

Personnel Committee – 31st October 2014

National Living Wage Rate in Walsall Council

Service: Human Resources

Wards: All

1. Summary

To consider implementing a minimum pay rate that matches the National Living Wage (NLW), for Walsall Council employees.

2. Recommendations

2.1 That Personnel Committee agree that, to ensure lower graded employees' pay meets the cost of living, the Council will:

- With effect from 1st April 2015, pay a NLW supplement to existing roles (and casual roles) that are below the NLW rate. This will include all Walsall Council employees (excluding apprentices, including schools but excluding Voluntary Aided, Foundation and Academies)
- That this supplemented rate is used for all non standard working arrangements (overtime, holiday pay etc)
- That this supplement is reviewed annually following the annual uprating.

3. Background Information

3.1 The NLW is based on the amount an individual needs to earn to cover the basic costs of living. A different rate exists for London compared to the rest of the UK.

3.2 The living wage is an informal benchmark, not a legally enforceable minimum level of pay, like the national minimum wage. The living wage is currently calculated by the Centre for Research in Social Policy at Loughborough University. The Living Wage calculation takes into account the Joseph Rowntree Foundation Minimum Income Standard research in which members of the public identify what is needed for a minimum standard of living. This is then combined with an analysis of the actual cost of living including essentials like rent, council tax, childcare and transport to produce the Living Wage figure.

3.3 The living wage outside of London is currently £7.65 an hour (it increased by 2.68% in 2013 from £7.45). By comparison, the current national minimum wage for adults is £6.50 and £5.13 for those aged 18 to 21. The Living Wage is likely to again increase in November 2014.

3.4 In addition to the reputational advantages to employers that pay the NLW, the Living Wage Foundation has identified the following benefits of the Living Wage:-

Good for Business

An independent study examining the business benefits of implementing a Living Wage policy in London found that more than 80% of employers believe that the Living Wage had enhanced the quality of the work of their staff, while absenteeism had fallen by approximately 25%.

Two thirds of employers reported a significant impact on recruitment and retention within their organisation. 70% of employers felt that the Living Wage had increased consumer awareness of their organisation's commitment to be an ethical employer.

Good for the Individual

The Living Wage affords people the opportunity to provide for themselves and their families. 75% of employees reported increases in work quality as a result of receiving the Living Wage. 50% of employees felt that the Living Wage had made them more willing to implement changes in their working practices; enabled them to require fewer concessions to effect change; and made them more likely to adopt changes more quickly.

Good for Society

The Living Wage campaign was launched in 2001 by parents in East London, who were frustrated that working two minimum wage jobs left no time for family life. The causes of poverty are complex and in order to improve lives there should be a package of solutions across policy areas, the Living Wage can be part of the solution.

4. Implementation of a NLW rate in Walsall Council.

4.1 It is proposed to:-

- With effect from 1st April 2015, pay a NLW supplement to existing roles (and casual roles) that are below the NLW rate. This will include all Walsall Council employees (excluding apprentices, including schools but excluding Voluntary Aided, Foundation and Academies)
- That this supplemented rate is used for all non standard working arrangements (overtime etc)
- That this supplement is reviewed annually following the annual uprating.

4.2 The vast majority of staff that work for Walsall Council already earn a rate of pay at or above the NLW. However, the bottom six points of the national pay scale (scp 05 - 10) are currently below the NLW.

4.3 In the Council's current grading structure, the whole grade G1 (scp 05-09) and half of grade G2 (scp 8-10) are also below the NLW. The Council has also brought back into the Council via TUPE, staff that were paid below the NLW by their previous employers.

4.4 As at 15 July 2014, the Council have 140.57 FTE occupied posts (including Education) that are paid below the NLW that would be affected by the

introduction of NLW, these are categorised below based on their current hourly rate.

All FTE	Corporate FTE	Education FTE	Annual FTE £	Hourly rate £	SCP	FTE hrs
8.69	3.28	5.40	12,435.00	6.50	005	37
0.54	0.54	0.00	12,540.00	6.50	Spot rate	37
8.97	0.37	8.60	12,614.00	6.54	006	37
13.07	1.89	11.18	12,915.00	6.69	007	37
19.16	11.55	7.61	13,321.00	6.90	008	37
63.83	20.79	43.05	13,725.00	7.11	009	37
25.50	21.38	4.12	14,013.00	7.26	010	37
0.81	0.81	0.00	14,052.00	7.28	WACC	37
140.57	60.61	79.96				

This information is based on basic pay only and excludes apprentices. Casual employees are also excluded from the table above, however the Council has approximately 108 people that work on a 'casual' basis for the Council at rates less than £7.65.

- 4.5 For the 60.61 FTE occupied posts within the Corporate FTE shown above, the breakdown by directorate is:-

Children's FTE	Neighbourhoods FTE	Resources FTE	Regeneration FTE	Social Care FTE
21.09	0.81	1.00	33.09	4.62

- 4.6 In addition to the above, there are currently 43.24 FTE permanent vacancies (183 posts) in the corporate budget at a rate less than £7.65 per hour. Due to the ongoing budget consultations, it is not known at this time, how many of these posts maybe deleted as part of the 2015/16 savings.
- 4.7 Implementation of the living wage will also have an impact on the Council's Agency contract due to the Agency Worker Regulations introduced in 2011, giving equality rights for temporary staff in terms of pay.

Schools

- 4.7 A school has the delegated power to decide where to appoint employees on the pay scale and could therefore choose not to apply the NLW (even if the Council has decided to implement it across the board, including schools). If a school chooses not to apply it, this will increase the risk of equal pay claims as explained in 6.4 below. If a claim arises as a result of a school's failure to apply the NLW, the school will be held responsible for any award/settlement of the claim and any associated costs of defending the claim.
- 4.8 Foundation or Voluntary Aided Schools or Academies are separate employers so are outside of any decisions the Council may take regarding pay.

5. Financial implications

5.1 Estimated costs - Based on £7.65 per hour

	Corporate	Education (school based staff)	Total
Increased annual cost for Occupied Posts including Employers NI and Superannuation Costs (excluding casuals)	£ 81,447	£131,954	£213,401
Increased annual cost for Permanent Vacant Posts including Employers NI and Superannuation Costs (excluding casuals)	£57,414	£24,324	£81,738
Increased cost of Casuals (Incl. Employers NI and Superannuation Costs) Based on previous 12 months	£11,642	£303	£11,945
Total Increased Annual Cost	£150,503	£156,581	£307,084

N.B. Costs shown within table above have been updated to take account of the increases in the national minimum wage which were implemented on 1st October 2014.

- 5.2 The cost of council funded staff (non schools) will be paid from council funds; individual services budgets will be adjusted. The medium term financial outlook will be amended to reflect this additional cost. Schools costs would be expected to be funded from schools DSG budgets as they are schools based staff. There would also be an increase in overtime costs as the basic rate of pay will have increased, however these will be absorbed within existing Council budgets.
- 5.3 The total indicative annual increase in costs for roles that are currently filled by agency staff, assuming the same level of usage going forward, would also increase. However, these would be absorbed within existing Council budgets.
- 5.4 Negotiations are currently under way in respect of the NJC pay award with effect from the 1st April 2014. The settlement of this pay award is likely to have an impact on the rates of pay for all staff salaries mentioned in this report.

6. Legal Considerations

- 6.1 NLW is not a legal requirement. It is the minimum wage only that is a legal requirement and that has already been factored into the national pay scales.
- 6.2 Provided the NLW is implemented consistently across the Council, in that all the Council's employee of the grade to which the NLW supplement is applied are given this supplement, it should not in normal circumstances give rise to valid equal pay claims. This is because such an approach will not result in one group of employees being paid **less** for work of equal value or work rated as equivalent (same grade). It will inevitably result in two or more groups of employees being paid the same for work of different value/different grades, but in such a case

there would be no difference in pay and so there would be no less favourable pay on which to base a valid equal pay claim.

- 6.3 It may, however, lead to some resentment on the part of those whose work is rated higher (or is of greater value) as they would be paid the same as someone whose work is rated/valued lower. It is therefore important to ensure that the reason for introducing the NLW is carefully considered and communicated, namely that it is ensure that lower graded employees are paid enough to meet the cost of living. That may assist in managing the above employee relations issue, but should also help in defending any discrimination claim (for example, if the higher graded employees assert that an equivalent uplift should be applied to them too, so that their pay increases in line with the increase to those on grades below them). If in such a claim it was shown that men and women as a group were losing out disproportionately by the Council not providing a consistent uplift and, on the face of it therefore, there was indirect sex discrimination, the Council would have to justify its approach in order to defend the claim. Being able to show a legitimate, non-discriminatory reason for the approach (i.e. to ensure that lower graded employees' pay meets the cost of living) should satisfy the first step in that defence. The Council would then need to demonstrate that its approach was proportionate. The adverse costs and impact on services that would result from applying the uplift across the board (which would have to be to all grades up the scales) would also be a key part of that defence.
- 6.4 The above assumes that the NLW supplement will be applied consistently across the board at the Council, **including** schools (except voluntary aided, foundation and academy schools). The schools are responsible for implementing this via their respective staffing committees. If any school does not agree to pay the NLW supplement then potentially an equal pay challenge could arise and a two tier workforce would be created, which would thwart the purpose of single status. As a greater proportion of women are employed in schools and who fall below the NLW, then there is a risk of equal pay claims being made. To defend such claims, the Council would need to demonstrate that the failure to pay NLW to these groups was objectively justifiable. If some schools have implemented it and others have not, this may be difficult to justify objectively. As stated above, if a claim arises as a result of a school's failure to apply the NLW, the school will be held responsible for any award/settlement of the claim and any associated costs of defending the claim.

7. Citizen Impact

- 7.1 The implementation of the NLW will only impact on citizens in terms of budgetary spending power of the Council.

8. Equality implications

- 8.1 The implementation of the Living wage will not result in any adverse impact or discrimination against any of the protected groups, but should in fact address current areas of potential discrimination where younger workers, females and part-time workers are the lowest paid.

9. Consultation

- 9.1 The Council's recognised Trades Unions are nationally supportive of the Living Wage. The Council has also directly been approached by the GMB on the implementation of the Living Wage, and request made via the Employee Relations Forum.
- 9.2 Schools would need to be consulted via the Schools Forum on the budget issues of this NLW allowance.

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