

Committee: Cabinet

Date: 19 September 2022

Wards: All

Subject: Living Wage Employer Accreditation

Lead officer: Caroline Holland

Lead member: Cllr Billy Christie

Contact officer(s): Dawn Jolley (Head of Commercial Services) and Liz Hammond (Head of HR)

Recommendations:

- A. Cabinet notes what is required for the Council to achieve accreditation as a Living Wage Employer from the Living Wage Foundation; and
 - B. Cabinet notes the indicative cost implications of rolling out the Real Living Wage (RLW) and London Living Wage (LLW) across all Merton 'in-scope' contracts; and
 - C. Cabinet approves Merton seeking accreditation as a Living Wage Employer and agrees to introduce the Real Living Wage into Merton contracts - as and when the contracts come up for re-tendering (excluding Care Home contracts) – Phase I
 - D. Cabinet agrees that more work be undertaken to ascertain a more realistic cost for implementing the LLW across Merton's Care Home contracts and that this work is carried out after Merton has achieved its Living Wage Employer accreditation – Phase II.
 - E. Cabinet agrees the appointment of Cllr Billy Hayes as the Living Wage champion so that the Council may build on its status as a Living Wage Employer and become a Living Wage Borough.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. Since 2013, the Council has adopted the London Living Wage for all staff and agency workers.
- 1.2. In July 2022, the new administration expressed an ambition to go further, and achieve accreditation from the Living Wage Foundation as a full Living Wage Employer. It also expressed its ambition to become a Living Wage Borough.
- 1.3. To achieve accreditation, the Council must:
 - (i) Pay the Real Living Wage (RLW) to all its directly employed staff
 - (ii) Have a plan to pay its contractors a Living Wage
 - (iii) Complete the application form.
- 1.4. The London Living Wage (LLW) is the higher rate of the Real Living Wage (RLW), applied where London weighting is applicable.
- 1.5. The Council operates a LLW guarantee so that should nationally determine pay rates for staff or agency workers fall below the LLW, the LLW will be applied until such time as the national pay rates meet or exceed it.

- 1.6. To pay its contractors the RLW, the Council would need to ensure all third-party contractors - who work regularly for 2 or more hours a week, for 8 or more consecutive weeks a year - on Merton specific contracts (including 'in-scope' concession contracts) - are paid either the RLW or the LLW (depending on where the service is carried out).
- 1.7. The RLW does not apply to contractors that supply the Council with products, for example, stationery suppliers. These are referred to as 'out of scope' contracts.
- 1.8. The accreditation is a signed licence between the Living Wage Foundation and the Council. To receive a licence and become accredited, the Council will need to fill in an enquiry form. Once received, the Living Wage Foundation will send the Council an online licence form and guide on how to implement the RLW. Once the Council has ensured it is able to satisfy the requirements, the Council's accreditation can be processed.
- 1.9. The indicative cost implication to the Council of implementing the RLW across all of its contracts, is in the region of £7.5m, excluding Care Home / residential care contracts.

2 DETAILS

Background

- 2.1. In 2013, Cabinet approved adoption of LLW for all directly employed staff and agency workers.
- 2.2. At that time, the report stated that it was not possible to accurately cost the adoption of a RLW as a requirement for all contractors.
- 2.3. Estimates prepared by other London authorities at the time, suggested increased costs of over £1m, with one quoting £8m - with significant increases in cost for externalised services such as cleaning and school meals.
- 2.4. Given that the impact on Merton was not easy to quantify, Cabinet resolved only that the recommendation of the Head of Paid Service to introduce a 'minimum earnings' guarantee for directly employed and agency staff based upon the LLW is agreed.
- 2.5. Subsequently, any decision to pay a RLW against any relevant contract, was taken on a case-by-case basis.
- 2.6. On 8 July 2020, Council resolved to work with existing contractors to get the data needed to understand the impact on the Council's finances of requiring the LLW for contractors' workers in any new procurement exercise.
- 2.7. On 13 July 2020, Cabinet resolved that the desire of the South London Waste Partnership boroughs to implement the payment of LLW starting on 1st April 2021 be supported. It was also noted, that in the event of a change of contract which gave some flexibility, the Council would seek to pay LLW where possible.
- 2.8. On 6 July 2022, the newly formed Merton Council administration noted that Merton is a LLW direct employer and expressed its desire to obtain accreditation from the Living Wage Foundation - thereby become a

recognised Living Wage Employer. It also expressed its ambition to become a Living Wage Borough and resolved to appoint a Living Wage Champion to drive forward this work.

2.9. To obtain accreditation, Cabinet will need to approve an increase to what the Council currently pays across several of its contracts.

2.10. The current hourly rates of pay (from 1 April 2022) are as follows:

| Wage Band | Current Hourly Rate |
|---|---------------------|
| London Living Wage (LLW) | £11.05 |
| Real Living Wage (RLW) | £9.90 |
| National Living Wage (NLW) (age 23 or over) | £9.50 |
| National Minimum Wage (NMW) (age 21 to 22) | £9.18 |
| Age 18 to 20 | £6.83 |
| Under 18 | £4.81 |
| Apprentice | £4.81 |

2.11. The new Living Wage rates will be announced on Thursday 22nd September 2022. Employers need to implement the rise as soon as possible and no later than the 14 May 2023.

Achieving Living Wage Employer Accreditation

2.12. On the 28 June 2022, the Head of HR and the Head of Commercial Services met with the Living Wage Foundation.

2.13. Next steps in the accreditation process were outlined as follows:

- 2.13.1 Secure buy-in at a senior level. The support of senior management and elected representatives is key to driving the initiative.
- 2.13.2 Assemble a small team of key people who can practically implement the Living Wage; the team should include representatives from for example HR, Communications, Procurement, Social Care Commissioner (where applicable) and Finance This internal working group should meet twice a year.
- 2.13.3 Review rates of pay for relevant contracted staff (those who work regularly – 2 hours or more a week for at least 8 consecutive weeks). Identify where contractors are not meeting Living Wage requirements. Calculate the financial implications of bringing contracted staff up to the Living Wage.
- 2.13.4 Work with the team at the Living Wage Foundation to develop a set of achievable milestones to ensure Living Wage is implemented across all 'in-scope' contracts as they come up for renewal.
- 2.13.5 Sign off on the accreditation licence document.
- 2.13.6 Promote our Living Wage Employer accreditation internally and externally.

Staff and Agency Workers

- 2.14. The Council operates a LLW guarantee. Should the nationally set pay rates for staff (including apprentices or agency workers), fall below the LLW rate, the LLW rate will be applied. This is until such time as the national pay rate either meets or exceeds the LLW rate.
- 2.15. The Council also ensures any local pay rates match the duties of the job, and that they will in any case meet or exceed LLW.
- 2.16. As such, the criteria for Living Wage Employer accreditation, in relation to staff and agency workers, are already met.
- 2.17. LLW increases for staff and agency workers are adopted on 1 April each year (in line with pay increments, pay awards and the financial year) following announcement of the increase typically in October the previous year. This is in line with Living Wage Foundation guidance, which sets out that the increase should be adopted within 6 months of the announcement of any increase.

The Council's Contracts

- 2.18. All Merton Council contracts are required to pay, as a minimum, the National Living Wage (NLW), or the National Minimum Wage (NMW) or the Apprentice Rate; whichever is applicable to the worker. This is a legal requirement, and these wage rates are set by Government. This is not necessarily specifically referenced in the Council's contracts as it is implicit.
- 2.19. Some Council providers are accredited by the Living Wage Foundation and as such already pay the RLW. Others pay above the RLW rate due to the nature of the industry they operate in.
- 2.20. To achieve Living Wage Foundation accreditation, Merton's 'in-scope' contracts would be required to pay all relevant staff the RLW. (Where the wage attracts a 'London Weighting', this is known as London Living Wage (LLW)).
- 2.21. Where this is not already occurring, Merton would need to ensure that a plan is in place for all 'in-scope' contractors' staff to be paid the RLW. This plan would need sign-off by the Living Wage Foundation.
- 2.22. When perusing accreditation, some Local Authorities choose to introduce the RLW into their contracts, as and when the contracts come up for re-tendering. Others have opted to re-negotiate all of their existing 'in-scope' contracts so that all these contracts pay the RLW as soon as possible.
- 2.23. There are also Local Authorities that have chosen not to pursue accreditation at all - rather they have chosen to adopt the RLW into their contracts on a case-by-case basis.
- 2.24. Commercial Services, working in conjunction with colleagues across the council, have reviewed all contracts that do not currently pay the RLW or above, and that are likely to have the largest staffing contingent. Figures from the original tender documentation have been compared alongside the current LLW rates.

- 2.25. The projected cost implication to Merton, of implementing LLW across these 'in-scope' contracts, is in the region of an additional £1.8m per annum in a full year. This however excludes Care Home / residential contracts.

Care Homes

- 2.26. Care Home contracts present an extremely complex challenge. The commissioning of care home placements is a demand driven activity with the choice of home driven by a combination of customer choice and availability of placements.
- 2.27. In many instances, Merton is the minority purchaser of placements in a care home and many care homes accommodate provision for several different boroughs and self-funders at any given time.
- 2.28. Staff working in care homes are typically paid on a weekly or monthly basis and it is not possible for the provider to distinguish when they are providing care to a resident in a placement commissioned by the Council as distinct from a self-funded resident for example.
- 2.29. The care home market consists of organisations ranging in size from large national organisations through to small local providers.
- 2.30. Initial desktop analysis indicates that the cost implication to Merton - for implementing LLW across just the care homes in the borough - could be more than £3.5m per annum.
- 2.31. The Implementation of LLW / RLW when placing outside of the borough, would be even more complex and would add further cost. Significant further work would need to be undertaken to develop an implementation plan and to determine a more realistic cost implication.
- 2.32. The Living Wage Foundation has confirmed that other local authorities have received accreditation as a Living Wage Employer, without first implementing LLW across their Care Home contracts. These contracts would fall into a 'future commitment to pay' plan.
- 2.33. In circumstances where the other local authorities using the same care home are not already, or in the process of becoming, LW accredited, the Living Wage Foundation would expect Merton to include in their milestones, opportunities to raise the Living Wage as a discussion point, with the aim of trying to influence those authorities to pay RLW.
- 2.34. Merton could also commit to continuing to encourage care home providers to pay LLW / RLW - and there may be opportunities to promote this as part of our work on implementing the national Fair Cost of Care policy. This will be reported to Cabinet in October 2022.

School Meals

- 2.35. Merton's school meals catering contract provides a school meals service on a discretionary 'buy back' basis. The centrally managed contract drives economies of scale as well as procurement and contract management

efficiencies. However, as budgets are delegated to schools, they are not obliged to make use of the contract.

- 2.36. Schools receive an allocation of funding for free school meals from within the Dedicated Schools Grant. For pupils not eligible for free school meals, parents or carers pay for the meal.
- 2.37. The council is therefore not responsible for payment of the costs of school meals (except in the event of a school failing to make payment).
- 2.38. A new contract was let in 2021, schools have the option of whether they want to pay LLW, however only one school has currently opted to pay the higher rate.
- 2.39. As with Home Care, the Living Wage Foundation would potentially expect Merton to include in their milestones, opportunities to raise the Living Wage as a discussion point.

Total cost implication

- 2.40. The total additional cost to the Council - for the life of contracts which do not currently cover LLW and excluding Care Homes - is in the region of £7.5m over the next five years. The Living Wage foundation reviews its rates each year. These rates are not in line with RPI and as such it is difficult to predict what the uplift will be year-on-year and the actual increased cost to the Council.

| Contract | Financial Year | | | | | Total |
|--------------------|----------------|----------|------------|------------|------------|-------------------|
| | 2022/23 | 2023/24 | 2024/25 | 2025/26 | 2026/27 | |
| Corporate Catering | £33,288 | £33,288 | £33,288 | £33,288 | £33,288 | £166,440 |
| Corporate Cleaning | £70,888 | £70,888 | £70,888 | £70,888 | £70,888 | £354,440 |
| Corporate Security | £56,410 | £56,410 | £62,051 | £62,051 | £62,051 | £298,973 |
| School Catering | £155,324 | £155,324 | £155,324 | £155,324 | £155,324 | £776,620 |
| School Cleaning | £169,669 | £254,504 | £254,504 | £254,504 | £254,504 | £1,187,685 |
| Home Care | £744,123 | £372,062 | £1,200,000 | £1,200,000 | £1,200,000 | £4,716,185 |
| | £1,229,702 | £942,476 | £1,776,055 | £1,776,055 | £1,776,055 | £7,500,343 |

Figures in red are based on new contracts that would include LLW. Those that show an increase in value take into account an anticipated increase in demand.

Some figures vary year-to-year due to contract start / end dates not aligning to full financial year

3 ALTERNATIVE OPTIONS

- 3.1. The Council could choose not to pursue accreditation from the Living Wage Foundation and continue to review contracts on a case-by-case basis with regards to the payment of the RLW and the LLW. This would go against the new administration's ambition and is therefore not recommended.
- 3.2. Rather than opting to introduce the RLW into Merton contracts as and when the contracts come up for re-tendering; the Council could opt to re-negotiate existing contracts so that all existing contracts pay the RLW as soon as possible. This would require a greater financial investment up front, as well as require considerable resource to re-negotiate all relevant contracts.

There is also no guarantee that existing contracts could be renegotiated to ensure all contractors meet the LLW. This option is not recommended.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. No consultation with Staff Side is required as the Living Wage has already been adopted for all staff, including apprentices and agency workers.
- 4.2. If Cabinet agrees to recommendations C and D above, officers with responsibility for procurement, commissioning and contract management will need to be informed of the requirement for RLW in all contracts. This will be communicated via Corporate Management Team (CMT), Departmental Management Teams (DMTs), Procurement Board, the departmental operational procurement groups as well as general wider internal communications via the Merton Hub.
- 4.3. The Council's website will require updating to inform bidders of Merton's expectations going forward.

5 TIMETABLE

- 5.1. The time taken to become accredited will vary according to the size of the organisation and the types of contracts they hold.
- 5.2. Merton will need to undertake a project of work to identify exactly which contracts are 'in-scope' and when the RLW can be brought in.
- 5.3. Indicative summary timetable:

| MILESTONE | LEAD RESPONSIBILITY | TARGET DATE | COMMENTS |
|--|---|-----------------|--|
| Make initial case for Living Wage Accreditation Leader/Councillors | | | 16 July 2022, Council requested that Cabinet present a paper to them on the costs, implications and timescale for Merton being accredited by the Living Wage Foundation in recognition of its status as a Living Wage Employer. |
| Agreement from Leader/Councillors on commitment to Living Wage Accreditation | Head of Commercial Services | 19/09/22 | This paper |
| Living Wage to be included in forward financial planning including costs with third party contracts | | | Included in the MTFs for contracts previously notified |
| Develop implementation plan for directly employed staff (stage 2) & third party contracted staff (stage 3; phase I & II). | Head of HR (Stage 2) Head of Commercial Services (Stage 3) | N/A 03/10/22 | No action necessary for directly employed staff. In 2013, Cabinet approved the adoption of a LLW for all staff and agency workers. (Stage 2) Once a resolution is provided by Cabinet, an action plan for stage 3 can be drafted. |
| Create working group to oversee implementation. | Head of Commercial Services | 03/10/22 | <i>Working group will report back milestone progress annually to the Living Wage Foundation.</i> |
| Final sign off on the LW implementation plan. | Head of Commercial Services & Head of HR | 20/12/22 | <i>Work with the team at the Living Wage Foundation to develop a set of achievable milestones to ensure Living Wage is implemented across all relevant contracts.</i> |

| MILESTONE | LEAD RESPONSIBILITY | TARGET DATE | COMMENTS |
|--|--|-------------|--|
| Council becomes an accredited Living Wage Employer | Head of Commercial Services & Head of HR | 31/01/23 | Agree announcement timescales with the Living Wage Foundation. |

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The cost to the Council is estimated at circa. £1.8m pa in a full year. This excludes Care Homes contracts and the impact on Schools. Provision has been made in the MTFS but will be reviewed when the increase for April 2023 is announced later this month.
- 6.2. A risk exists with the school catering contract where the school acts as an agent for the provision of meals which the parents pay for. If there is a decline in school meal take-up as a result of cost increases this could affect the viability of the contract overall. This is not financially quantifiable at this point and will need to be monitored go forward. Any financial risk will fall to the General Fund not the Dedicated Schools Grant.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. There is no statutory or other legal obligation to adopt the RLW.
- 7.2. If the Council opts to apply to be an accredited Living Wage Employer and is successful, then this will need to be included as part of the tender documents that the Council uses for services that this would be applicable to when going out to procure.
- 7.3. A clause will be required in new contracts being entered into, though this will be relatively straight forward as SLLP have already drafted such a clause for the other councils who instruct SLLP and who have already gained the accreditation from the Foundation.
- 7.4. If it is decided that this will impact on existing contracts these will need to be varied to incorporate the new clause and there may need to be modifications to the contract in relation to the increase in the cost of the contract and any changes to the pricing which are contained in the document. This will result in extra legal costs for the Council though these should not be onerous.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. The RLW is championed as a measure which assists the lowest earners and those below the poverty threshold. Proponents of the RLW argue that it can reduce dependency on benefits for low paid employees and also bring advantages to the local economy.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. Research by Machin and Meghir (2004) showed that crime rates can be directly linked to low incomes. Policies such as the introduction of the RLW

are therefore well-positioned to have a positive impact on the reduction of crime and disorder.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. N/A

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- None.

12 BACKGROUND PAPERS

- Cabinet Report – 1st July 2013
- Council Report - 8 July 2020
- Cabinet Report - 13 July 2020
- Council Report - 6 July 2022

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