



COALITION OF CARE AND SUPPORT PROVIDERS SCOTLAND

Briefing for care and support providers on the Living Wage and procurement

March 2015



Introduction

The Living Wage is becoming an increasingly hot topic in care and support services. The Scottish Government has committed to supporting the Living Wage for the duration of the current parliament and has ensured all workers covered by the public sector pay policy are paid the Living Wage. This covers the 180,000 people in Scotland working for central government, its agencies and the NHS. However, the Scottish Government's own figures show that over 400,000 people in Scotland are working for less than the Living Wage and the majority of these are women.

Pressed by the unions, who have been running Living Wage campaigns, Scottish councils are signing up to pay the Living Wage to their own employees; a number of them are also considering how best to achieve the Living Wage for employees in commissioned or contracted services. CCPS is aware that more and more councils are asking providers, either in relation to specific tenders or more generally, whether they are Living Wage employers; some are setting this out as an expectation of suppliers with whom they wish to 'do business'; and others are considering whether and how they can use procurement models to ensure that their contractors pay the Living Wage. Not all of these councils, however, appear to have ensured that contract values are sufficient to enable providers to comply with their requirements. CCPS has anecdotal evidence, for example, of councils that have issued tender documentation in which providers are either encouraged or expected to pay the Living Wage, yet the contract value calibrated against the volume of care hours to be delivered indicates that this would be difficult or impossible to achieve.

This briefing has been prepared:

- a To provide information about the Living Wage and accreditation with the Living Wage Foundation, and
- b To offer pointers to providers when responding to tenders or other service opportunities where Living Wage is a factor.

Background to the Living Wage

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. Since then, nearly 600 employers across the whole of the UK have become accredited as Living Wage employers, benefitting tens of thousands of workers. In Scotland, the Scottish Living Wage Campaign was established in 2007 by a coalition initially involving the Poverty Alliance, the STUC and the Church of Scotland. In Scotland, both the Living Wage campaign and the employer accreditation initiative are managed by the Poverty Alliance, based in Glasgow.

What is the Living Wage?

The Living Wage applicable to the whole of the UK (except London which is set at a higher rate) is £7.85 per hour (from November 2014). The National Minimum Wage is £6.50 per hour (from October 2014) for those aged 21 and over. Employers choose to pay the Living Wage on a voluntary basis, while the National Minimum Wage is statutory and enforced by HM Revenue and Customs (HMRC). The minimum wage has come under criticism that it fails to cross the poverty line, meaning numerous working people are left living in poverty.

The figure for the Living Wage is calculated using detailed research on what is required to cover the basic cost of living in the UK. It is calculated and set annually by the Centre for Research in Social Policy (CRSP) at Loughborough University. The calculation is based on the Minimum Income Standard for the United Kingdom, the product of research by CRSP and funded by the Joseph Rowntree Foundation.

For more information on how the Living Wage is calculated, please visit: <http://www.lboro.ac.uk/research/crsp/mis/thelivingwage/>

Benefits of the Living Wage

For the employer

Since the Living Wage was established in London in 2001, the Living Wage Foundation has been gathering information from employers on the impact that introducing the Living Wage has been having on businesses. Independently conducted research on employers who have introduced the Living Wage showed:

- a 25% fall in absenteeism
- 80% of employers believe that the Living Wage has enhanced the quality of the work of their staff
- 66% 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.

PwC (PricewaterhouseCoopers) found that staff turnover amongst their contractors fell from 4% to 1% following the adoption of the Living Wage.

For the employee

The figure for the Living Wage is calculated using detailed research on what is needed to cover the basic cost of living in the UK. Therefore, the Living Wage affords people the opportunity to provide for themselves and their families.

Independently conducted research with employees who work for an employer who has been accredited as paying the Living Wage showed:

- 75% of employees report 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.

For society

The causes of poverty are complex. In order to improve lives, a package of solutions across policy areas is required. The Living Wage can be part of the solution. Paying a Living Wage can afford workers more time to spend with their friends and loved ones, and time to dedicate to their local community. Paying workers a Living Wage can also boost the economy, by giving workers more money to spend on goods or services. Extracted from http://scottishlivingwage.org/benefits_of_the_living_wage 18th December 2014

Living Wage Accreditation

In Scotland, The Poverty Alliance runs a project to encourage and support organisations to apply for accreditation with the Living Wage Foundation, an initiative of Citizens UK, which offers accreditation to employers that pay the Living Wage, or those committed to an agreed timetable of implementation. To be an accredited employer through The Living Wage Foundation, all staff that are directly employed must be paid the Living Wage, and there must be a plan in place to implement this for all contracted staff.

Service Providers Recognition Programme (Living Wage Campaign)

Under this programme Living Wage service providers commit to pay all their own head office staff the Living Wage as part of this agreement. They also commit to always supply a Living Wage bid alongside every market rate submittal to all of their prospective and current clients. This means the client always has the choice to implement the Living Wage at the point of tender. (Appendix 1)

Paying the Living Wage: challenges for social care providers and contracting authorities

An average of more than three-quarters of income per CCPS member organisation, in common with most independent social care providers, relates to services provided under contract or other formal arrangement on behalf of the public sector. For our members, the ability to implement the Living Wage, and achieve accreditation as a Living Wage employer, can rely heavily on responsible commissioning and procurement.

CCPS members value their workforce highly, and are committed to offering appropriate reward packages to staff. For many providers, workforce costs account for up to 85% of the total cost of the support they provide. In recent years, severe downward pressure has been applied by local authorities to the cost of social care services in the voluntary sector, through a combination of competitive tendering and (more recently) the unilateral imposition of cuts. The result is that pay and conditions packages for workers in this sector have not kept pace with those of comparable workers in the public sector, creating in effect a two-tier workforce in social care.

Until relatively recently, very few voluntary sector care providers offered rates of pay that fell below the Living Wage threshold. Pay for some workers in a number of organisations has however now slipped below that threshold, at least partly because providers have not received sufficient (or any) inflationary uplifts to care budgets to enable them to keep pace with increases to the Living Wage. Other voluntary organisations have had to take steps to reduce rates of pay to a level below the Living Wage either indirectly, by extending the working week, or directly, by cutting rates of pay, in order to remain 'in business' supporting vulnerable and disabled people within available funding limits.

Public sector bodies, meanwhile, are constrained in using their procurement processes to further the use of the Living Wage in Scotland. Scottish Procurement Policy Note 1/2015, issued in February 2015, sets out the parameters of procurement activity in this regard. Whilst it advises that public bodies are unable to make payment of the living wage a mandatory requirement as part of a competitive procurement process, the note is clear that it is possible to encourage suppliers to pay a living wage as part of a procurement exercise.

In a further recently-published note for public bodies, Ready for Business offers a number of models to contracting authorities that wish to include Living Wage considerations into their procurements without making payment of the Living Wage a mandatory requirement. These include:

Evaluation of “Proposals to enhance workforce retention/cohesion/performance”: whereby a contracting authority, within its quality scoring, includes an award criterion in this vein for a service contract where staff are key to successful delivery.

Submission of separate “Living Wage based” offer: whereby a contracting authority seeks bids under a procurement process that permits voluntary submission of a second sealed “Living Wage” bid (identical with all aspects of the first bid other than the cost component relevant to paying the Living Wage).

Below threshold/not of cross border interest: where the full European regime does not apply, whereby a contracting authority seeks contractual requirements on the Living Wage.

Partnering/voluntary commitments to work towards Living Wage: whereby a contracting authority seeks to put in place “loose” arrangements under which, over the duration of a contract, a supplier gives a non-binding commitment to work towards an authority’s goals (including payment of Living Wage).

Further details are available in Ready for Business’s publication at <http://readyforbusiness.org/wp-content/uploads/2015/01/lib-Living-wage.pdf>

A key point to note is that unless contract values support the Living Wage, then all these models do is place all the responsibility for Living Wage onto service providers.

Considerations for CCPS members in entering into a contract based on one of these models

Impact on whole organisation

Many CCPS members deliver services in a number of local authority areas. Their annual turnover is comprised of multiple income sources, including trusts, charitable donations and the like. In entering into a contractual commitment to pay the Living Wage to staff delivering services under one particular public contract, in order to avoid the risk of, at a minimum, disgruntled employees and at worst, equal pay claims, members will need to ensure they have the resources to pay (or work towards paying in the case of model 4) all employees the Living Wage. A whole payroll costing exercise should be carried out, factoring in relief

costs for sickness, holidays, training etc. Members may find themselves having to renegotiate contracts not only with public bodies but with charitable donors, trusts and other funders.

Pay differentials within the organisation

When increasing the minimum rate of pay members will need to consider the impact on pay differentials at the bottom of the pay structure. The most obvious example might be the closing of the pay gap between support workers and ancillary and administrative workers. Members will need to decide locally what approach to take to deal with the issue of diminished pay differentials at the bottom of the scale.

Definition of hours worked

Hours worked for payment of Living Wage purposes should always include travel and downtime. Members are advised to make the basis of any calculation absolutely explicit in any "Living Wage bid" submitted as part of a tender exercise. As the worked examples at Appendix 2 (provided by Carr Gomm) illustrate, providers using different definitions for hours worked, will achieve different tender prices in terms of paying the Living Wage.

Other terms and conditions

It is a matter of concern to a number of providers that the Living Wage should not be viewed in isolation. In doing so, the danger is that payment of the Living Wage is achieved at the expense of other terms and conditions. In drawing up "Living Wage bids" members are advised to detail other terms of employment such as contract type, holiday, sickness and pension benefits, and their impact on the contract price submitted. Introduction of a Living Wage should be negotiated with trade unions. The implementation of a Living Wage will always require the agreement of certain details and principles relating to working practices. Members should negotiate these changes with any recognised union.

Interaction with benefits, tax credits and Universal Credit

Members should be mindful of the interaction between low pay levels and state benefits. Employees will need to be made aware that there may be some offsetting of benefits as a result of a rise in wages. However, a Living Wage will almost always lead to a net benefit for low-paid workers and state benefits are not a substitute for reasonable wages. In addition if the employee is a member of a pension scheme, payment of the Living Wage should result in them receiving a higher occupational pension at retirement.

Compliance

In its responses to Scottish Government consultations on procurement and the Living Wage, CCPS has raised the issue of compliance and enforcement; in other words, how contracting authorities can ensure that successful bidders implement commitments made to pay the Living Wage. CCPS has raised this issue because ultimately, the whole purpose of using procurement in relation to the Living Wage is to level the playing

field for all bidders. In care and support, where the workforce accounts for up to 85% of the cost of non-residential services, there is likely to be a significant competitive advantage for contractors in not paying the Living Wage if it is not a standard requirement: indeed, cost-driven competitive tendering can in itself “encourage” contractors not to pay it. Hence, including the Living Wage in any one of the procurement models outlined above will require robust monitoring and enforcement action for it to have any teeth.

Experience to date suggests that the imperative for many commissioning authorities to make savings has overridden consideration of a link between staff pay and conditions and the quality of care they provide. Even if that were not the case, the examples of hourly rate calculations given in the Appendix illustrate the considerable complexity in unraveling, for example, downtime, travel time, and basic contractual hours to establish whether or not an employee is being paid the Living Wage. Resources will be required to do this.

In its response to John Park MSP’s 2011 proposal for a Living Wage (Scotland) Bill, CCPS proposed charging the Care Inspectorate with an enhanced enforcement role, as a way of providing a higher level of scrutiny and clearer monitoring of commissioning and procurement of care and support services than is currently available. In the meantime, in responding to tenders in which payment of the Living Wage is a consideration, members will wish to satisfy themselves that the contracting authority has arrangements in place whereby they will monitor compliance on the part of successful bidders.

Appendix 1



Extracted from <http://www.livingwage.org.uk/how-become-recognised-living-wage-service-provider> 18th December 2014

Appendix 2 – Definition of Hours Worked

Employer A: Employs its workers on a zero hours contract. Workers are paid £7.85 per hour for the periods when they are providing direct support only. Workers are not directly paid for time spent travelling, training or during downtime.

Employer B: Employs workers on a full or part time employment contract. Workers are paid for the full duration of their rostered shift (excluding 30 mins unpaid rest break). Workers are paid a minimum of £7.09 per hour for all hours worked - including travel time, training and downtime (i.e. a gap in the rota where no other task is possible).

Employer C: As for Employer B but pays the living wage of £7.85. Using a standard shift by way of example, you will see the significant difference in the take home pay for workers employed by each provider. A standard shift comprises a 30 mins unpaid break plus periods of direct support, travel and downtime.

	Typical shift	Support time	Travel Time	Downtime	Break (unpaid)
07:00 to 7:30		30			
7:30 to 7:40			10		
7:40 to 7:55		15			
7:55 to 8:00			5		
8:00 to 8:10				10	
8:10 to 9:10		60			
9:10 to 9:20			10		
9:20 to 9:50		30			
9:50 to 10:05			15		
10:05 to 10:35		30			
10:35 to 10:45			10		
10:45 to 11:00		15			
11:00 to 11:20			20		
11:20 to 11:30				10	
11:30 to 11:45		15			
11:45 to 12:15					30
12:15 to 12:20			5		
12:20 to 12:50		30			
12:50 to 13:00			10		
13:00 to 13:30		30			
13:30 to 13:40			10		
13:40 to 13:55		15			
13:55 to 14:00				5	
Total		270	95	25	30

In this example, the workers spends 4.5 hours delivering direct support, 2 hours travelling and downtime plus a 30 mins unpaid rest break.

Employer A only pays its workers for direct time and so this worker should receive £35.33 for this shift (that is, direct time of 4.5 hours multiplied by £7.85/hr). Under working time regulations the full period of time 'at work' is counted and hence this worker is considered to have been at work for 6.5 hours. On this basis the actual hourly rate is £5.43 (£35.33/6.5 hours) and employer A therefore has to pay this worker a top up payment (of £6.92) to ensure they comply with minimum wage requirements. If we compare the gross wage of the worker with the actual number of hours worked, then the worker is only 'really' earning £5.43/hr of work, before the top-up payment. With the top-up payment, the worker actually receives £42.25 per shift, which equates to £6.50 per hour (for all hours worked) and hence equals the minimum wage.

Employer B pays its workers for a full shift and so the worker receives £46.09 for this shift (6.5 hours times £7.09 per hour). For fair comparison with Employer A's advertised hourly rate, Employer B's payment equates to £10.24 for each hour of direct support provided.

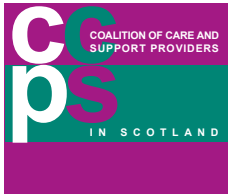
Employer C workers receive £51.03 per shift (6.5 hours times £7.85 per hour). This equates to £11.34 for each hour of direct support provided.

As you can see from this example (and as illustrated in the table below), comparisons using advertised hourly rates alone are often misleading. Furthermore this places little value on other terms of employment such as contract type, holiday and pension benefits: an advertised rate may be quite different to the wage a worker actually receives in their pay slip.

	Advertised Hourly Rate	Actual Hourly Rate (as considered by working time regulations)	Hourly Rate (for Direct Hours only)	Gross Wage
Employer A	£7.85	£5.43	£7.85	£35.33
Employer B	£7.09	£7.09	£10.24	£46.09
Employer C	£7.85	£7.85	£11.34	£51.03
Minimum Wage	£6.50	£6.50	£9.39	£42.25

Consider also where the balance of risk lies with the two employment terms described above. Employer A pushes all of the risk onto the worker, and so the worker's wage fluctuates depending on how well the employer manages the rota to minimise travel and downtime. Employers B and C hold the risk and so are incentivised to be as efficient as possible; the worker always receives a wage equal to the length of their shift regardless of what they spend their day doing. Framework contracts issued by local authorities only pay according to direct hours delivered and hence incentivise employers to shift the risk to workers.

(Information and tables kindly provided by Carr Gomm)



About CCPS

CCPS is the Coalition of Care and Support Providers in Scotland. It exists to identify, represent, promote and safeguard the interests of third sector and not-for-profit social care and support providers in Scotland, so that they can maximise the impact they have on meeting social need.

CCPS aims to:

- Champion quality care and support provided by the third sector
- Challenge policy and practice that inhibits or undermines the sector's ability to provide quality care and support
- Prepare providers for future challenges and opportunities
- Support providers to understand, negotiate and influence the complex policy and practice environment in which they operate.

CCPS hosts the Workforce Development Network, funded by the Scottish Government to assist voluntary sector social services providers to fully contribute to the national workforce development agenda.

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