

11 September 2012		ITEM 5
Corporate Overview and Scrutiny Committee		
PAY: BECOMING A LIVING WAGE EMPLOYER		
Report of: Chris White, HR Strategy & Policy Manager		
Wards and communities affected: N/A	Key Decision: N/A	
Accountable Head of Service: Jackie Hinchliffe, Head of Human Resources, Organisational Development and Customer Strategy		
Accountable Director: Graham Farrant, Chief Executive		
This report is public.		
Purpose of Report: To assess the implications of the introduction of the living wage for Thurrock Council employees and wider workforce through its contracts and partnerships.		

EXECUTIVE SUMMARY

At full council on 31 July 2012, councillors voted in favour of a motion to work towards becoming a living wage employer:

"Thurrock Council resolves to work towards becoming a living wage employer. Such accreditation when obtained will mean that anyone working for this council as a council employee is paid at a rate not less than the living wage rate and further resolves to take steps to encourage council contractors to do the same with their employees".

This report outlines the cost and other implications of doing so.

1. RECOMMENDATIONS:

- 1.1 That Overview & Scrutiny Committee considers all implications in this report before further plans are taken to full council.**

2. INTRODUCTION AND BACKGROUND:

- 2.1** The council currently sets its pay floor slightly above the National Minimum Wage (NMW). At present, the NMW rates are:

- £6.19 per hour (workers aged 21 and over);
- £4.98 per hour (aged 18-20);

- £3.68 per hour (aged 16-17);
- £2.65 per hour (rate for apprentices under the age of 19, or over 19 but still in the first year of their apprenticeship).

The lowest hourly rate on the council's pay spine is £6.53. The lowest rate currently paid to any employee other than apprentices is £6.71 (16 staff in total are paid at this rate). These posts all sit within bands one or two of the pay spine (see Appendix 1). Apprentices are paid outside of the pay spine at the applicable NMW rates as listed above, depending on their age and time served in the apprenticeship.

- 2.2 In the midst of pay freezes in recent years, some local authorities are considering the concept of a living wage to offset the slide of their lowest paid workers' earnings against costs of living, and as a boost to their local communities. As of April 2012, two London boroughs were registered as living wage employers but the Living Wage Foundation expect the official number of local authorities to be in the region of twenty by November 2012. To our knowledge, none of those are in the East of England region.
- 2.3 The rate in question would be the national rate outside of London, set by the Centre of Research in Social Policy at Loughborough University, currently £7.20 per hour. Accreditation is achieved through the Living Wage Foundation which issues licences to employers that meet their criteria. This includes a requirement to ensure as far as is legally permissible that any contractors of the employer adopt the same measures.
- 2.4 The council's pay scales form part of the single status pay and conditions document which is a collective agreement made with the recognised trade unions and extends to non-teaching, schools-based staff. Therefore, any changes to pay scales would result in changes to this and also changes to Thurrock's public pay policy statement, which in accordance with the Localism Act, must be agreed at a meeting of full council.

3. ISSUES AND/OR OPTIONS:

Cost

- 3.1 Some preliminary figures have been quoted already, based on the £7.20 rate, as follows:
- **c£12,000** (substantive corporate pay bill including on-costs)
- 3.2 Whilst the approximation in 3.1 equates to less than 1% of the overall corporate pay bill, there are also agency staff to consider. With the recently introduced Agency Worker Regulations (AWR) and their enforcement of pay parity, we would need to raise the minimum rate of agency workers to £7.20. The impact of this is virtually impossible to accurately gauge by the very nature of an agency staff workforce and its propensity to fluctuate. At the time of this report there is a higher number of agency staff earning less than £7.20 than there is substantive staff. Based on the number of workers earning below

£7.20 at present, the approximate estimated annual cost would be £80,000. This would represent a reduction in the targeted transformation savings attached to the MSTAIR project.

- 3.3 Adding the figure in 3.2 to that for the substantive pay bill in 3.1 gives a more realistic overall number for the elements which are broadly quantifiable:
c£92,000.
- 3.4 There are secondary financial considerations which are unquantifiable at this stage:
 - 1) Overtime payments - being variable, these are difficult to forecast. Using figures for overtime paid to staff under £7.20 in 2010/11, the approximate increase would be between £3,000 and £5,000.
 - 2) Asking contractors to comply will increase their overheads, the encumbrance of which will invariably be passed back to the council. Attempting to enforce this on existing contractors would have litigious consequences as it would represent a fundamental change to the terms upon which contracts were procured. We could apply it to new contracts but there could still be an indirect cost repercussion with bidders simply front-loading the additional wage burden into their tender calculations to create higher priced bids. The affects of this cannot be predicted with any certainty; they would vary by potential contractor and by size and scope of contracts. A separate and comprehensive costing exercise would have to be carried out by Procurement, which would also need to weigh-up the legal considerations and the timescales of realistically having all contractors on board;
 - 3) There is a probability of a 'ripple' effect throughout the pay spine at some stage, with bands and points above £7.20 increasing in sequence to maintain appropriate differentials between them. This can happen later once the pay structure has been reconfigured as part of the wider review, and could initially be absorbed by the review which aims to have a cost-neutral final outcome across all pay and conditions. However, it could still be a future financial strain because a certain level of differential between pay points will have to be maintained as the rate goes up (see next paragraph);
 - 4) The living wage is set annually and to become an accredited employer Thurrock would need to respond accordingly to yearly adjustments. The rate is set each November so by the likely time of implementation the projections given in this report will have already changed. The out-of-London rate was only introduced nationally in 2011 so there is no history to be able to plan for this. Based on the London Living Wage (LLW) in existence since 2001 we can expect to see year-on-year raises in the region of 3%. In 2011 the LLW went up by 5% but this was unusually high. Finance would have to allow for this additional annual pressure on the pay bill. Based on a circumspect projection of a 5% yearly increase, the rates over the next five years would be:

2013/14 - £7.56
 2014/15 - £7.94
 2015/16 - £8.34
 2016/17 - £8.76
 2017/18 - £9.20

The total additional amount to the corporate pay bill over a five year period on this reckoning and assuming for now the same numbers of staff on the bands that would be affected, would be: c£590,000.

Based on a more realistic assumption of a 3% yearly increase, the rates over the next five years would be:

2013/14 - £7.42
 2014/15 - £7.64
 2015/16 - £7.87
 2016/17 - £8.11
 2017/18 - £8.35

The total additional amount to the corporate pay bill over a five year period on this reckoning and assuming for now the same numbers of staff on the bands that would be affected, would be: c£155,000.

- 3.6 The licence itself would be an additional £1,000 per year.

Wider pay review & sustainability of pay structure

- 3.7 Assuming a higher living wage rate is announced in November, implementation will expunge band one of the current pay spine (which goes up to £7.21). We will be considering the wider implications of this when devising a new structure and policy for rewarding staff as part of the overall pay review. Any new set-up would be designed to be flexible enough to withstand the expected annual increases without the risk of unaffordable upward ratcheting of the entire pay structure each year. These issues will be an integral part of any pay modelling.

HR & employee relations

- 3.8 The internal and external communications around a move to the living wage will be an important part of the process to ensure the positives are realised, in connection with the context of the overall pay review.
- 3.9 Research studies conducted into the effects of the living wage based on existing employers who pay it, indicated the following benefits:
- An improvement in the quality of work;
 - Reduction in absenteeism;
 - Easier recruitment and retention;
 - Consumer awareness and reputation;

- Reduction in turnover of contractors;
- Improved morale, motivation and commitment.

3.10 As a concept, it will no doubt be well received by the trade unions but it is likely to trigger a certain amount of individual discontent in the workforce as people will have an expectation that they are entitled to maintain their differential over lower paid staff in recognition of their perceived worth. This will be particularly pertinent in the bands closest to those people who will gain. Some employees will learn of colleagues previously paid less than them being paid the same, or paid at a rate that is closer to their own. In some cases this will involve longer serving staff who have incrementally progressed to a point over time, seeing new colleagues accelerated to the same point. This may affect short-term morale and create ill-feeling in some parts of the workforce but it should not give rise to any legal issues as employees are contracted to a band and pay point rather than a differential against others, and because our bands already overlap, making this scenario possible anyway.

Apprentices

3.11 Apprentices are considered exempt for the purposes of obtaining a licence, however they should be given moral consideration. Although apprenticeships are subject to separate arrangements they are still technically our lowest paid staff. Widening the gap between them and the rest of the organisation seems at odds with the principles behind the proposal. Islington, one of the local authority flag-bearers of the living wage have decided to pay it to their apprentices. To do this at Thurrock would cost an additional £189,000 initially. As an alternative, to place them all on the NMW basic £4.98 rate for 18-20 year olds, would still be in the region of an extra £91,000 initially.

National cost of living increases

3.12 It is anticipated that a fourth year of a local government national pay freeze is unlikely based on information so far from the Local Government Association (LGA). It looks as though some award in 2013/14 is going to be made, which Thurrock is tied into by virtue of the single status agreement. If we were to implement the living wage before this, people on the pay points in question could then receive a second pay rise which we would have to honour unless we negotiate with the trade unions in advance that living wage uplifts will supersede the national position and not be paid in addition.

Schools

3.13 Schools operate largely independently of the council and will have to take their own legal/HR advice on the implications of either following the council's lead or retaining their existing pay arrangements. The council's HR service will advise the People Services Directorate who in turn will have to consult with the schools about this change through their established channels. We do not have jurisdiction to ensure that schools comply, but it would not affect our accreditation status if they chose to opt out. Some estimates of the total cost to schools have already been provided and would be in the region of £51,000

initially (excluding agency staff, for which we have no data or control). Over the same five year period as outlined in 3.5(4) above, allowing for inflation in the living wage would be a cost of around £450,000 based on a 3% yearly increase and £900,000 on a 5% yearly increase.

4. PHASES

4.1 It is possible to obtain a licence without having contractors subscribe to it immediately, providing a phased approach is agreed whereby contracts are renegotiated to incorporate it as they expire or are retendered. Given the complications surrounding existing contractors' compliance highlighted in section 3, this is the recommended route rather than a 'big bang' exercise to get all contractors on-board. A phased approach is achievable although where the council has longer-term contracts such as Serco, an agreement may need to be reached earlier than the contract renewal date.

4.2 The following steps are therefore recommended if the council is to proceed:

- (1) Further consultation is delayed until after the new November rate is announced. This will give us the opportunity to recalculate the basic costs rather than having to adjust almost immediately after implementing. It will also give us a percentage figure on the £7.20 as an indicator of future yearly progression to be accounted for in the council's finances;
- (2) Procurement, Legal, and Business Services functions undertake an analysis of all existing contracts, their expiry dates, likely timescales to be able to implement (some may be possible now, for example if no staff are paid below £7.20 anyway), and estimations of inflated mark-ups when contracts are renewed, then ensure the living wage is factored into new tenders;
- (3) Organisational Development consult with the trade unions from November. As an addendum to the single status agreement it will be proposed that any staff below the living wage who benefit from the change in any given year will be ineligible for a cost of living rise in the same year, should one be awarded nationally (unless the cost of living rise is higher, in which case they would receive the higher of the two). For 2013/2014 any cost of living award is anticipated to be no higher than 1% so this should not be a problem given the uplift to the living wage would be between a 2.8% and 9% difference depending on the scale points of the individuals affected;
- (4) The draft pay policy statement for 2013/14 is taken to full Council in January 2013 (ready for publication in April) and includes the living wage;
- (5) Changes take effect from April 2013 for substantive (and agency staff by legal default), with contractors to fall in line on a phased basis pending the outcome of point (2) above;

- (6) Whilst all of this is ongoing, the main pay & reward review commences which builds in the living wage as an integral consideration in any new framework. Associated changes to the pay structure aim to be implemented in April 2014. HR, alongside the appropriate contact in People Services, also begin liaising with schools from November onwards for a possible April 2013 implementation date where they decide to follow.

5. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

- 5.1 This will significantly impact on the council's pay policy and will influence the subsequent development of a new pay & reward framework. A new approach, starting with the living wage if agreed, will be more modern and responsive to the current economic climate and should also support our drive to become a high performance organisation, in turn influencing our ability to deliver our priorities. Introducing a higher pay floor for council employees, who are 75 – 80% Thurrock residents, will provide an economic boost to the community which will be enhanced if the concept is extended to contractors and further, other businesses in Thurrock who can be persuaded to follow the example.

6. IMPLICATIONS

6.1 Financial

Implications verified by: **Martin Hone**
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There are numerous financial implications which are outlined in the main body of this report. Further detail will be obtained once a review of contracts has taken place. It will not be possible to forecast the exact cost in some areas, for instance agency staff who are largely engaged on an ad-hoc basis. Crucially, the outcome of the subsequent pay review must be a robust and flexible solution that can withstand yearly living wage inflation without the overall pay bill becoming unaffordable in the future.

6.2 Legal

Implications verified by: **Chris Pickering**
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chris.pickering@bdtlegal.org.uk

The legal pitfalls of this paper mostly rest in the commercial contracts with our suppliers and the difficulties in imposing changes to those contracts without significant challenge. The phased approach recommended would remove these risks.

The Council's obligations to agency workers pursuant to the Agency Worker Regulations (AWR) are explained in this report and the Council cannot contract out of these obligations. There is therefore a risk to the Council in not ensuring that agency workers receive the same pay as permanent employees in compliance with the AWR. The Council could be liable to such workers as end users of their services if there the agency workers are paid less for any period. Therefore, while a phased implementation with contractors makes sense, any such consultation should be started before the implementation of a pay increase so that there is no actionable differential in pay for any period.

6.3 **Diversity and Equality**

Implications verified by:

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The majority of the staff on the lower pay bands are female employees so the proposal will help narrow the gender pay gap which exists between men and women. Despite this and the fact that it is driven by genuine positive intentions to benefit the lower paid, it will mean pay rises for some groups and staff and not others, leading to perceptions of inequality in parts of the workforce. A full equality impact assessment should be carried out and any resulting recommendations form part of final implementation plans. An equal pay analysis will also be built into the wider pay review mentioned in the report.

APPENDICES TO THIS REPORT:

- Appendix 1: Pay policy statement

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