

BIRMINGHAM CITY COUNCIL**PUBLIC REPORT**

Report to:	CABINET
Report of: Date of Decision:	Director of Commissioning & Procurement 21st March 2017
SUBJECT:	BIRMINGHAM LIVING WAGE POLICY REVIEW AND REVISION
Key Decision: YES	Relevant Forward Plan Ref: 003162
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member(s):	Councillor Majid Mahmood, Cabinet Member, Value for Money and Efficiency
Relevant O&S Chairman:	Councillor Mohammed Aikhlaq Corporate Resources and Governance
Wards affected:	All

1. Purpose of report:
1.1 To provide an update on the implementation of the Council's Living Wage Policy to date.
1.2 To seek approval of the revised Birmingham Living Wage Policy.

2. Decision(s) recommended:
That Cabinet:-
2.1 Notes the progress made to date on the implementation of the Council's Living Wage Policy.
2.2 Approves the revised Birmingham Living Wage Policy (Appendix 1)

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3. Consultation

Consultation should include those that have an interest in the decisions recommended.

3.1 Internal

The Deputy Leader, the Acting Strategic Director Change and Support Services, Assistant Director Workforce Strategy, the Head of Service Delivery and Procurement Law and the Interim Assistant Director Finance - People Directorate have all been involved in the preparation of this report and support the proposed amendments.

3.2 External

The Living Wage Foundation has been kept informed by Corporate Procurement Services of the development of the Council's Living Wage Policy and will be working with the Council to promote Birmingham as an exemplar Council in terms of applying the Living Wage as set out by the Living Wage Foundation.

A separate report is being presented to Cabinet in March 2017 to seek permission to consult the providers of Adult Care on the implementation of the Birmingham Living Wage in the care sector. The feedback and recommendations will be reported post consultation and item 4.7 of this policy would then be amended accordingly.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

This Policy continues to be a key Council priority as a major contributor to creating a stronger local economy through better jobs and improved skills. It builds on the achievements to date and recognises that a living wage generates value locally; prosperity shared and harnesses the distinct and different strengths of our communities. Employment is the route to independence and out of poverty.

4.2 Financial Implications (Will decisions be carried out within existing finance and Resources?)

The changes proposed to the policy do not have an adverse financial implication. The removal of the £200k threshold in the Council's Living Wage Policy has, in effect, no change to current practice, as the requirement to pay the Birmingham Living Wage has been applied as a mandatory element of the Birmingham Business Charter for Social Responsibility to all contracts irrespective of the value. The financial implications of the Birmingham Care Wage will be reported separately.

4.3 Legal Implications

4.3.1 The Council has a best value duty under Section 3 Local Government Act 1999 to make continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness. As the Council progresses further as a commissioning authority, so the importance and effectiveness of its service delivery arrangements become increasingly prominent.

4.3.2 Previously under the well-being powers contained in Section 2 Local Government Act 2000 the Council could do anything which it considered was likely to achieve any one or more of the following objectives:-

- The promotion or improvement of the economic well-being of their area;
- The promotion or improvement of the social well-being of their area; and
- The promotion or improvement of the environmental well-being of their area.

This power could be exercised for the benefit of any person resident or present in the Council's area. There were, however, a number of limitations on the exercise of the well-being powers.

4.3.3 The well-being powers were repealed and replaced by a wider general power of competence in Section 1 Localism Act 2011. This is a power for a local authority to do anything which individuals generally may do. This power includes:-

- Power to do it anywhere in the United Kingdom or elsewhere;
- Power to do it for a commercial purpose or otherwise for a charge or without a charge;
- Power to do it for the benefit of the authority, its area or persons resident or present in its area or otherwise.

4.3.4 Both the Local Government Act 2000 and the Localism Act 2011 were enabling Acts allowing the Council to do these things if they chose to do so.

4.3.5 In the context of procurement the general power of competence was amplified with effect from 31 January 2013 by social value duties in the Public Services (Social Value) Act 2012 ("2012 Act"). The 2012 Act applies primarily to contracts for the provision of services, or the provision of services together with the purchase or hire of goods or the carrying out of works to which the Public Contracts Regulations 2015 apply.

4.3.6 The Public Contracts Regulations 2015 recognise that contract award criteria may include the best price-quality ratio, which has to be assessed on the basis of criteria, such as qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. Contract award criteria may equally include social, environmental and innovative characteristics. Also conditions for the performance of contracts may include economic, innovation-related, environmental, social or employment-related considerations

4.3.7 The 2012 Act imposes a duty on the Council as a contracting authority under the 2015 Regulations to consider before commencing procurement:-

- How what is proposed to be procured might improve the economic, social and environmental well-being of its area; and in doing so it must consider the extent to which it is proportionate in all the circumstances to take those matters into account.
- How in conducting the process of procurement, it might act with a view to securing that improvement. (It must only consider matters that are relevant to what are proposed to be procured and in doing so it must consider the extent to which it is proportionate in all the circumstances to take these matters into account).

- 4.3.8 The 2012 Act imposes a duty on the Council to consider whether to undertake any consultation as to the matters listed in Paragraph 4.3.7 above.
- 4.3.9 This necessarily means that whilst the Council may develop its policy and best practice for a range of contracts (not just service contracts), it has still to exercise both the pre-procurement duty and the consideration of consultation duty afresh for each new contract to which the 2012 Act applies.
- 4.4 Public Sector Equality Duty (see separate guidance note)
- 4.4.1 Equality Impact Assessment – A first stage Equality Impact Assessment (Ref: EA001933) undertaken on 24 November 2016 concluded that there is no impact and that a full assessment is not required.

5. Relevant background/chronology of key events:

- 5.1 In this report “Birmingham Living Wage” means the Council’s Living Wage Policy which applies the rate set out by the Living Wage Foundation. This is not the National Living Wage which is the minimum wage payable by law to those aged 25 years and over.
- 5.2 On 18 October 2012 the Council was accredited by the Living Wage Foundation as a UK Living Wage Employer. This accreditation required the Council to pay all its employees aged 18 years or over not less than the Living Wage as set out by the Living Wage Foundation.
- 5.3 The Council’s Living Wage Policy was approved by Cabinet in April 2013, along with the inter-linked Birmingham Business Charter for Social Responsibility and Social Value policies.
- 5.4 Payment of the Birmingham Living Wage was one of the mandatory requirements of the Birmingham Business Charter for Social Responsibility prior to its revision in December 2016 and compliance with the Charter is included in the Council’s conditions of contract and Conditions of Grant Aid.
- 5.5 All the Council’s directly employed staff since July 2012 and agency staff since April 2014 have been paid the Birmingham Living Wage. This includes all maintained schools and their associated nurseries where the Council is the employer. The implementation of the Birmingham Living Wage for directly employed and agency staff is established in the HR procedures. There are no changes proposed to the policy where it relates to directly employed or agency staff.
- 5.6 On 16 February 2016 Cabinet agreed the introduction of the Birmingham Care Wage at £7.50 per hour from April 2016 for staff providing adults’ services and children’s home support financed by the Council. There are no proposals to increase this in 2017/18 as detailed in the approved Financial Plan 2017+. The current position means that the Birmingham Care Wage is aligned with the National Living Wage from April 2017.
- 5.7 On 13 December 2016 Cabinet approved a revised Social Value Policy and a revised Birmingham Business Charter for Social Responsibility.

- 5.8 As well as being included in the Council's tender documents, the Birmingham Living Wage and Birmingham Business Charter for Social Responsibility have been continually promoted. This promotion includes Finditinbirmingham Breakfast events, Councillors' Market Place, awareness and update sessions, Charter Award Ceremonies and regular newsletters.
- 5.9 There are currently 389 (as of 7 February 2017) organisations signed up to the Charter and are therefore required to adhere to the Council's Living Wage Policy. A list of these organisations is available on www.finditinbirmingham.com/charter
- 5.10 As at 28 February 2017, 623 employees of contractors/service providers have now had their pay increased to the Birmingham Living Wage as a result of their organisations being certified to the Birmingham Business Charter for Social Responsibility.
- 5.11 The Council was shortlisted for the Living Wage Foundation's Champion award in 2014 and 2016.
- 5.12 The revised Birmingham Living Wage Policy is contained in Appendix 1. In summary, the key amendments are:
- 5.12.1 removal of the £200k (£500k aggregate) contract value threshold. This will ensure that the Council's Living Wage Policy is applied to all values of contract and makes it consistent with the Council's Living Wage Accreditation Licence which does not include any thresholds.
- 5.12.2 inclusion of the Birmingham Living Wage in both the Council's conditions of contract and Conditions of Grant Aid.
- 5.12.3 makes it clear that once an employee has worked at least 2 hours a day for 8 consecutive weeks, they are eligible to be paid the Birmingham Living Wage both for those initial 8 weeks and for all subsequent weeks.

6. Evaluation of alternative option(s):

- 6.1 An alternative would be not to implement any changes to the policy. However this would not reflect the policy aspirations of the Council. It would make implementation more difficult leading to fewer new accreditations as well as fewer employees benefitting from the Birmingham Living Wage. The policy would remain inconsistent with other interrelating policies and the Council's Living Wage Accreditation Licence.

7. Reasons for Decision(s):

- 7.1 To note the considerable progress on the implementation of the Birmingham Living Wage.
- 7.2 To ensure alignment between the Birmingham Living Wage Policy and the Birmingham Business Charter for Social Responsibility.
- 7.3 To ensure that the Council's Living Wage Policy continues to make the desired impact.

Signatures	<u>Date</u>
Cabinet Member(s): Councillor Majid Mahmood Cabinet Member, Value for Money and Efficiency	
Chief Officer(s): Nigel Kletz Director of Commissioning and Procurement	

List of Background Documents used to compile this Report:	
1.	The Living Wage Policy for Birmingham – Cabinet Report dated 22 nd April 2013
2.	The Leader’s Policy Statement 2014 and 2015
3.	The Living Wage Accreditation Licence 2012
4.	A report published by the Living Wage Foundation in January 2015 following research undertaken by Strathclyde University entitled:- “Living Wage Employers – evidence of UK business cases ¹ .
5.	HMRC - National Minimum Wage compliance in the social care Sector, November 2013 ²

List of Appendices accompanying this Report (if any):	
1.	Revised Living Wage Policy

¹ [p://www.livingwage.org.uk/sites/default/files/BAR_LivingWageReport%20cropped%2021%2001.pdf](http://www.livingwage.org.uk/sites/default/files/BAR_LivingWageReport%20cropped%2021%2001.pdf)

² <https://www.gov.uk/government/publications/national-minimum-wage-compliance-in-the-social-care-sector>

Appendix 1

BIRMINGHAM CITY COUNCIL

Birmingham Living Wage Policy

1.0 BACKGROUND

- 1.1 The Leader's Statement in June 2012 communicated the intention to introduce the Living Wage, as part of a Business Charter for Social Responsibility, for Council employees and the promotion of this amongst Birmingham businesses.
- 1.2 The Council has paid the Living Wage as set out by the Living Wage Foundation to its employees since July 2012, including Community, Community special, Voluntary Controlled and Maintained Nursery Schools.
- 1.3 In October 2012 the Council obtained Living Wage employer accreditation where it committed to work towards the adoption of the Living Wage within its supply chain.
- 1.4 The Council's Living Wage Policy was approved by Cabinet in April 2013, along with the inter-linked Birmingham Business Charter for Social Responsibility (BBC4SR) and Social Value policies. These policies were adopted against the backdrop of the recently enacted Public Services (Social Value) Act 2012. They are aimed at maximising the social, economic and environmental value of the Council's area derived from its significant procurement spend.
- 1.5 In April 2014 the Birmingham Living Wage was applied by the Council to all its contracted agency staff.
- 1.6 The Council's Living Wage Policy ensures that people working on behalf of the Council are paid the same minimum rate as if they worked directly for the Council. We also believe that since our procurement policies mean that more of them will be Birmingham residents, then putting more money into those people's pockets will help local shops and businesses, creating a virtuous spiral that can treble its value to the local economy. There is plenty of evidence that paying the Living Wage, as set out by the Living Wage Foundation, boosts flexibility and performance, reduces sickness and aids staff retention.

2.0 WHAT WE MEAN BY THE BIRMINGHAM LIVING WAGE

- 2.1 The Birmingham Living Wage is not the same as the National Living Wage which is a legal requirement. The Birmingham Living Wage, is the same as that set out by the Living Wage Foundation and independently determined on an annual basis by the Centre for Research in Social Policy at Loughborough University. The current rate can be found at: www.livingwage.org.uk This Living Wage is not a statutory requirement but a voluntary undertaking.
- 2.2 The Living Wage as described above is intended to recognise the dignity of work and the importance for individuals, families and society of people being able to earn a living. The idea is rooted in notions of contribution, reciprocity and community.

For employees, the Living Wage Foundation's Living Wage means no longer having to work multiple jobs, getting some sleep and being able to provide for and spend time with their family.

For employers, it means higher staff morale, better quality work, improved rates of retention, lower rates of sickness and absence, and reputational gain. For local authorities, it can mean more money being spent by local employees in the local economy.

3.0 THE POLICY CONTEXT

3.1 The strategic context for the Council's Living Wage policy was derived from the following key Council policies:

- Leader's statement (June 2012), specifically:
 - a) To tackle inequality and deprivation, promote social cohesion across all communities in Birmingham, and ensure dignity, in particular for our elderly and safeguarding for children.
 - b) To lay the foundation for a prosperous city, built on an inclusive economy.
 - c) To involve local people and communities in the future of their local area and public services – a city with local services for local people.
- Giving hope, changing lives (the Social Inclusion green paper).

3.2 This Policy continues to be a key Council priority as a major contributor to creating a stronger local economy through better jobs and improved skills. It builds on the achievements to date and recognises that a living wage generates value locally, prosperity shared and harnesses the distinct and different strengths of our communities. Employment is the route to independence and out of poverty.

4.0 IMPLEMENTATION

4.1 The City Council will therefore require, to the extent permitted by law, that any contractor, including subcontractors, who supplies an employee (other than an intern or apprentice) who provides a service or completes works, involving 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks on:

- Council premises; and/or
- Property owned or occupied by the Council; and/or
- Land which the Council is responsible for maintaining or on which it is required to work

will pay employees the Birmingham Living Wage in respect of their time working on a Council contract or grant funded service.

Where the 8 consecutive week threshold is achieved the payment of the Birmingham Living Wage will be made in respect of all of those weeks and any additional weeks worked by such employees.

4.1.1 The following qualifications apply to the above:

- Grants for the purchase of capital assets are exempt from this policy
- Contracts and grants solely for the supply of goods are exempt from this policy.

4.2 Adherence to the Birmingham Living Wage, in accordance with this policy, will be through the standard terms and conditions of Council contracts and Conditions of Grant Aid (COGA).

- 4.3 Any supplier/contractor not willing to apply the Birmingham Living Wage will be deselected during the procurement process.
- 4.4 The Council will implement the annually revised Living Wage rate as set out by the Living Wage Foundation within 6 months of the date on which any increase in the UK Living Wage is officially announced, and will require all suppliers/contractors, sub-contractors and grant recipients to do the same as part of the terms of the contract/grant.
- 4.5 If the application of the Birmingham Living Wage is not considered to be appropriate this will need to be justified by the Chief Officer who is commissioning the relevant works or services and be approved by the Cabinet Member for Value for Money and Efficiency. Reports that are not advocating the application of the Birmingham Living Wage will not be eligible for inclusion in the Council's Procurement Governance Arrangements irrespective of the value.
- 4.6 Where the application of the Birmingham Living Wage is considered to be appropriate regardless of the location, this will need to be financially justified by the Chief Officer who is commissioning the relevant works or services and approved by the Cabinet Member for Value for Money and Efficiency. It will then be included in the appropriate report.
- 4.7 The care sector is a challenging area for the Birmingham Living Wage. The Council will be consulting with the market on the broad terms of the new care contracts during the period of April to October 2017. A review of the response received will help to determine how the Council will implement the Birmingham Living Wage in the care sector.

5.0 REPORTING ON THE LIVING WAGE

5.1 Birmingham City Council will:

- a) Report and promote the suppliers/contractors & grant recipients who have adopted the Birmingham Living Wage within their organisation and supply chain.
- b) Monitor contracts to check that suppliers continue to pay the Birmingham Living Wage, especially after the annual uplift which takes place every November.