living Wage supplement is consolidated into basic pay for scp 5 – 10.

### **LEGAL IMPLICATIONS**

- 39... 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 Living Wage are applied consistently across the Council to all council managed and school managed/maintained (non teaching) employees.
- 40 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 living wage should also be reviewed periodically to ensure that any anomalies can be addressed.

41. The application of the Living Wage has the effect of lifting those currently on L1a onto the pay rates of L1b and the potential in the next couple of years for uplifting them onto pay rates of grade L2; so that an employee whose job content has been evaluated at grade L1a, but as a result of the Living Wage, is in fact 'paid' at a scale point in grade L2.
42. In addition, there may be circumstances where the Living Wage is increased in a year and the Council is not awarding a pay increase to any employees of the Council in that year.
43. In either event, on a balance on of probabilities it is more likely than not, that the Council will be able to justify the differential treatment compared to other employees, on the basis that the application of the LW is a proportionate means of achieving a legitimate aim i.e. paying a living wage and addressing poverty. 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.
44. Governing Bodies in Council Maintained Schools should be encouraged to apply the same Living Wage in Schools for those non teaching staff so that the minimum wage paid by the School for these staff is at the same minimum level as the Council to ensure that neither the school nor the Council is subject to equal pay litigation
45. This has been agreed by Jasbir Josen on 5 January 2015.

### **STAFFING IMPLICATIONS**

46. Agreed with Angela Claridge, Head of HR & Monitoring Officer on 5<sup>th</sup> January 2015.

### **EQUALITIES IMPLICATIONS**

47. An equality analysis was undertaken prior to the introduction of the Living Wage to identify whether there was any disparate impact arising from this proposal. This identified that the proposal benefited the lowest paid employees within the Council who are predominantly female and part time.

### **FINANCIAL IMPLICATIONS**

48. Current estimated costs will be subject to variations dependent on staffing changes between now and April 2015.

### **General fund posts**

49. Approximately 27 directly employed staff paid for from the General Fund

receive an uplift in pay. The additional cost of the supplement for the financial year 2015/16 including on-costs if the Living Wage rate remained at £7.65 would be £5,012. If the Living wage was increased to £7.85 the additional costs including on-costs would be £7,495, an additional £2,483. Although the Council identified money to cover the initial implementation of the Living Wage, going forward departments are expected to cover the costs within existing budgets.

50. Agreed with Darren Lambert, Finance Manager for Environment & Regeneration on 5th January 2015.

### **Dedicated Schools Grant funded posts**

51. School Catering service - The employees of the Schools Catering Service are directly employed staff but are funded from the DSG.
52. Approximately 241 posts receive an uplift in pay. The additional cost if the supplement remained at £7.65 would be approximately £108,802 in a full year including on-costs. The additional cost if the supplement was increased to £7.85 would be approximately £146,686 in a full year including on-costs, an additional £37,880.
53. Maintained Schools - Approximately 1177 posts within schools are on spinal column points between 5 and 10. Based on current staffing levels and pay points, the total estimated cost including on costs of applying the UK Living Wage of £7.85 to schools would be £446,669 for the year 2015/16. If it remained at the current rate of £7.65 the total estimated cost to schools including on costs is £327,655, a difference of £118,695.
54. Approximately 150 posts within the Academies and Free school are on spinal column points between 5 and 10. The total estimated cost including on costs of applying the UK Living Wage of £7.85 to Academies and the Free school would be £64,484 for the year 2015/16. If it remained at the current rate of £7.65 the total estimated cost to Academies and Free schools including on costs is £47,160, a difference of £17,324.
55. A number of schools have been identified where implementation of the Living Wage will have an adverse impact on their budget and possibly take them into a deficit position.
56. The financial implications contained within the report have been seen and agreed as accurate by, Steve Dickman, Finance Manager, Children and Learning, on 5th January 2015.

### **CONSULTATION IMPLICATIONS**

57. Consultation on the proposed increase has taken place with the Schools Forum. It was agreed that collective responses from both the primary and secondary schools would be produced and submitted to the Administration

and Regulation Committee. They are attached as appendices to this report.

58. The Trade Unions have been briefed on the implementation of the Living Wage, the fact that this committee is reviewing the increase and the schools' response to the potential impact the increase may have on their budgets.

## **APPENDIX**

1. Luton Primary Heads views on Living Wage rates
2. Secondary Schools views on Living Wage rates

## **LIST OF BACKGROUND PAPERS**

### **LOCAL GOVERNMENT ACT 1972, SECTION 100D**

None