

OSC Update Report

Living Wage through Procurement

Lead director: Kamal Adatia



Useful information

- Ward(s) affected: All
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- Report version number: 0.5

1. Summary

- 1.1. The purpose of this report is to update Overview Select Committee on progress on implementing the Living Wage through Procurement for contracts and services not delivered in-house by the Council, and the implementation into the Council's procurement procedures.

2. Recommendations

- a) OSC is asked to note and comment upon the contents of the report.

3. Supporting Information

Background

- 3.1. The **real 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 Living Wage which is a statutory obligation. This government-set rate is based on median earnings and does not properly reflect the cost of living.
- 3.2. The current real Living Wage is **£9.50 per hour** (as opposed to the National Living Wage which is £8.91).
- 3.3. Part of the commitment to become an accredited LW Employer was to extend the commitment into the Council's supply chain. The Council approved the Living Wage through Procurement (Appendix 1) in July 2016.
- 3.4. The licence agreement, we signed with the LWF which allows us to call ourselves a Living Wage Employer, sets out criteria for which staff must be paid the real LW:

Criteria for the LWF Living Wage on procured services:

Staff (other than apprentice or intern) are eligible to receive the LWF LW if they:

- are aged 18 or over;
- are either employed/contracted or sub-contracted by the contractor/supplier; and,

- provide a service to or on behalf of Leicester City 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 City Council's premises; and/or;
 - property owned or occupied by the Council (including where the Council is a tenant and is provided building-related services through a Lease); and/or
 - land which the Council is responsible for maintaining or on which it is required to work.

3.5. The Council has inserted draft wording into its procurement documents to highlight that it is a LW employer, and where a contract will meet the criteria above, sets out the requirements for the procurement clearly in the Invitation to Tender (ITT), as well as being embedded in the formal contract documents.

3.6. The Council's procurement teams have implemented processes to ensure that all contracts are reviewed prior to procurement to consider whether they meet the criteria and need to include a living wage requirement.

3.7. Internal Audit conducted a review of the implementation of Living Wage through Procurement in 2019. Whilst eight recommendations were made, no in-scope contracts were identified to have been procured without the required commitments.

3.8. Despite some risks being considered at the time of the adoption of the policy, the Council has not received any challenges, formal or otherwise, to procurement procedures based on the inclusion of the Living Wage.

Agency Staff

3.9. The Council was already paying agency staff with placements greater than 12 weeks in duration a Living Wage supplement. However, the LWF licence required the Council to shorten this to eight weeks. This change was implemented with the Council's managed service provider during 2019.

Social Care Contracts

3.10. An exception was agreed for social care contracts due to the widely recognised financial implications this would have which would be unaffordable for the Council to take on. The Council did commit to review each social care contract meeting the criteria set out above prior to the procurement process to see whether a living wage requirement was feasible and affordable for the Council. This generally reflects the approach of councils nationally and the situation in the social care sector generally.

3.11. This process has been followed. Out of 22 contracts procured that would meet the criteria above, the living wage requirement has been included in the following 12 social care/public health contracts:

- Healthy Eating Initiatives in Schools;
- Healthwatch Leicester and Leicestershire;
- Community Food Growing Support Programme;
- Integrated Sexual Health Services;

- Probation Health Trainer Service;
- Free Emergency Hormonal Contraception (for women under 25);
- NHS Health Checks;
- Provision of intrauterine systems (IUS) and provision of sub-dermal implants (SDI) for contraception and the provision of IUS for non-contraceptive purposes;
- Substance Misuse Housing Related Support;
- Special Educational Needs and Disabilities Information, Advice and Support Service (SENDIASS) and Choice Advice Service (CAS);
- Service to Support People Bereaved by Suicide;
- Leicester Specialist Substance Misuse Service.

3.12. In the remaining ten contracts, it was not deemed affordable to pay the Living Wage due to the significant inflationary impact this would have on the contract cost:

- Assessment and Equipment Service for People who are D/deaf, Deafened or Hard of Hearing;
- Paid Persons Representatives;
- Carers Support Service;
- Best Interest Assessors;
- Visual Impairment Support and Enablement Service;
- Independent Care Act Advocacy (ICAA); Independent Mental Health Advocacy (IMHA); Independent Mental Capacity Advocacy (IMCA); Independent Complaints Advocacy Service (ICAS);
- Service User Participation Service;
- Supported Living Services;
- Dementia Support Service;
- Integrated Community Equipment Loans Service.

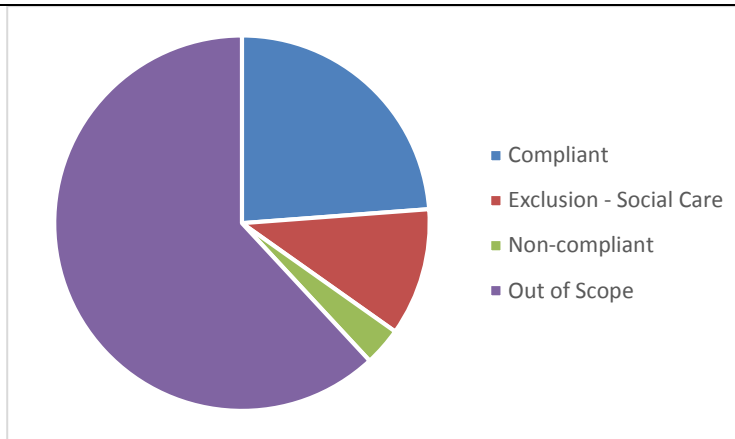
PFI Contracts

3.13. The Council's three PFI contracts were all procured prior to our LW accreditation and even before the real LW was developed outside of London. The complexities of these contracts make it difficult to vary to include such a provision and difficult to calculate how much extra should be paid; it would also require the agreement of the various parties to the contracts. Many of the staff on these contracts, are already paid above the real LW.

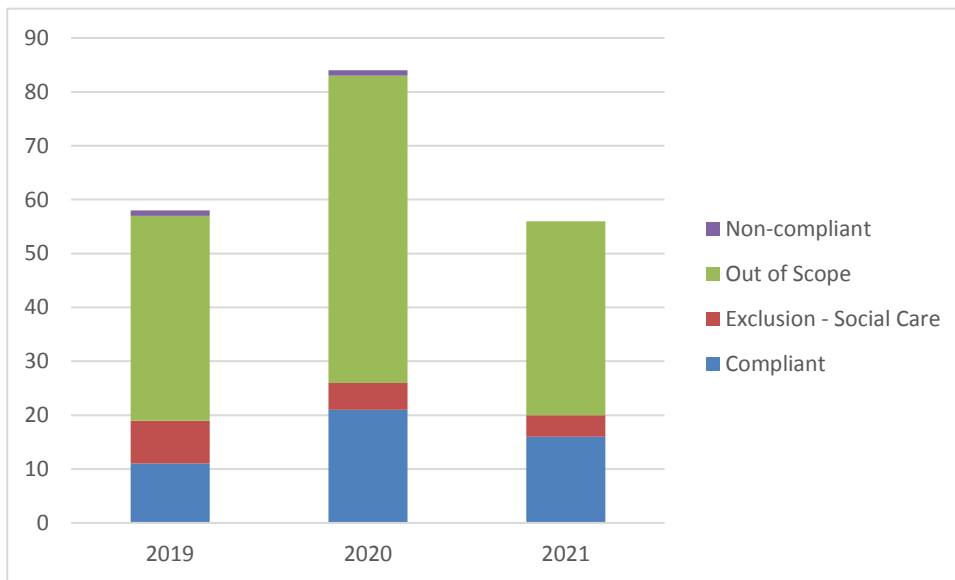
Overall

3.14. It was anticipated that in the five years since we became a licensed employer, we would have renewed nearly all of our contracts; however, due to Covid, there have been a small number of contracts that have not been renewed when anticipated and therefore are not yet fully compliant. Most of these are now in procurement and will be made compliant in the coming months.

3.15. The following pie chart shows current contracts at 30 June 2021 as either compliant, out-of-scope, social care exclusions and non-compliant.



3.16. The following graph shows contracts procured over the last three years.



3.17. It can be noted from these graphs that over half of the council's procurement is out-of-scope of this commitment. This is because it does not meet the criteria set out in paragraph 3.4 above. Such contracts include:

- many contracts for the supply of goods (e.g. PPE, vehicles, stationery);
- services which are delivered remotely (consultancy, ICT services);
- short-term contracts (e.g. smaller constructions projects, training).

3.18. As with all contracts, it is the responsibility of the contract manager to ensure all aspects of the contract are adhered to and any non-compliance addressed. We publish a list of Living-Wage compliant contracts on our website so this is transparent; however, we are not able to otherwise proactively monitor compliance with the requirements other than through whistleblowing by Council or contractor staff. Contracts give us the right to audit or for the LWF to audit should we believe the clause is not being complied with.

4. Details of Scrutiny

4.1 This report is being presented to the Overview and Scrutiny Commission in July 2021.

5. Financial, Legal and Other Implications

5.1. Financial Implications

The requirement to pay the real living wage may add to contract costs. However, this is considered worthwhile for the benefits derived by the local workers.

Colin Sharpe, Deputy Director of Finance

5.2. Legal Implications

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 believes that the inclusion of a Living Wage condition in ‘in-scope’ contracts, based upon a consideration of the subject matter of the contract, contributes to the economic and social well-being of Leicester.

The Council is required to comply with the Public Contracts Regulations 2015 in its procurement processes. Specifying that tenderers must offer staff a minimum rate of pay is not unlawful provided it is proportionate and relevant to the individual contract being tendered. The EU Parliament, in response to a parliamentary question about Living Wage contract conditions, provided helpful clarification on this issue:

“Living wage conditions may be included in the contract performance clauses of a public procurement contract 'provided they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents'. In addition, they must be related to the execution of the contract. In order to comply with this last condition, contract performance clauses including living wage conditions must concern only the employees involved in the execution of the relevant contract, and may not be extended to the other employees of the contractor”.

The Council also has a duty under s3 of the Local Government Act 1999 to secure continuous improvement in the performance of its functions (Best Value Duty). The Best Value Duty is defined as a combination of economy, efficiency and effectiveness and therefore permits the Council to take a wider view of value for money outcomes in procurement processes than simply securing the lowest price.

Mannah Begum, Principal Solicitor (Commercial)

6. Background information and other papers

7. Summary of Appendices

8. Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?

No

9. Is this a “key decision”?

No