

Finance and Resources Committee

10.00am, Thursday, 26 January 2023

Sustainable Procurement Strategy Annual Report – 2022 – Living Wage Update

Executive/routine	
Wards	All
Council Commitments	

1. Recommendations

- 1.1 It is recommended that the Committee
 - 1.1.1 notes the contents of this report and the steps being taken to promote, encourage and deliver Fair Work First practices and the payment of the Real Living Wage by all Council suppliers
 - 1.1.2 agrees, in accordance with the Council Motion of 15 December 2022, to routinely mandate payment of the Real Living Wage in Council regulated tenders subject to the conditions in 4.14 being met
 - 1.1.3 approves the proposed timetable as set out in Appendix 1 of this Report to adopt the recommendations of the Fair Work and Procurement motion of 15 December 2022 as amended by the Green Party addendum.

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Report

Sustainable Procurement Strategy Annual Report – 2022 – Living Wage Update

2. Executive Summary

- 2.1 This report is in response to requests from elected members for a briefing on the Living Wage Employer and the Living Wage City initiative in response to the [Sustainable Procurement Strategy Annual Report - 2022](#) taken to the Council Finance and Committee on 8th September 2022.
- 2.2 The report also addresses the requests in the motion on Fair Work and Procurement to Council on 15 December 2022 (The Council Motion).
- 2.3 The report includes as requested (a best estimate) of the percentage of Council contractors and suppliers currently paying the Living Wage and what percentage might be achievable as a goal. This report also summarises the legal context and recommends proposed next steps in relation to (1) increasing the numbers of Living Wage suppliers and contractors working with the Council and (2) implementing the recommendations contained in the [Fair Work Convention Construction Inquiry Report 2022](#).

3. Background

- 3.1 The Council has been an accredited Living Wage Employer since 2016 and is committed to the promotion of fair work as an employer as well as through use of its capacity to influence change in Edinburgh as a buyer and commissioner of services. The promotion of fair work is a key strategic objective of both the Council and the Scottish Government. The Council's Sustainable Procurement Strategy 2020-2025 (the Strategy) includes as a key objective "(ii) improving fair work practices adopted by suppliers".
- 3.2 Supporting the adoption of Fair Work and payment of the Real Living Wage is part of the Council's Business Plan. In addition, and more specifically, it is also part of the Council's response to the work of the Edinburgh Poverty Commission. Linked to this, at the 2 September 2021 Housing, Homelessness and Fair Work Committee agreed the [Edinburgh Living Wage City Action Plan](#).

- 3.3 Fair Work is central to the Scottish Government's priority for sustainable and inclusive growth. Fair Work First (FWF) criteria must now be applied to all regulated procurement processes where proportionate and relevant. In general this will be where there is a significant workforce element and will normally be included in Council tenders as standard practice. The application of FWF and promotion of the Real Living Wage are also explicitly included in the Council's Contract Standing Orders.
- 3.4 The Real Living Wage (RLW) is a voluntary minimum rate, set by the Living Wage Foundation. For 2021/2022, the RLW rate was £9.90 in per hour in 2021/22 rising to £10.90 in September 2022 for all directly employed staff over the age of 18. This is not a statutory rate; employers can choose to sign up to become an RLW employer and choose to extend it to all employees regardless of age. The RLW rate is normally set annually in November each year, though this year, due to cost of living pressures it was introduced on 22 September 2022 to be implemented before 14 May 2023.
- 3.5 The RLW calculation is based on evidence around living standards and a basket of goods and services reflecting everyday living costs. The RLW is higher than the [National Minimum Wage the National Living Wage rates](#), these latter two rates being UK wide minimum rates set by statute whereas the RLW is calculated independently based on what is considered people need to get by. The National Minimum Wage applies to those aged 23 and over and will rise in April 2023 from £9.50 to £10.42. The National Living Wage applies to those over school leaving age and rises incrementally from the rates for Apprentices and Under 18s which will be £5.28 from April 2023 to £10.18 for 21-22 year olds.
- 3.6 The Fair Work Convention, an independent advisory body to the Scottish Government since 2015, have done much to further fair work for the people in Scotland. The Convention has recently published its report '[Building Fair Work into the Construction Industry - Fair Work Convention Construction Inquiry Report 2022](#)' (the Report). The Report calls for "urgent interventions by Government, employers, unions and industry leadership groups to improve the quality of work for the 130,000 strong workforce in Scotland and to help embed fair work into Scotland's £7 billion construction industry". Currently public sector contracts are responsible for around 50% of construction spend in Scotland so procurement is seen as a key lever with the potential to play a key role in shaping the industry. There are twenty six recommendations, eight of which relate to procurement and are set out in Appendix 1 to this report along with a proposed timeline for implementation in accordance with the Council Motion.
- 3.7 The Council Motion requires that a timetable is provided for "updating procurement policy to implement for all UK procurement contracts:
- (1) All the recommendations for contracting authorities contained in the Procurement schedule of the Fair Work Convention Construction Inquiry Report 2022 (see 1-8 of the Appendix)
 - (2) The Real Living Wage; (9)

- (3) A presumption against zero hours contracts (10);
- (4) Workers' rights, including Trade Union access to workplaces (11);
- (5) Evidence of a commitment to minimising Pay Gaps for protected characteristics in companies contracted (12); and
- (6) Evidence of a commitment to supporting the Council to meet climate targets as set out in the 2030 Climate Strategy and Council Emissions Reduction Plan" (13)

4. Main report

- 4.1 At the 8th September Finance and Resources Committee 2022 a briefing on the Council as a Living Wage Employer/Living Wage City was requested, in response to the Sustainable Procurement Strategy Annual Report - 2022 presented. It was requested that this include the percentage of contractors and suppliers currently paying the RLW, what percentage might be achievable as a goal, and which sectors were most likely to face issues with paying the RLW.
- 4.2 The following Table 1 sets out figures from each years Procurement Strategy Annual Report. For example in 2022, 87% of suppliers awarded contracts in 2021/22 state the intention to pay the RLW. This is an increase on 2020/21, which reported a 79% figure and a further increase on the 70% recorded in 2019/20. The number of Living Wage accredited suppliers has also increased, to 28% from 26% the previous year and 8% in 2019/20. These figures shown in Table 1 below reflect the contracts awarded in any one financial year so the RLW percentage may go up or down according to the type of contracts let in any one year and market conditions but the trend is increasingly towards Council suppliers paying a RLW.

Table 1

Year	Contracts Concluded with suppliers	Suppliers Committed to paying Living Wage	Accredited Living Wage employers
21/22	94	82 (87%)	26 (28%)
20/21	321	254 (79%)	84 (26%)
19/20	296	208 (70%)	24 (8%)
Current contract register	2477 entries	1747 (71%)	606 (24%)

- 4.3 This upward trend that the Council has recorded is reflected in the Living Wage Foundation figures. The Foundation reports a record number of employers signing up for accreditation with over 3,000 since the beginning of the pandemic. In total there are around 11,000 RLW employers throughout the country. The Scottish Government recently announced 2,900 accredited RLW employers in Scotland, which they indicated is proportionately five times as many as in the rest of the UK. In Edinburgh the city has seen 120 Edinburgh employers commit to paying the real

living wage in 2021/22 following the formation of the Living Wage Action Group, providing 1,400 workers with a direct pay rise.

- 4.4 The Council is working to gather a fuller understanding of the 2400 or so contracts it has with suppliers. In particular those above the regulated threshold i.e. £50,000 and above for goods and services and £2M for works. At the current time we do not hold the complete data for all contracts. This is in part due to the number of contracts being put in place prior to this information being captured. There are also direct awards e.g. for continuity of care purposes or annual licences or memberships or where contracts have been called off from national frameworks and this data has either not been available or recorded. Going forward arrangements will be put in place to capture this information where possible.
- 4.5 Based on the information we have and are continuing to gather we would expect the total figures to largely reflect annual contractual figures at around 70-80% of suppliers paying a RLW. Information will also change over the duration of the contract period as more organisations are persuaded of the benefits of paying employees a RLW.
- 4.6 Feedback from Council suppliers indicates that the challenging sectors are likely to be those that are labour intensive such as social care, security, transport and parking, waste, road repairs and maintenance, roofing, trades and to some degree construction, as well as certain suppliers of goods. These are the main sectors but there are likely to be suppliers in all sectors who have yet to choose to pay employees a RLW.
- 4.7 Some suppliers that don't currently pay the RLW have indicated concerns that accreditation or a commitment to paying the RLW may make them less competitive elsewhere when bidding for contracts. In the case of social care providers the barriers reported tend to be the funding mechanisms, and the low levels of contractual funding for social care packages which impact the rates of pay to staff. The Adult Social Care Pay Uplifts by the Scottish Government have made significant inroads into care providers paying their staff a RLW while in receipt of this uplift.
- 4.8 The Poverty Alliance, a Scottish anti-poverty network promoting the RLW, reports a focus on the low pay sectors of social care, hospitality, tourism and retail. They are however seeing high numbers of uplifts paid to employees from organisations in catering, cleaning and security in recognition of the benefits payment of RLW can deliver in terms of retention and recruitment of staff. The Poverty Alliance reports a significant increase in the number of construction companies becoming RLW accredited during the pandemic though it notes that construction companies have tended to pay on or around the real Living Wage and therefore come with limited numbers of uplifts. The Construction Inquiry Report also notes that in the context of construction the RLW tends to represent a pay rate that is lower than collectively agreed rates and 92% of the workforce already earns above it.

- 4.9 In terms of the percentage goal achievable by the Council as a percentage of suppliers paying the RLW this is difficult to predict. It is likely to be somewhere between the current high 80% and high 90% though given current market conditions due to the recent recession and the impact of a 10.1% increase in RLW to address the cost of living, the largest year-on-year rise, we may see percentages fall below the current annual 87%. In addition to market conditions, factors such as ability to influence and the types of sectors being contracted will impact the percentage of suppliers committed to paying a RLW.
- 4.10 As contracts expire and are renewed and replaced over time the commitments of the Council and the Scottish Government, such as introducing a mandatory requirement to pay RLW where possible, will positively influence the numbers of RLW providers contracted. Due to resource constraints in the Council national frameworks other than the Scottish Government or Scotland Excel Framework are currently used which may not follow the same requirements and as a result in addition to circumstances where there is only one possible provider currently in the market or a supplier which has a proprietary right such as a licence, a 100% of suppliers paying the RLW is at this stage in time is unlikely to be achieved.
- 4.11 To date the Council has followed the Scottish Government guidance on Fair Work First (FWF) in regulated procurements and payment of the Real Living Wage. The Scottish Government's Scottish Procurement Policy Note (SPPN3/2021) recommended that where FWF practices were relevant to the delivery of the contract i.e. a significant workforce element then FWF practices should be evaluated in the tender exercise and scored. This directional approach to encouraging suppliers to pay RLW and adopting FWF practices has been incorporated in all Council tenders through the use of standard evaluation questions where it was relevant and proportionate to do so.
- 4.12 In response to challenges in the labour market SPPN 3/2021 has now been withdrawn and replaced with [SPPN6/2021](#). This new policy note expands FWF principles to include two new elements: the promotion of flexible and family friendly working practices and the opposition of the use of fire and rehire practices. The guidance advises an incremental approach so that Fair Work First is incorporated in all relevant procurement processes in financial year 2022/23" and referred contracting authorities to new model questions to be adopted.
- 4.13 The Scottish Government's Sustainable Procurement Tools for contracting authorities including the Council, now provides example wording for inclusion in the tender process. Notably there is now a choice of wording. One question follows the previous directional/encouraging approach to FWF practices being evaluated which has been followed by the Council to date. The second provides a mandatory approach to the RLW which is new. Tenderers are asked to confirm that they will pay staff that are involved in the delivery of the framework agreement or contract, (including any agency or sub-contractor staff) directly involved in the delivery at least the real Living Wage.

- 4.14 The Scottish Government emphasise that the choice should be made on a case by case basis and the wording is caveated so as not to be construed as legal advice with the choice of question is left to the contracting authority to determine. In other words the Scottish Government is not recommending a blanket approach. Provided certain conditions are met then the advice which is a significant shift away from previous advice obtained by the Scottish Government from the European Commission, it appears to support the use of a question mandating the RLW. The conditions to do so are that (1) it would not discriminate amongst potential bidders; (2) the contract will be delivered by workers based in the UK; (3) it is relevant to how the contract will be delivered and (4) it is proportionate to the contract in question. This shift is likely to reflect the current restrictions on freedom of movement of workers which underpinned the earlier guidance
- 4.15 The potential now to mandate the payment of RLW by suppliers subject to the conditions set out in para 4.14 provides the Council an opportunity to increase the percentage goal of suppliers paying the RLW. Other than those conditions in para 4.14, there are a number of limiting factors such as the current Council budget challenges and a potential inability to meet significant increased costs passed on by contractors. The potential for Council contracts to be less attractive to certain sectors may also result in instances of no bids being received and purchasing through national frameworks where RLW has not been mandated may make it more challenging to require suppliers to pay the RLW. However, as the Living Wage Foundation champions there is a growing body of evidence demonstrating the business benefits of becoming a Living Wage employer such as improvements in staff motivation and retention, improvement in business reputation, market edge and improved relationships between managers and staff.
- 4.16 It is expected that through a combination of mandating and encouragement the Council can continue to achieve and maintain the percentage of suppliers paying a RLW between 80-95%, though this may be subject to market conditions. As the mandating of a RLW is likely to bring additional costs with consequent impacts on service area budgets this report seeks Committee approval to introduce the requirement as standard practice in Council regulated procurements.
- 4.17 This report also asks the Committee to note the proposed timescales for implementing the Council Motion as set out in 3.7 above. The recommendations of the Fair Work Convention and the Green party, the proposed timescales and actions are all set out in Appendix 1 to this report.

5. Next Steps

- 5.1 To make the necessary revisions to the Council's procurement procedures and templates to introduce a mandatory RLW question in addition to a FWF question which will continue to be evaluated.
- 5.2 Take the required steps to adopt the recommendations, aligning actions to Scottish government guidance to deliver the timetable as set out in Appendix 1

6. Financial impact

- 6.1 Council adoption of the mandatory RLW question requiring suppliers contracting with the Council to pay all those working on the delivery of a Council contract a RLW will increase the costs of certain contracts. These increased costs will bring additional potential risks for Council budgets which would need to be funded on an annual recurring basis. There is no current budget provision for this predicted increase nor is it possible to predict the level of increases that will be passed on to the Council.
- 6.2 The increased costs of contracts will depend upon current pay levels, numbers of employees being given an uplift, any impact on differentials between pay levels as well as what costs are absorbed by the organisation and which are passed on to the Council. These costs will change from organisation to organisation and it is only once the financial evaluation takes place that costs will be known. It is not possible to estimate the impact of these costs as a whole. Market engagement can be undertaken on a case by case basis and may give an idea of the impact on budget and affordability as well as on local SMEs/micro businesses
- 6.3 If approved at this Committee, the introduction of the mandatory RLW question will be introduced in new Council tenders commencing after this date. As procurements take on average 9 months, the financial impact is likely to be experienced from October 2023 onwards.
- 6.4 Indirect savings to the Council may result from improving contractual and income security and stability. For example improving pay and conditions for families living in in-work poverty may, as the Poverty Commission notes in [A Just Capital: Actions to End Poverty in Edinburgh, September 2020](#), by allowing people “to move out of poverty quickly, take control of their lives, and contribute to a city where people look after each other” will reduce reliance on expensive Council services such as homelessness temporary accommodation services.

7. Stakeholder/Community Impact

- 7.1 As noted above, the Council Business Plan and the Council’s Sustainable Procurement Strategy, all of which were widely consulted upon, support the adoption of Fair Work and payment of the Real Living Wage. The delivery of these objectives will have a positive impact upon the city and its citizens.

8. Background reading/external references

- 8.1 [Sustainable Procurement Strategy Annual Report - 2022](#)
- 8.2 [Motion 8.2 Fair Work and Procurement - City of Edinburgh Council 15th December 2022](#)
- 8.3 [Addendum by the Green Group to Motion 8.2 Fair Work and Procurement](#)
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- 8.4 [Fair Work Convention Construction Inquiry Report 2022.](#)
- 8.5 [Council's Sustainable Procurement Strategy 2020-2025](#)
- 8.6 [Edinburgh Living Wage City Action Plan](#)

9. Appendices

Appendix 1 –Proposed Timetable to implement Recommendation of the Construction Inquiry Report and the Council Motion:

Fair Work Convention Construction Inquiry Report 2022			
		Action	Timeframe
1	All contracting authorities should seek to maximise quality weightings and fair work criteria should be given a robust weighting within the quality dimension. Fair work weightings should not be lower than 10% of the contract and it must be possible for low scores on fair work to impact whether a tender is won or lost.	Appropriate revision of Contract Standing Orders and templates	Within each tender. Reviewing frameworks as they arise Start date: May 2023
2.	Training in fair work should be mandatory for all project commissioners and managers overseeing construction contracts. Training should be provided by those who have demonstrable expertise on fair work and support an understanding of what constitutes positive and stretching fair work commitments by contractors.	Revision of CSOs to make training mandatory Communications Training to be delivered for construction contracts.	May 2023 Start in June 2023 complete by January 2024
3	Guidance should be reviewed to ensure it supports the use of collectively bargained rates within procurement contracts and short best practice guidance should be developed for construction procurement that highlights positive examples of practice in the construction industry. Current wording around avoiding the use of umbrella	Included in Scottish Government Fair Work practice guidance, SPPN 6/2021 , Procurement Toolkit and example questions	Confirm being used as standard practice March 2023

	companies should be retained.		
4.	Contracting authorities should set an expectation that trade unions have access to workplaces on all public construction contracts in line with the aspiration of the HS2 approach. Access should be facilitated throughout the supply chain.	Liase with Legal Services to revise construction T&Cs	By June 2023
5.	Guidance should be updated to make clearer the connections between fair work, sustainable procurement duties, community benefits and discretionary and mandatory exclusions. The guidance should support more use of discretionary exclusions when a contractor or subcontractor has breached its labour law obligations.	For Scottish Government to take forward	To be implemented once guidance received.
6	All contracting authorities should include adherence to relevant collectively bargained pay rates as a condition of contract. Introducing this clause within industry standard form contracts is an efficient, proportionate and transparent way to implement this and to ensure that it is applied throughout the supply chain.	Introduce appropriate clause within industry standard form contracts	February 2023 to be implemented
7.	In every contract in which fair work questions were asked at the framework stage, tender stage or both, effective contract management by the contracting authority must take place to ensure that the response provided by the contractor is delivered in practice.	Training, communication and guidance to be provided to project managers for construction contracts. Current Contract Management guidance to be updated	December 2023
8	All contracting authorities should be signatories to a Fair Work Charter collectively	August 2018, the Council adopted the	tbc

	agreed with employers and trade unions. The Scottish Government should also facilitate the appropriate industry leadership group/forum, in negotiation with trade unions, to develop a single charter that sets out principles for advancing fair work in the industry. The single Fair Work Charter should then be used as a pass/fail condition within all construction procurement exercises in Scotland to ensure appropriate fair work standards are applied throughout the supply chain.	Construction Charter Commitment. Any Fair Work Charter will be referred to Finance and Resources Committee before adoption.	
Fair Work and Procurement Motion of 15th December 2022			
9	Payment of the Real Living Wage	Begin mandating the RLW in Council tenders following approval by F&R Committee on 26/1/23	February 2023 to begin mandating RLW
10	A presumption against zero hours contracts	Amend standard terms and conditions	March 2023
11	Workers' rights, including Trade Union access to workplaces.	Amend standard terms and conditions Amend Contract Standing Orders	March 2023
12	Evidence of a commitment to minimising Pay Gaps for protected characteristics in companies contracted; and	Various including <u>Amend Tender documents</u> – include organisational statement by the Council; amended FWF question detailing pay gaps not restricted to gender; terms and conditions	April 2023
13	Evidence of a commitment to supporting the Council to meet climate targets as set out in the 2030 Climate	Various: Amendments to strengthen CSOs and Sustainable Procurement	Already ongoing, new targets will be reported as part of CERP

	Strategy and Council Emissions Reduction Plan	Strategy; Updated actions e.g. Use of SG Prioritisation tools; inclusion of requirement for carbon reduction plans in all key priority areas see CERP Annual Progress report 2022	Annual Progress report 2023.
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