

# Title of report: Real Living Wage

**Meeting: Employment Panel**

**Meeting date: Friday 20<sup>th</sup> January 2023**

**Report by: HR Improvement Manager**

## **Classification**

Open

## **Decision type**

This is not an executive decision

## **Wards affected**

(All Wards);

## **Purpose**

The purpose of this report is to consult Employment Panel on the options available to the council in respect of paying the Real Living Wage to its employees. The report provides information and considers the financial and non-financial implications of the council paying the Real Living Wage and/or becoming an accredited Living Wage Employer through the Living Wage Foundation.

## **Recommendation(s)**

**That:**

- a) **Employment Panel make comments and recommendations to the Chief Executive regarding the Real Living Wage.**

## **Alternative options**

1. There are no alternative options to the above recommendation; it is a function of Employment Panel to be consulted on overall terms and conditions of employment (including policies) to be determined by the Chief Executive as Head of Paid Service.

## **Key considerations**

2. This report set out the key points for consideration for the council when considering adopting the Real Living Wage and whether the council would wish to do this and seek accreditation.
3. There are two types of Living Wage: the National Living Wage and the Real Living Wage.

## National Living Wage

4. In April 2016, the UK Government introduced a higher statutory minimum wage rate for all staff over 25 years of age, and referred to it as the 'National Living Wage' (NLW). In 2021, this was lowered to over 23 year olds. Employers are required by law to pay the National Living Wage – they have no choice.
5. The Government's National Living Wage rate is separate to the Real Living Wage (RLW) rate calculated by the Living Wage Foundation (LWF). Unlike the Living Wage Foundation's rates, the National Living Wage is set after consultation with employers about affordability.
6. In April 2022, the National Living Wage for over-23s was increased to £9.50 per hour, from £8.91 per hour the previous year. The 2023 rate has also been announced as £10.42 per hour.
7. In November 2022 the national employers agreed the pay award for 2022 – 2023, with the instruction that SCP 1 will be deleted from the pay scale in April 2023. This decision has been made following the concern of the NJC pay scale falling behind, or marginally close to the National Living Wage.
8. The table below demonstrates how marginal the gap had become, with employees on SCP 1 being paid at the same rate of the National Living Wage until the new pay award was agreed, and how deleting SCP 1 is an attempt to future proof that gap closing again. It should be noted that the pay award for 2023 has not been agreed in full.

	SCP 1	SCP 2	NLW
2021	£9.50	£9.60	£8.91
2022	£10.50	£10.60	£9.50
2023	-	*Pay award not yet agreed	£10.42

## Real Living Wage

9. The Real Living Wage is higher than the Government's National Minimum Wage rates, including the minimum wage rate for over-23s (the National Living Wage) because it is calculated according to a formula which aims to represent the cost of living. According to information on the Living Wage Foundation's website in August 2022, full-time workers receiving the independently calculated Real Living Wage earn about £780 a year more than those on the Government's National Living Wage. This rises to £3,023.50 a year in London.
10. The Real Living Wage is not a statutory requirement; UK businesses may wish to voluntarily pay the Real Living Wage rate with or without becoming accredited through the Living Wage Foundation.
11. The Living Wage Foundation usually announces annual increases in the Real Living Wage in November and the increase must be implemented by accredited employers within 6 months of the announcement. However, the Living Wage Foundation has this year announced the Real Living Wage increase on the earlier date of 22 September 2022 due to the cost of living crisis. Accredited employers must ensure that their employees receive the increased Real Living Wage by 14 May 2023.
12. The Real Living Wage set in September 2022 was increased to £10.90 per hour, this is the highest increase the Living Wage Foundation has set since its inception in 2011, demonstrated

in the table below. As the rate is based on a calculation on the basic cost of living, the future costs cannot be estimated or planned for.

2011/2012	£7.20
2012/2013	£7.45
2013/2014	£7.65
2014/2015	£7.85
2015/2016	£8.25
2016/2017	£8.45
2017/2018	£8.75
2018/2019	£9.00
2019/2020	£9.30
2020/2021	£9.50
2021/2022	£9.90
2022/2023	£10.90

### **Current position**

13. The vast majority of council employees are employed on national terms and conditions – specifically the ‘National Joint Council (NJC) for Local Government Services’; also known as the ‘Green Book’. This includes non-teaching staff based in maintained and voluntary controlled schools.
14. These core terms and conditions of employment remain largely unchanged from year to year. Any changes to terms and conditions are determined by the National Employers after negotiation with the trade unions and in consultation with councils to reflect affordability.
15. Although the main bargaining activity concentrates on the annual pay award, from time to time as part of that pay bargaining process, other terms and conditions are changed such as spinal column points deleted or annual leave entitlements and allowances are amended.
16. In the past 5 years, there have been significant changes to the pay scales. The most significant impact was in 2018/19 when pay points at the bottom of the scales received a cumulative 16% increase which was designed to relieve pressure caused by the National Living Wage.
17. Paying the Real Living Wage and/or becoming an accredited Living Wage Employer would not require the council to break away from nationally agreed pay scales. It would be possible to keep the council’s pay scales in place and simply pay a top-up per hour for those in the lower salary brackets that are below the Real Living Wage. This is illustrated in the table below.

Grade	National SCP (scp50 & above are local)	Annual Pay Rate £	Hourly Pay Rate £	Top up required
01HC	1	20,258	10.50	0.40
02HC	1	20,258	10.50	0.40
	2	20,441	10.60	0.30
03HC	3	20,812	10.79	0.11
	3	20,812	10.79	0.11
	4	21,189	10.98	0.00

### Implications of paying the Real Living Wage

18. The RLW can be paid with or without being accredited as a Living Wage Employer by the Living Wage Foundation, and the council would have a choice about which route it went down. This section sets out the implications for the council of paying the Real Living Wage be that with or without accreditation, which is covered separately.
19. The council currently has 10 employees that are paid below the Real Living Wage and it is estimated that this could remain the same as at April 2023, considering that SCP 1 will be deleted from the NJC pay scale and the pay award for SCP 2 and above is not known at this time.
20. In the meantime and for the purpose of this report, an illustration of the approximate cost to the council of paying the Real Living Wage to its direct employees would be circa £2,122.08 for this element alone.

SCP	Headcount	Total cost of uplift to SCP	Annual cost <sup>*based on</sup> FTE
1	0	0.00	0.00
2	1	£0.11	£212.20
3	9	£0.11	£1,909.88

21. Unlike inflationary increases in respect of staffing, this cost has not been budgeted for by the council and so it would be an additional pressure, which would require a decision about how the council would fund this cost.
22. It should be noted that the implications for council-employed non-teaching staff based in schools are separately considered below.
23. Further details about the challenges and benefits of paying the RLW can be found at in the table below.

Challenges	Benefits
Affordability of this considering the forecasted overspend for 22/23	The council will lead by example by promoting the RLW in the community

This may negatively impact employees in receipt of Carers Allowance (a benefit which doesn't 'taper off')	Supporting our lowest paid employees with the cost of living
Residents perception may not be as well received as hoped, especially if council tax increases are set for 23/24	
The difference in the rate of pay is minimal, and hard to measure the benefits that will be felt by staff.	
Challenges on managing the pay scale at the lower end with the gap between increments being reduced	
The real living wage rate is set on an in year calculation on the cost of living, so we are unable to estimate or plan on future costs	

### **Implications of becoming an accredited Living Wage Employer**

24. In order to become an accredited Living Wage Employer, the council would need to pay its directly employed staff the Real Living Wage, and have a plan in place to extend that to regular sub-contracted staff as well. These are the staff employed by third-party suppliers providing services to the council under a contract.
25. Where third-party suppliers cannot pay the Real Living Wage to their staff immediately, or where they decline to do so indefinitely, the council could choose to roll out the Real Living Wage across supplier contracts over time when the contracts come up for renewal, and building the Real Living Wage requirements in to its contracts. Details of these contracts are provided to the Living Wage Foundation, who will check on periodic milestone dates whether this has been adopted. The Living Wage Foundation cites a period of 3 years for this to be completed. Provided that there is a plan in place which is agreed with the Living Wage Foundation, the fact that all suppliers do not immediately pay the Real Living Wage will not prevent the council from securing accreditation provided all other criteria are met.
26. The Living Wage Foundation celebrates employers that sign up for accreditation by awarding them the mark of a responsible employer, which they may display on their materials and in their buildings.
27. For the purposes of Living Wage Employer accreditation, regular self-employed workers are treated the same as sub-contracted workers. 'Regular' means that they work for the council for 2 or more hours per week, for 8 or more consecutive weeks per year.
28. Living Wage accreditation does not require employers to pay the Real Living Wage to volunteers or apprentices. However, in respect of the latter, the Living Wage Foundation recognises it as good practice to ensure pay rises over the course of the apprenticeship and they state that many accredited employers have chosen to extend the full Real Living Wage to apprentices. This would be a decision for the council to make.
29. Accreditation does not include any specific requirements about employee contract types. However, the Living Wage Foundation will not accredit if there are any concerns about exploitative working practices e.g. misuse of zero hours contracts.

30. The implications for third-party suppliers are separately considered below.
31. The cost of the council applying to become accredited would be £480 and there would be a recurring annual cost of £480 to retain accreditation. These costs are payable to the Living Wage Foundation and are subject to any increases that the Living Wage Foundation may determine over time.
32. Once accredited, the Living Wage Foundation would monitor the council's compliance with payment of the Real Living Wage to its employees, together with the implementation of the council's plan regarding its third-party suppliers paying the Real Living Wage.
33. The Living Wage Foundation will provide support and work with procurement in navigating the complex supply chains of contracts held by the council.

### **Implications for those employees receiving benefits**

34. Employees in receipt of benefits may have their benefits reduced as their salary rises due to the council paying the Real Living Wage. In the vast majority of cases the benefits will 'taper' off, meaning that the employee would not be worse off overall, just better off by only a small amount.
35. The Living Wage Foundation states that it is not aware of any cases of employees being worse off as a result of receiving the Real Living Wage in terms of their benefits and allowances where there is a 'taper' in place.
36. The Living Wage Foundation is aware that employees receiving Carers Allowance, which does not taper, have the potential to be negatively impacted as a result of salary increases. This will depend on their individual circumstances. Should this scenario arise the Living Wage Foundation would be keen to support the council and its employees by being as flexible as possible in respect of the Real Living Wage application.

### **Implications for schools and academies**

37. The council is the legal employer of non-teaching staff based in maintained controlled schools. The council is not the legal employer of those staff in academies, foundation or voluntary aided schools where the Academy Trust, Governing Body or the organisation by which the academy or school is owned or run is instead the legal employer. Due to its purpose, this report will focus on the implications for maintained controlled schools
38. The following considerations of those schools potentially paying the Real Living Wage are highlighted below:
  - The process will involve individual consultation with the Governing Bodies to secure agreement. If all Governing Bodies don't agree to sign up to implementing this, this would create an equal pay risk for the schools that have not implemented it.
  - The possibility of introducing the Real Living Wage has not been discussed with schools, so their views are unknown
  - There would be a significant amount of resource required to undertake the consultation process. The council would need to hold approximately two meetings with each of the governing bodies.
  - The risk and impact to school budgets of an open ended commitment to a living wage increase set by an outside body.

39. Approximately 420 staff in schools would be affected by the changes. This is a higher amount of staff than directly employed by the council. The total cost of the identified employees receiving the Real Living Wage is approximately £14,937.18.
40. Due to funding arrangements the increased costs of applying the Real Living Wage would have to be met by individual schools, rather than the council, however there could be additional pressure on the council to fund this as being the lead in implementing the Living Wage Foundation.
41. Unlike inflationary increases in respect of staffing, this cost is unlikely to have been budgeted for by schools and so it would be an additional pressure for them, which would require a decision about how each Governing Body would fund this cost.
42. Again, as stated above in relation to direct employed staff, there would be implications to school based staff who are in receipt of benefits.

### **Implications for third-party suppliers, including Hoople Ltd**

43. There are implications for third-party suppliers should the council wish to become an accredited Living Wage Employer which would require careful consideration. There are no implications for third-party suppliers should the council instead wish to pay the Real Living Wage to its own employees without becoming an accredited Living Wage Employer. This section therefore focuses on implications of the former (paying the Real Living Wage and becoming accredited).
44. To become an accredited Living Wage Employer, the Living Wage Foundation would require that the Real Living Wage is paid by all contractors who supply the council with services on a regular basis which it defines as 2 or more hours per week, for 8 or more consecutive weeks per year.
45. The Real Living Wage would not apply to contractors that supply the council with goods or products e.g. stationery suppliers, software providers. Other public bodies such as Wye Valley Trust also would not be classed as a contractor to be considered in paragraph 44.
46. Hoople Ltd are classed as a supplier of council services and, as such, feature on the council's contracts register, as the majority shareholder of Hoople, the council will need to encourage Hoople adopt the Real Living Wage. The decision on whether to extend this Real Living Wage rate to all employees of Hoople would need to be taken by them, although the council would need to evidence they have attempted to influence them to do so.
47. Should Hoople adopt the Real Living Wage following encouragement from the council, the cost of which would be borne by the council. Hoople's pay structure is different to the councils which includes a number of elements including basic pay and an annual performance based bonus, which would affect the amount of employees who would receive the top up.
48. Hoople employ 106.95 fte that would be affected by the introduction of the Real Living Wage, if the annual bonus is to be included then this would impact 102.30 fte. The annual costs of increasing to the Real Living Wage excluding the bonus is £209,903 and including the bonus in the calculation is £178,105.62. The costs beyond year one cannot be estimated or planned for as the rates are set by the Living Wage Foundation.
49. The introduction of an accredited status would not only reach the domiciliary care services provided by Hoople, but also those who receive Direct Payments from the council for the hours they are paid for care.
50. An important step that would need to be undertaken by the council would be to identify all contracts in accordance with the Living Wage Foundations definition, set out in point 44. The

council would also need to undertake detailed work to understand which of these contracts, if any, already pay the Real Living Wage, and so would require significant resource to contact each supplier to ask the question of them. Only then will it be possible to accurately estimate the potential increase in supplier costs.

51. With the nature of becoming an accredited Living Wage Foundation employer and the impact to contracts, this could increase the bill for subcontracted services, and could reduce the interest of suppliers during a tendering process.
52. Unlike inflationary increases to the cost of contracts, this cost is not budgeted for and so it would be an additional pressure, which would require a decision about how the council would fund this cost.
53. The Public Services (Social Value) Act 2012 places a duty on public authorities to consider social value at the pre-procurement stage. Under the Act, the council must therefore 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.”* It is recognised that the inclusion of a Real Living Wage condition in ‘in-scope’ contracts may, based upon a consideration of the subject matter of the contract, contribute to the economic and social well-being of Herefordshire.
54. If the council became an accredited Living Wage Employer, it would need to include the Real Living Wage commitment in its Procurement / Social Value Strategy.

### **Available options**

55. Taking account of the information contained within this report, there are four options available to the council in respect of the Real Living Wage:
  - i. To pay the Real Living Wage to Herefordshire Council employees without becoming an accredited Living Wage Employer, but also make recommendations to its suppliers to adopt the Real Living Wage. This option would give council employees, (10 which were identified at the time of writing) on SCP’s 2 & 3 a salary which more closely reflects the cost of living and would come at a significantly lower cost than option (ii) and could revisit accreditation status at another time;
  - ii. To pay the Real Living Wage to its employees and work towards becoming an accredited Living Wage Employer. This option would come at the highest cost to the council due mainly to the implications for its third-party suppliers, as referenced to in the body of this report;
  - iii. To revisit the matter of the Real Living Wage during the 2023/24 Financial Year and decide how the council wishes to proceed then, when more financial information is available as a whole, including about other budgetary pressures faced the council and the pay award being known; or
  - iv. To decide that the council will not pay the Real Living Wage to its employees and therefore will not work towards becoming an accredited Living Wage Employer. Of course, this will not prevent the council from re-considering the Real Living Wage at a later date.

### **Community impact**

56. Developing a skilled and stable workforce in children’s services will ensure delivery of the ‘community’ objectives set out in the council’s County Plan 2020 - 2024. Having the right workforce in place will enable us to ensure all children are healthy, safe and inspired to



achieve; and that care experienced children and young people are well supported and make good life choices.

### **Environmental Impact**

57. Whilst this decision will have minimal environmental impacts, consideration has been made to minimise waste and resource use in line with the council's environmental policy.

### **Equality duty**

56. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
57. The council's human resources policies pay full regard to the council's responsibilities as set out in the public sector equality duty.

### **Resource implications**

58. The estimated cost of applying the Real Living Wage to council employees for the 2022/23 Financial Year would be £2,122.08 (excluding on-costs). There would also be a continuing cost each year thereafter, which are unable to be determined.
59. The impact on the cost of third party suppliers commissioned by the council to deliver services is potentially much more significant.
60. The potential cost of becoming an accredited Living Wage Employer, however, is much more significant.
61. As the Real Living Wage is not a statutory requirement, the council has not budgeted for this additional cost so it would be an additional pressure.

### **Legal implications**

62. It has already been noted above that the council is not legally required to pay the Real Living Wage and so it is a matter of choice for the council.
63. The most significant legal implication of the council paying the Real Living Wage to its employee is the potential risk of equal pay claims from non-teaching staff based in maintained and voluntary controlled schools, where the Governing Body decides not to pay the Real Living Wage to those staff, resulting in a two-tier pay framework.
64. The council is the legal employer of non-teaching staff based in maintained and voluntary controlled schools, therefore such claims could arise on the basis that other council employees

doing similar or even the same jobs elsewhere are being paid at higher rates as a direct result of the application of the Real Living Wage.

65. Whilst there is a potential risk of equal pay claims, the council and/or schools may well be able to defend those claims on the basis that the difference in pay is justifiable. The Equality Act 2010 states that discrimination can be justified as a “*proportionate means of achieving a legitimate aim*”. A legitimate aim in this case could be the removal of low pay grades (although it must be noted that this is not a report for decision and does not pre-empt any decision the council may make) and the principles behind the Real Living Wage are applied to men and women alike.

## **Risk management**

66. This report considers the financial and non-financial implications of the council paying the Real Living Wage and/or becoming an accredited Living Wage Employer through the Living Wage Foundation; it is not a report for a decision. However, it does highlight that the potential financial implications of the council implementing the Real Living Wage *and* becoming an accredited Living Wage Employer would be significant and this cost is not currently built into future budget plans.
67. The key risk would therefore be for the council to progress with this policy change without first being clear as to how it would fund the cost. It will be important to consider this policy change and the financial implications for the council in the round, alongside any other financial pressures anticipated during the 2023/24 Financial Year and beyond.

## **Consultees**

68. Should the council decide to proceed with paying the Real Living Wage without accreditation, it would be necessary to consult with:
- Governing Bodies of maintained and voluntary controlled schools as to whether they would be in agreement with paying the Real Living Wage to their non-teaching staff; and
  - the council's recognised trade unions. It may be possible to reach agreement with those maintained and voluntary controlled schools who wish to pay the Real Living Wage and the trade unions for a joint council and school consultation process given that the recognised trade unions will be the same. This would make best use of resources through avoiding duplication.
69. Should the council decide to proceed with paying the Real Living Wage and becoming an accredited Living Wage Employer, it would be necessary to consult with:
- Governing Bodies of maintained and voluntary controlled schools as to whether they would be in agreement with paying the Real Living Wage to their non-teaching staff;
  - the relevant third-party suppliers of services to the council as to their adoption of the Real Living Wage, including Hoople Ltd; and
  - the council's recognised trade unions. It may be possible to reach agreement with those maintained and voluntary controlled schools who wish to pay the RLW and the trade unions for a joint council and school consultation process given that the recognised trade unions will be the same. This would make best use of resources through avoiding duplication.

## Appendices

None

## Background papers

None

## Report Reviewers Used for appraising this report:

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**Please include a glossary of terms, abbreviations and acronyms used in this report.**