

Leicester City Council
Living Wage through Procurement
(PUBLISHED VERSION 0.11)



Procurement Services

1 Introduction

1.1 What is Living Wage?

The Living Wage (LW) is calculated according to the basic cost of living in the UK. It is an hourly rate set independently and updated annually by the Living Wage Foundation (LWF) and calculated by the Centre for Research in Social Policy at Loughborough University. Employers choose to pay the Living Wage on a voluntary basis, unlike the National Minimum Wage which is a statutory obligation. The current rate for the UK Living Wage (outside of London) is £8.45 per hour. The current National Minimum Wage (for employees over 21 years of age) is £6.95 per hour and £5.55 per hour for employees between 18 to 20 years of age. The National Minimum Wage is updated each October, followed shortly thereafter by the new Living Wage rate.

The LWF Living Wage (LWF LW) is updated annually. A detailed explanation of how the Living Wage is set can be found on the [LWF's website](#). The table below shows how the two have increased since 2011. The gap has widened, with the Living Wage now 23% higher than the Minimum Wage, compared to 18% in 2011.

Year	NMW (age 21+over)	NLW (age 25+over)	UK LW (age 18+over)	Difference
2011	£6.08	-	£7.20	£1.12
2012	£6.19	-	£7.45	£1.26
2013	£6.31	-	£7.65	£1.34
2014	£6.50	-	£7.85	£1.35
2015	£6.70	-	£8.25	£1.55
2016	£6.95	£7.20	£8.45	£1.50

1.2 Different from the National Living Wage

In July 2015 the Chancellor of the Exchequer announced that from April 2016 the government will introduce a new mandatory National Living Wage (NLW) for workers aged 25 and above, initially set at £7.20.

The government has instructed the Low Pay Commission that the minimum wage premium for over 25s should reach 60% of median earnings by 2020. This would mean a rise to around £9 per hour by 2020.

Whilst the government rate is based on median earnings, the Living Wage Foundation rate is calculated according to the cost of living.

1.3 Background

Sir Peter Soulsby, City Mayor said "It is important that the Council sends a strong message to all employers in the City that all workers deserve a Living Wage. Introducing the Living Wage is a socially responsible thing to do. It is

important in terms of helping lower-paid employees attain a fair and decent standard of living.”

As of 1 January 2014, Leicester City Council joined the growing number of employers throughout the UK that has pledged to pay a Living Wage to employees. In March 2015 the Council made a commitment to work towards the adoption of the Living Wage within its supply chain.

1.4 Wider Application of Living Wage in Leicester

The Council as a major public sector employer in the City recognises its key role in supporting the local economy through paying the Living Wage to its employees and encouraging others to do so.

The Council will advocate and lobby at a sub-regional and City level to promote the benefits of the Living Wage to the wider regional economy and as part of the Council’s commitment to reduce poverty.

The Council will explore ways to incentivise adoption of the Living Wage amongst small and medium sized enterprises (SMEs), who may otherwise find it unaffordable, through targeted intervention and lobbying for ‘Living Wage city deals’.

2 Purpose of the Policy

The purpose of this policy is to set out the Council’s commitment to require its contractors (and their sub-contractors) to pay their employees and agency workers, who meet the criteria, set out in 3.1 below, the Living Wage, so long as it is legal to do so.

The Council will encourage and promote on a case by case basis that all employees/agency workers of contractors working on other contracts also be paid the Living Wage. This has the potential to create wider economic benefits for the City.

3 Scope

The criteria that we are required to use in order to assess if staff qualify for the payment of the LWF LW on any given contract are provided by the LWF in our Licensing Agreement.

3.1 In-Scope

The contents of this policy apply to contractors (and their sub-contractors) which supply an employee (aged 18 and over and is not an apprentice or intern) who provides a service to or on behalf of the Council involving two or more hours of work in any given day in a week, for eight or more consecutive weeks in a year on:

- the Council’s premises; and/or
- property owned or occupied by the Council (including where the Council is a tenant and is providing building-related services through a lease); and/or
- land which the Council is responsible for maintaining or on which it is required to work.

Clarification on the definition of “LCC premises”:

The part of the LWF qualifying criteria that focuses on the location of where staff would be working, does not fully account for certain types of Council contracts such as taxi services or highways maintenance.

Therefore where there is any ambiguity or where, if the criteria are applied strictly, contracts fall out of scope but intuitively ought to be in scope to meet the Council's wider commitment to the LWF LW, we will review contracts on a case-by-case basis, whilst ensuring proportionality and relevance.

Examples which would probably be considered to be in scope are, where there is a:

- 1) logistical/implicit requirement to operate from a depot or facility in or near Leicester and we have not specified a location, e.g. transport/highways maintenance or refuse collection;
- 2) service delivery point required to be located in or near Leicester, e.g. drop-in centre, but we have not specified an exact premises.

Contracts below a £10,000 de minimis threshold are assumed not to meet the above criteria, and will therefore not be required to include Living Wage clauses unless there is clear evidence to the contrary.

3.2 Agency Staff

The Council is already paying agency staff with placements greater than 12 weeks in duration a Living Wage supplement. However the LWF licence would require us to shorten this to eight weeks within the implementation period. The Council will draw up plans to pay agency staff the Living Wage after their eight weeks in service. This is likely to be achieved at the point that the current contract is re-tendered in October 2017.

3.3 Social Care

It is widely recognised, including by the LWF, that the social care industry, both nationally and locally, predominantly pays its employees at or just above the National Minimum Wage/National Living Wage. There would therefore be considerable financial implications and possible challenges from the supply market if the requirement for payment of the Living Wage was implemented. A potential cost impact in excess of circa £10.3m per annum has been identified for adult social care services, and there is no current budget provision for this. Hence, it is proposed to exclude Social Care contracts from Living Wage consideration.

The LWF recognises that social care contracts may be an obstacle for councils to sign up to the licence, and has therefore agreed accreditation with an exclusion for social care contracts as set out above. In recognition of this significant exclusion the Council has included as part of its commitment signing up to the Citizens UK Social Care Campaign Charter. A separate action plan is being drawn up to demonstrate the Council's commitment to the Charter which will be delivered within the five-year implementation period.

The Council is nevertheless very supportive of the principle of the Living Wage for care workers as well as good terms and conditions of employment. It will review each social care contract meeting the criteria set out in section 3.1 above to see whether a living wage requirement is feasible and affordable for the Council.

3.4 Out-of-Scope

As well as procurement contracts the Council enters into a number of other forms of contract and agreement with organisations. These contracts are out of scope of this policy as they are not with Contractors and in many cases the Council cannot significantly influence the terms of the arrangement. Examples include grants; schools, concessions, and where the council acts as a distributor of funding for other public sector organisations, partnership arrangements etc.

However, the Council will continue to consider ways to promote the payment of a Living Wage to employees of its partners in these arrangements.

In light of increased cooperation with other authorities (under the combined authority proposal and/or other existing partnerships such as the LLEP), it will be necessary to have a further discussion with our partners to determine the feasibility of implementing the Living Wage in any joint procurement exercises. A case by case approach will be required when working with partners on such procurement contracts.

4 Implementation and Next Steps

The Council will strive to ensure that all contracts within the scope of this policy include a Living Wage commitment by the 31 July 2020. In order to achieve this, a number of tasks are set out below with target dates for completion, as agreed with the Living Wage Foundation.

Actions	Target Date
Develop and establish internal procurement documentation to include Living Wage requirements.	30 November 2015
Review the tender evaluation process and contract terms and conditions to ensure the Living Wage application is included.	31 January 2016
Write to existing contractors to request voluntary inclusion of LW into qualifying contracts.	31 March 2016
Pilot above documentation to apply LW in selected contracts being procured.	31 March 2016
Following review of pilot, roll out inclusion of LW across all contracts to achieve full compliance by 2020.	31 October 2016
Negotiate with Contractors in long-term contracts ¹ to include the Living Wage.	30 September 2017
Re-tender agency staff contract with additional LW terms.	30 October 2017

¹ Those ending after 31st July 2020

The Council will on an ongoing basis review its contracts database and planned procurement activity to identify which contracts will fall in scope and ensure appropriate action is taken.

5 Legal and Market Consideration

The Public Services (Social Value) Act 2012 places a duty on public authorities to consider Social Value considerations at the pre-procurement stage. Under the Act, the Council must consider “*how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and how, in conducting the process of procurement, it might act with a view to securing that improvement.*” The Council strongly believes that the inclusion of a Living Wage condition in ‘in-scope’ contracts will generally, based upon a consideration of the subject matter of the contract, contribute to the economic and social well-being of Leicester. The Act also states that the Council may only consider “matters that are relevant to what is proposed to be procured” and “to the extent to which it is proportionate”. The Council interprets that by applying the criteria set out in section 3.1 it will act within these bounds of the legislation, though recognises this will not be applied without regard to the subject matter of the contract.

As a public sector body, the Council has a duty to treat all bidders equally while procuring contracts for services and works. Whilst implementing payment of Living Wage, the Council will also need to ensure that that it does not discriminate against bidders from the European Union. The Council considers however, that in order for the criteria set out in section 3.1 above to apply, it is almost certain that the employees in question will be employed in the UK and subject to UK employment law, and therefore the implementation of a LW condition in the contract does not discriminate against bidders from other countries. Should this not be the case, the Council may for contracts with a high degree of cross border interest, decide not to apply the Living Wage policy to ensure compliance with the Public Contracts Regulations 2015.

The Council recognises that suppliers may face challenges in implementing a LW for the City Council’s contracts. For example:

- Staff may not be fully employed to work on the council’s contracts – they may also work on other contracts for other customers; but it may not be possible for the employer to pass on additional cost to its other customers or pay the same employee two different rates for the same work?
- Similar to the point above, there is the potential to create a situation where two employees of the same company doing the same work for different customers (one the Council) may be paid different amounts;
- In construction contracts, the staff whose salaries are to be augmented may be those of supply chain partners, not the main contractor; there is a concern that the main contractor will apply price pressure which doesn’t allow small supply chain partners to cover any increased employment cost;

The Council will work with the LWF, its contractors, tenderers and local business groups to aid in resolving these issues, whilst promoting the principle of payment of LW to all staff.

6 Monitoring & Enforcement of Contractors

The Council will publish a list of contracts, including suppliers' names, in which a LW condition has been included on the internet. Should any identification of non-compliance be alleged or suspected, any party may anonymously "whistleblow" to the Council, and the Council, aided by the LWF, will investigate the claims. The Council will develop procedures to facilitate the whistleblowing process.

In addition to this list, the Council will regularly promote its LW commitment and update details of contracts included.

7 Governance and Review of this Policy

The Council will include this commitment as part of its Procurement/Social Value Strategy (currently under development) along with a KPI to measure its progress over the 5-year implementation period. This will be reported at least bi-annually to the Executive and to the Audit & Risk Committee from 2016/17.

As per the terms of the Licence Agreement, the Council will allow the LWF to monitor and audit its implementations of this policy.