

A 'Local' Living Wage for Durham County Council

Report of the Living Wage Working Group

**Councillor Alan Napier, Deputy Leader and Portfolio Holder,
Finance**

Purpose of the Report

- 1 For Council to consider the conclusions and recommendations of the Council's Living Wage Working Group to remove Spinal Column Points 5-9 from the Council's pay and grading structure with effect from 1 January 2015 and implement a 'Durham Living Wage' for the Council's lowest paid employees where the lowest spinal column point would be spinal column point 10.

Background

- 2 Following a resolution of Full Council on 5 December 2012, the Living Wage Working Group was set up to explore the feasibility of implementing the accredited 'living wage' scheme that had been set up by the Living Wage Foundation which is part of the campaigning group 'Citizens UK'.
- 3 The Group has been chaired by Councillor Napier and includes Councillors Brown, Johnson, Stephens, Surtees and Yorke. Officers on the Group include Don McLure, Corporate Director Resources and Lorraine Anderson, HR Operations & Data Manager. The terms of reference for the Living Wage Group were to examine the benefits, risks and affordability of establishing a living wage scheme for Durham County Council employees and produce a report and recommendations for Full Council to consider.
- 4 The Group has also been considering developments of the national and local position in respect of the Living Wage in local government and the strategy developments of the national political parties. Since the setting up of the Group, the leaders of both major political parties have offered public support to the Living Wage in principle.

Definition of the Nationally Accredited Living Wage

- 5 The nationally accredited Living Wage is an hourly rate set independently, updated annually each November and promoted by the Living Wage Foundation, which is part of the campaigning group called 'Citizens UK'.

- 6 The nationally accredited UK Living Wage since 3 November 2014 is £7.85 per hour (the London Living Wage level is £9.15 per hour).
- 7 Employers who choose to pay the Living Wage, do so on a voluntary basis. Accredited Living Wage Employers are expected to implement the new hourly rate as soon as possible following the annual announcement each November and within 6 months. There are over 1,100 organisations who have currently signed up as accredited Living Wage Employers.
- 8 Some of the benefits of introducing a Living Wage that are promoted by the Living Wage Foundation are attached at Appendix 2.
- 9 From 1 October 2014, the National Minimum Wage (NMW) increased to £6.50 per hour for employees aged 22 years and older.
- 10 Unlike the NMW, the Living wage is not a statutory requirement but a voluntary undertaking where local authorities can choose to 'do nothing', opt into the nationally accredited scheme or opt for a local scheme.

2014 Pay Award

- 11 The 2014 pay award for local government employees (including school support employees) has been agreed by trade unions and employers. The pay award covers a two year period from 1 April 2014 to 31 March 2016 and includes percentage increases with effect from 1 January 2015 for the whole two year period (not backdated) as summarised in the table below:

Increase to FTE Annual Rate of Pay	Current Hourly Rate	% Increase	Hourly Rate from 1 January 2015
£1,065 on SCP 5*	£6.45**	8.56%	£7.00
£1,000 on SCP6	£6.54	7.93%	£7.06
£800 on SCP 7	£6.69	6.19%	£7.11
£550 on SCP 8	£6.90	4.13%	£7.19
£350 on SCP 9	£7.11	2.55%	£7.30
£325 on SCP 10	£7.26	2.32%	£7.43
2.2% on SCP11 and above	Various	2.20%	Current rate + 2.2%

* Under the terms of the new pay award, SCP 5 point will be removed from the pay scales with effect from October 2015

**Increased to £6.50 with effect from 1 October 2014 in line with National Minimum Wage

Local Authorities who have implemented the Accredited Living Wage

- 12 To become an accredited Living Wage Employer, employers must commit to pay the Living Wage hourly rate and apply any increase in rates as soon as possible following the annual announcement each November and within 6 months.
- 13 Accredited Living Wage employers are also expected to ask their contractors to also implement the Living Wage. They need to also work with the Living Wage Foundation to set achievable milestones for applying the Living Wage across all contracts and these will be included in the accreditation licence.

- 14 From our research, 25 local authorities have been identified as accredited Living Wage Employers by the Living Wage Foundation. Eleven of these are London Boroughs and the only unitary/single tier authorities who have become accredited Living Wage employers to date are Birmingham, Blackpool, Brighton and York. There are no accredited authorities within the north-east region.

Non Accredited Living Wage Local Authorities who have implemented a form of Living Wage

- 15 Our research has identified a further 70 local authorities who are reported as paying a 'local' Living Wage but are not accredited. By not becoming accredited, gives employers the flexibility to choose, if and when, to apply any increase to the rate it pays. It also gives them flexibility in the application of the increase – for example choosing to apply the extra pay as a 'supplement' on top of existing pay scales. Newcastle, Darlington and Redcar and Cleveland have adopted this approach.
- 16 There are twelve authorities comparable to Durham i.e. unitary/single tier authorities who have implemented a local living wage being; Bristol, Darlington, Hartlepool, Leicester, Newcastle, Nottingham, Plymouth, Redcar & Cleveland, Slough, South Gloucester, Stoke on Trent and Thurrock.
- 17 Newcastle implemented the 'Newcastle Living Wage' from November 2012 and is currently paying a 'local' living wage of £7.55 an hour.
- 18 Hartlepool introduced its own local living wage on SCP10 on 1 September 2013. This is currently £7.26 per hour rising to £7.43 an hour from 1 January 2015 in line with the 2014 pay award.
- 19 Redcar and Cleveland Council commenced paying its own local Living Wage rate of £7.04 per hour from October 2013 as a supplement on those spinal column point hourly rates below this amount at the time.
- 20 Darlington introduced a local Living Wage supplement which is the difference between contractual hourly rates and SCP 10 (currently £7.26 per hour rising to £7.43 an hour from 1 January 2015, in line with the 2014 pay award). This will be reviewed annually.
- 21 Gateshead agreed to the removal of SCPs 5-7 from their pay and grading structure with effect from 1 October 2014.
- 22 Research has also identified that all employees working for the region's Fire and Rescue Services and Police Forces are currently paid above the Living Wage.

Authorities Considering Implementing a Living Wage

- 23 Research has identified a further 19 authorities who are currently considering a Living Wage but not yet at the stage of implementation.

- 24 Within the North East region, currently Northumberland, North Tyneside, Sunderland and Durham still pay employees on SCP 5 (£6.50 an hour – rising to £7.00 an hour from 1 January 2015, in line with the 2014 pay award). However, Sunderland Council is aiming to become a Living Wage Employer from 1 April 2015 with details currently being worked up.
- 25 Stockton Council also has employees on SCP 5 however they are considering implementing a higher minimum SCP that would be backdated to 1 April 2014 now that the 2014 Pay Award has been agreed.
- 26 Middlesbrough and South Tyneside have a minimum adult rate of SCP 6 (currently £6.54 per hour – rising to £7.06 an hour from 1 January 2015 in line with the 2014 pay award). However South Tyneside is looking to implement a phased introduction of a local Living Wage from 1 April 2015 (pending Full Council approval) with a commitment to work towards the implementation of the fully accredited national living wage scheme.

The Living Wage – Durham County Council Context

- 27 Durham County Council's lowest hourly rate is currently £6.50 (SCP) 5 which is the same hourly rate as the National Minimum Wage. The hourly rate for staff on NJC terms and conditions will increase to £7.00 an hour from 1 January 2015 in line with the 2014 Pay Award.
- 28 Within the Council's Pay and Grading structure, Grade 1 currently spans SCP 5-11 overlapping with Grade 2 which spans SCP 9-13.
- 29 Those employees paid on SCP 11 and below are all currently paid below the accredited Living Wage of £7.85 per hour. From 1 January 2015 following implementation of the 2014 pay award, SCP 11 will increase to £7.88 an hour – just above the current accredited Living Wage level although all employees paid on SCP 10 and below will be paid below this level.

The Living Wage Working Group

- 30 Since its inception, the Living Wage Working Group has examined the benefits, risks and affordability of establishing a living wage scheme for Durham.
- 31 The Group has also been considering developments of the national and local position in respect of the Living Wage in local government and the strategy developments of the national political parties.
- 32 A number of options have been explored, including costing of various hourly rates for implementation with the clear aim of ensuring any proposals would be both affordable and sustainable. The group has concluded that it would not wish to recommend becoming an accredited Living Wage employer and would prefer to recommend introducing a 'local' form of living wage in order to have the flexibility to choose and then control an affordable hourly rate into the future for all affected Council employees.

- 33 A number of authorities have done something similar and removed spinal column points from their pay and grading structure in order to accommodate a 'local' Living Wage. The benefit of this is that the pay and grading structure can still fit within the spinal column point ranges set by the National Joint Council and any increases resulting from National Pay Awards can more easily be applied.

The Option to Introduce a 'Durham' Living Wage for Durham County Council

- 34 After a lot of research and due deliberation and consideration of several options and associated costs, the Working Group have concluded that the Council should implement a 'Durham' Living Wage in support of the lowest paid employees in the Council. The Group's proposal to remove SCPs 5-9 from the Council's pay and grading structure is considered to be the most affordable and sustainable option.
- 35 The proposal will mean that with effect from 1 January 2015, no employee will be paid less than SCP10 or £7.43 an hour and from 1 April 2015, all employees apart from Grade 1 and Grade 2 employees who have been newly appointed since 1 October 2014 plus those employees detailed at paragraphs 53 and 54 will be paid £7.88 an hour which is above the national living wage of £7.85 an hour.
- 36 The Living Wage Working Group believes this to be a fair, affordable and sustainable rate of pay for the Council's lowest paid employees when compared to the accredited National Living Wage. By recommending a 'Durham' Living Wage will also mean that the Council would retain control of future annual pay awards which would be contained within national pay bargaining negotiations.
- 37 The Council's pay and grading structure for Grade 1 posts would therefore span SCPs 10-11 (instead of SCPs 5-11) and for Grade 2 posts would span SCPs 10-13 (instead of SCPs 9-13).
- 38 If implemented with effect from 1 January 2015, the number of posts/employees that would be directly affected is set out in the table overleaf. The figures shown for schools-based staff exclude the staff at our 52 voluntary-aided, academy and foundation schools where the governing body, not the Council, is the employer.
- 39 However, as all schools apart from the academies were part of the Council's job evaluation / equal pay implementation, it is considered prudent to also encourage their participation in the introduction of any 'Durham' Living Wage should this be agreed by Full Council.

Service	Number of Posts / Employees 14/15* (Increase from 01.01.15)	Full-Time Equivalents 14/15* (Increase from 01.01.15)	Number of Posts / Employees 15/16** (Full Year)	Full-Time Equivalents 15/16** (full year)
Children and Adults Services	159	65	159	65
Neighbourhood Services	603	176	603	176
Regeneration & Economic Development	4	4	4	4
Resources	4	3	4	3
Subtotal (excluding Schools)	770	248	770	248
Schools				
Nursery	29	13	29	13
Primary	1,389	372	1,389	372
Secondary	267	109	267	109
Special Schools	106	63	106	63
Pupil Referral Unit	4	1	4	1
Subtotal (Schools)	1,795	558	1,795	558
Grand Total	2,565	806	2,565	806

*14/15 take into account implementation of the 2014 pay award

**15/16 figures take into account implementation of the 2014 pay award and assume that existing employees remain in post and receive an increment as appropriate on 1 April 2015.

40 To summarise, it is anticipated that the introduction of a minimum hourly rate of £7.43 from 1 January 2015 would result in additional costs overall of circa £147k in 2014/15 (cost to the General Fund of £49k and £98k for schools).

For 2015/16, the full year costs would be an estimated £1.048m, (£243k to the General Fund and £805k to schools).

- 41 The costs for schools-based staff exclude the staff at 52 voluntary-aided and foundation schools, where the governing body, not the Council, is the employer.
- 42 Split by service area, the estimated extra cost to the Council in 2014/15 and 2015/16 would be as follows:

Service Grouping	Total Estimated Additional Cost (£) 2014/15 (Increase from 01.01.15)	Total Estimated Additional Cost (£) 2015/16 (Full year)
Children and Adults Services	10,151	32,749
Neighbourhood Services	38,596	201,375
Regeneration & Economic Development	417	6,760
Resources	38	2,119
Subtotal (excluding Schools)	49,202	243,003
Schools		
Nursery	1,797	16,456
Primary	64,602	532,543
Secondary	20,045	163,973
Special Schools	10,517	87,825
Pupil Referral Unit	577	4,487
Subtotal (Schools)	97,538	805,284
Grand Total	146,740	1,048,287

Apprentices have been excluded from this proposal.

Equality and Equal Pay Considerations

- 43 Introducing a local Living Wage only two years after introducing an equality-proof job-evaluated pay system like we have in Durham, could potentially create some new equal pay issues due to what is known as a “provision criteria or practice” (PCP) in the workplace. Where male and female employees are receiving different salaries as a result of a PCP and not covered by the Job Evaluation scheme scoring, then there is a potential for claims based upon indirect gender discrimination (equal pay claims).

- 44 There are two lines of defence to these claims 1) that the PCP is in fact not tainted by the gender of employees and 2) even if tainted by gender, then there is a genuine material factor defence under the Equality Act 2010 to such claims if the difference can be objectively justified as a "proportionate means of achieving a legitimate aim". The legitimate aim here would be the removal of low pay grades and the principles behind the living wage which is applied to male and females alike. It is believed that to apply this material factor defence, it would be important that the local Living Wage was applied fairly and consistently to all Council employees including school based employees.
- 45 A detailed equality impact assessment has been completed and has highlighted that provided the 'Durham Living Wage' is implemented consistently across the Authority, in that all the Authority's employees to which the Living wage applies are actually paid this hourly wage rate, it should not in normal circumstances give rise to equal pay claims. This applies to all DCC employees including those at maintained schools. The equality impact assessment suggests that if the Living Wage is introduced for all eligible employees (both school based and non-school employees) the proposals will have a positive impact in terms of equal pay between genders.
- 46 Research has confirmed that all Authorities with school based employees that are either an accredited Living Wage employer or are paying their own form of Living Wage have included all school-based employees or are in the process of doing so.
- 47 The option and potential implications of introducing a 'Durham' Living Wage for all Durham County Council employees including those based in schools, was initially raised at the Schools Forum meeting on 23 October 2013. At that time there was 'in principle' support for the implementation of a living wage and morally the Forum agreed with the concept of an increase in pay for low paid workers, although concerns were expressed at that time in respect of the cost implications on schools' budgets.
- 48 A further report was presented at the Schools Forum on 23 October 2014 which provided further background to the Living Wage and information in relation to the proposed recommendations being made to Full Council on 3 December 2014. The Schools Forum noted the content of the report and the process to be followed with regard to communication with schools.
- 49 Subsequently, a letter was issued to the head teachers of all the maintained, voluntary aided and foundation schools within the County on 23 October 2014 detailing the recommendations of the Council's Living Wage Working Group. The letter set out the background to the Living Wage and details of the financial implications for their individual school along with the benefits promoted by the Living Wage Foundation (as detailed in Appendix 2 of this report). The letter included a recommendation for each school to support implementation and head teachers were asked to consult with their Governing Body about whether to implement the recommendation if it were to be approved by Full Council on 3 December 2014. For those schools which did not have a scheduled Governors meeting arranged prior to the Council meeting, they were advised it would be sufficient to progress with the endorsement of their respective Chair of Governors. All schools were encouraged to respond to confirm acceptance or otherwise.

- 50 Head teachers were advised that schools that were minded to not accept the recommendation may put themselves at risk of equal pay claims from their employees on the basis that other employees doing similar/same jobs in the Council being paid at a higher rate.
- 51 In addition, letters were also sent to all the head teachers of academies and the free school within the County, asking them to also consider adopting the Durham County Council 'local' Living Wage
- 52 As at 24 November 2014, a significant majority of schools had responded and confirmed they would implement the Durham Living Wage if it were approved at Full Council. Some schools have advised they would confirm their position following the scheduled meeting with their Governing Body and no school to date has advised that they would not implement the Durham Living Wage.
- 53 There are a small number of employees based within the Council and schools currently receiving less than £7.43 per hour (new SCP 10 following implementation of the 2014 pay award from 1 January 2015) who have transferred to Durham County Council employment under previous TUPE transfer arrangements. Should a Durham Living Wage be agreed by Full Council, these employees would be considered separately in line with consultation exercises on TUPE as appropriate.
- 54 There are also 7 employees employed under 'Red Book' Conditions of Service and 72 employees employed under 'Youth and Community' Terms and Conditions' who are on fixed salary points and receiving less than £7.43 per hour (new SCP 10 following implementation of the 2014 pay award from 1 January 2015). It is proposed that the basic hourly rate of these workers would also be increased to the same level as the 'local' living wage of SCP10. However there will be no other changes to their terms and conditions at this time as these would be considered as part of any future review of pay and conditions.
- 55 Consideration has also been given to the impact on commissioning services from external contractors should a Durham Living wage be introduced for Durham County Council employees. There would be a risk in that paying a local Living Wage to Durham County employees could create some demand for price increase in relation to negotiations for commissioned services into the future across the Council particularly in areas such as social care where the Council has retained in-house provision and the payment of a local living wage to in-house employees would put them on higher remuneration than workers providing the services that are being externally commissioned.
- 56 If SCPs 5-9 are removed, the new minimum hourly rate would also apply to agency workers who have been in the Council's employ for more than 12 weeks under the rules of the Agency Workers Regulations. The numbers of agency workers change by the day and as at 20 November 2014 there were 45 agency workers earning less than SCP 10 (currently hourly rate of £7.26).
- 57 If implemented with effect from 1 January 2015, it is anticipated that 770 Council employees and 1,795 school based employees would be directly affected. Also for any new appointees to either a Council or school based post

Grade 1 or 2, the new minimum starting hourly rate would be SCP 10 (£7.43 following implementation of the 2014 pay award from 1 January 2015).

Potential Impact of Removing SCPs 5-9 on National Benefit Entitlement

- 58 The removal of SCPs 5-9 and adoption of a local Living Wage of £7.43 (following implementation of the 2014 pay award from 1 January 2015) could have a potential detrimental financial impact on employees who are also entitled to Local Council Tax Reduction Scheme benefits, family tax credits and other national benefits. This could mean that some employees may have their current benefit entitlements reduced through the implementation of the Durham Living Wage.

Trade Union Consultation

- 59 Consultation has taken place with the Regional Trade Union Officials from Unison, GMB and Unite who are all fully in support of the recommendations of the Living Wage Working Group.

Practical Considerations

- 60 In accordance with the Local Collective Agreement, employees move up one increment within a grade from 1 April each year until they reach the top of their grade. For employees taking up a new appointment, increments will be paid in April each year unless they commenced after 1 October, when they will receive an increment 6 months after their date of commencement. They will then receive annual increments in April each year until they reach the maximum spinal column point of their grade.
- 61 Therefore should SCP 5-9 be removed from the pay and grading structure with effect from 1 January 2015, affected employees would be aligned to SCP10 from that date and then progress to the next spinal column point on 1 April 2015 (or 6 months after their start date if appointed to their post after 1 October 2014).
- 62 There are around 1,200 school based employees who currently have a small deduction (1.5p an hour made from their hourly rate) to take into account they can access a 'free meal' while at work – this is known as 'abatement'. This historic practice is ceasing on 31 March 2015. If a living wage of £7.43 an hour is introduced from 1 January 2015, those employees subject to abatement would continue to have 1.5p an hour deducted from the 'local' living wage until abatement is no longer payable which is on 1 April 2015.
- 63 Any 'Durham Living Wage' of SCP 10 would be reviewed annually to take into account any National Pay Awards in each year as well as any changes to the National Minimum Wage.
- 64 As implementation of a Durham Living Wage would be a change to employees' terms and conditions it would also be necessary to reflect the change in individual 'variation to contracts' for all affected employees.

Conclusions

- 65 There is a national and regional drive for implementing a form of Living Wage within local authorities and the number of those participating continues to increase.
- 66 The Living Wage Working Group has concluded to recommend to Full Council to implement a local version of the Living Wage from 1 January 2015 (the 'Durham Living Wage'). This will take the form of a minimum salary of Spinal Column Point 10 equivalent to £7.43 per hour with effect from 1 January 2015 following implementation of the 2014 pay award.
- 67 Removal of SCPs 5-9 and introducing a 'Durham' Living Wage rate equivalent to SCP 10 of £7.43 would result in additional costs of circa £147k, with a cost to the General Fund of £49k and £98k for schools for the period 1 January 2015 to 31 March 2015.
- 68 For 2015/16, the full year costs would be £1.048m, being £243k to the General Fund and £805k to schools.
- 69 If implemented from 1 January 2015, it is estimated that 2,565 employees/posts (770 Council and 1,795 schools based) would be directly affected, however the new minimum hourly rate for any new appointees to Council and school based posts at Grade 1 or 2 would be paid at SCP 10 equivalent to £7.43 an hour.
- 70 From 1 April 2015 all employees, apart from Grade 1 and Grade 2 employees who have been newly appointed since 1 October 2014, and those employees detailed at paragraph 53 and 54 would be paid £7.88 an hour which is above the national living wage of £7.85 an hour.
- 71 There is the potential for equal pay claims from school based employees should any school choose not to apply the local Living Wage and this would potentially make the Council liable for cost and damages awards.
- 72 A letter was issued to head teachers of all maintained, aided and foundation schools on 23 October 2014 so that each individual school was made aware of the cost and implications should a Durham living wage be introduced by the Council.
- 73 There is a risk in that paying a local Living Wage to Durham County Council employees could create some demand for price increase in relation to negotiations for commissioned Services across the Council.
- 74 Whilst there are increased costs and some risk in implementing a Durham living wage, such a step is in line with key Council objectives and Altogether Better themes, where the proposed changes to terms and conditions would be to enable the Council's lowest paid employees to improve their standard of living and improve their health and wellbeing. Most low paid employees would normally expend their incomes within the local economy.

Recommendations and reasons

75 Full Council agrees:

- (i) To remove Spinal Column Points 5-9 with effect from 1 January 2015 and thereby implement a minimum hourly wage of Spinal Column 10 (£7.43 per hour) for all Durham County Council employees and this be referred to as the 'Durham Living Wage';
- (ii) To conduct a review of the Durham Living Wage rate annually from 1 April 2016.

Background papers:

None

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Appendix 1: Implications

Finance – The removal of spinal column points 5-9 and implementation of a ‘local’ Living Wage of £7.43 per hour from 1 January 2015 would result in additional costs overall of circa £147k (cost to the General Fund of £49k and £98k for schools). For 2015/16 the full year costs would be an estimated £1.048m, (£243k to the General Fund and £805k to schools).

Staffing – If implemented with effect from 1 January 2015 it is anticipated that 770 Council employees/posts and 1,795 school based employees/posts would be directly affected. Also for any new appointees to a Council or school based post Grade 1 or Grade 2 the new minimum starting hourly rate would be £7.43.

Risk – Provided the local Living Wage is implemented consistently across the Authority, in that all the Authority’s employees of the grade to which the Living wage applies are given the wage, it should not in normal circumstances give rise to equal pay claims. This applies to all DCC employees including those at maintained schools

Also outlined in the report is the risk that paying a local Living Wage to Durham County Council employees could create some demand for price increase in relation to negotiations for commissioned Services across the Council.

Equality and Diversity / Public Sector Equality Duty – An Equality impact assessment has been undertaken on the proposals to remove SCP 5-9.

Accommodation – None

Crime and Disorder – None

Human Rights – None

Consultation – Discussions have taken place with the Trade Unions and the Schools Forum

Procurement - None

Disability Issues - None

Legal Implications - Within the body of the report.

Appendix 2: Benefits of Introducing a Living Wage

Living Wage Foundation

The Living Wage Foundation describes the three main benefits of introducing the Living Wage as follows:

Good for Business

An independent study examining the business benefits of implementing a Living Wage policy that employers believe that the Living Wage had enhanced the quality of the work of their staff, while absenteeism had reduced.

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

Good for Families

The Living Wage affords people the opportunity to provide for themselves and their families.

The Living Wage Foundation report the majority of employees reported increases in work quality as a result of receiving the Living Wage.

Many 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 Foundation considers the Living Wage can be part of the solution.