



**Item No: 9**

**Meeting Date: Wednesday, 21st September 2016**

## **Glasgow City Integration Joint Board**

**Report By: Sharon Wearing, Chief Officer, Finance and Resources**

**Contact: Sharon Wearing**

**Tel: 0141 287 8838**

### **SCOTTISH LIVING WAGE**

**Purpose of Report:**

The purpose of this report is to outline the issues related to the Scottish Government's financial settlement to local authorities for 2016/17 specifically related to the provision of the Scottish Living Wage to social care workers within adult social care services. The report also makes proposals for the Glasgow City Integration Joint Board and the City Council to address these issues in a fair and equitable way within the available resource.

**Recommendations:**

The Integration Joint Board is asked to:

- i) Consider and agree the provision of funding of £5.3m to providers to allow payment of the Scottish Living Wage (£8.25 per hour) to adult services social care workers and some children and young people's workers from 1 October, all as more fully set out in this report, noting that this funding would be backdated to 1 April 2016;
- ii) Agree that option 2(i) be implemented, which will apply a 3.1% uplift to current provider rates, excluding the care home sector; and,
- iii) Agree that adult care home fee rates are aligned to National Care Home Contract rates from 11<sup>th</sup> April and 1<sup>st</sup> October 2016 as per the National Care Home Contract settlement.

## Implications for IJB:

<b>Financial:</b>	The proposal of a percentage uplift at the level identified, can be absorbed within the financial allocation provided by the Scottish Government as part of the 2016/17 settlement. As identified in 2.3 above in relation to younger adults in care home settings, the uplift proposal can also be accommodated within resources made available in the Scottish Government's settlement and Resource Transfer uplifts for 2016/17.
-------------------	---

<b>Personnel:</b>	There is no impact on Council personnel.
-------------------	--

<b>Legal:</b>	As indicated below, no option for delivering the Scottish Living Wage is free from the risk of legal challenge. Legal Services have, however, advised that of the proposed variation approaches, the standard percentage uplift is the least risky.
---------------	---

<b>Economic Impact:</b>	None.
-------------------------	-------

<b>Sustainability:</b>	None.
------------------------	-------

<b>Sustainable Procurement and Article 19:</b>	None.
--	-------

<b>Equalities:</b>	None.
--------------------	-------

## Risk Implications:

<b>Implications for Glasgow City Council:</b>	Risk of challenge from providers.

<b>Implications for NHS Greater Glasgow &amp; Clyde:</b>	None.
--	-------

<b>Direction Required to Council, Health Board or Both</b>	Direction to:	✓
	1. No Direction Required	
	2. Glasgow City Council	✓
	3. NHS Greater Glasgow & Clyde	
	4. Glasgow City Council and NHS Greater Glasgow & Clyde	

## 1. Background

- 1.1 The Scottish Government's 2016/17 local government financial settlement contained an allocation of £250 million spread across all local authorities provided from the Health budget to integration authorities for social care. Of that £250 million, £125 million was provided to support additional spend on expanding social care to support the objectives of integration, including increasing charging thresholds for all non-residential services to address poverty.
- 1.2 The balance of £125 million was provided to help meet a range of existing costs faced by local authorities in the delivery of effective and high quality health and social care services in the context of reducing budgets. This included the joint (Scottish Government & COSLA) aspiration to deliver the Scottish Living Wage for all social care workers as a key step in improving the quality of social care. It should be noted that the local government finance settlement was contingent on agreement to a complete package of measures, including delivery of the Scottish Living Wage commitment, protection of teacher numbers, and a council tax freeze.
- 1.3 This resource will enable councils to ensure that all social care workers including in the independent and third sectors are paid £8.25 per hour for all hours worked. The Scottish Government has made an assumption that private and third sectors will meet their share of the increased payments to staff. The new rate applies to all hours worked and therefore encompasses sleepovers, travel time and holiday pay. Similarly, those service users receiving personalised budgets or direct payments will require to have their payments increased by whatever methodology is applied. On the basis that preparatory work would be required to ensure effective implementation, an implementation date of 1 October 2016 was agreed.
- 1.4 This commitment is not, as of yet, a commitment to the National Living Wage as an ongoing benchmark for wages, but to the delivery of £8.25 per hour from 1 October 2016. Any further commitments would be subject to spending review negotiations for 2017/18 and beyond.
- 1.5 A report to the Council's Executive Committee of 31 March 2016 sought approval for progression of work to review the route to procurement of social care services, with a view to establishing a 'Proof of Concept' test case for a different model of procurement, administration and monitoring. The Proof of Concept will involve a shift away from the traditional purchasing of social care 'by the hour' to a holistic provision of support to individuals that makes maximum use of community based assets and local social networks with the emphasis on providers achieving positive and sustainable outcomes for their service users.
- 1.6 The Proof of Concept, involving 6 provider organisations with whom Social Work Services currently engage and purchase services from on behalf of people with disabilities or other social care assessed needs, is planned to complete by June

2017, at which time its outcome will be reported to the Council's Executive Committee.

- 1.7 Notwithstanding work already under way in Glasgow to support payment of the Scottish Living Wage, this report addresses the practical issue of identifying a methodology for distribution of resources to the private and third sectors to meet the stated objective of payment of the Scottish Living Wage of £8.25 per hour for all hours worked with effect from 1<sup>st</sup> October 2016. Taking account of the resources committed to address this issue in respect of the National Care Home Contract referred to at para 2.2 below, a balance of £4.6m remains to address the payment of the Scottish Living Wage to social care workers, excluding the care home sector.

## **2. National Care Home Contract**

- 2.1 Annual negotiations on the fee uplift within the National Care Home Contract (NCHC) settlement for 2016/17 were completed earlier this year and related to this, the Council's Executive Committee on 28 April 2016 agreed a two stage increase in rates, with a 2.5% increase from 11 April 2016, and a further 4% increase from 1 October 2016. The increase in rates from 1 October 2016 meets the commitment to deliver the Scottish Living Wage for social care workers within the private and voluntary sector residential and nursing care sector from that date.
- 2.2 The Council's Executive Committee report noted that the 2016/17 cost of this increase in rates was £2.92 million and would be funded from the additional monies provided to integration authorities. The full year effect will be £4.418 million.
- 2.3 The support needs of many younger adults (i.e. those under the age of 65yrs) are appropriately met within a care home environment. The current fee rate for younger adults, established by Glasgow some years ago, requires a recalibration to more accurately reflect the requirements of this provision. This would also provide parity with older people's care home provision in addressing the current Scottish Living Wage pressures. It is therefore considered equitable that the younger adult fee rate should be increased and aligned to the NCHC rates. It is proposed that rates for this sector will be applied from 11<sup>th</sup> April 2016 and 1<sup>st</sup> October 2016 as per the National Care Home Contract settlement.
- 2.4 The cost of the uplift described above is £922k and will be funded £693k from the Resource Transfer uplift and £229k from the Scottish Government funding for the living wage which will bring parity to the rates for Adult Care Homes in line with the National Care Home settlement for Older People. This results in additional resources of £5.3m in total (£4.6m plus £0.693m) being made available to providers.

### **3. Delivery Mechanism**

3.1 The Scottish Government have advised that the mechanism used to deliver the Scottish Living Wage commitment is a matter for local authorities to decide and will depend on a local assessment of the risks presented by each of the options. The scale and timeframe for implementing the Scottish Living Wage means that a collaborative approach between commissioners and providers is critical. To this end we continue to engage with providers involved in the Proof of Concept, and have issued a survey questionnaire to all of the Council's care providers to ask their views on the preferred delivery mechanism.

#### **3.2 Option 1 - Procurement**

The Scottish Government has obtained clarification from the European Commission on the application of the Living Wage in procurement processes. This confirms that contracting authorities are unable to make the payment of any specified wage rate above the legal minimums enshrined in law a mandatory requirement as part of a competitive procurement process. In the UK, this is the National Minimum Wage and National Living Wage, dependant on age. It is, therefore, not possible to reserve any element of an overall tender score specifically to the payment of the Scottish Living Wage.

3.3 However, where relevant to the delivery of the contract, it is possible for a contracting authority to take account of a bidder's approach to fair work practices which includes, for example, the payment of £8.25 per hour, and to evaluate this as part of the procurement process.

3.4 A commitment to pay £8.25 per hour to adult social care workers would be a strong indication of a positive approach to fair work practices. Payment of the Scottish Living Wage would not be the only indicator of fair work, however, and it should be emphasized that whilst failing to pay the Scottish Living Wage would be a strong negative indicator, it would not mean that the employer's approach would automatically fail to meet fair work standards in a procurement exercise.

3.5 It should be noted that many providers have recently been accepted onto a 'framework' for care services, the procurement exercise for the framework tender did involve consideration of fair work practices as outlined at 3.3 above, however not at the level of £8.25 per hour as required for the Scottish Living Wage.

3.6 The option of re-running procurement exercises, solely for the purpose of considering payment of £8.25 per hour within the context of evaluation of fair work practices, is not recommended given the significant time and resources which this would require, particularly when this would give no guarantee that all successful providers would pay this rate.

#### **3.7 Option 2 – Contract Variation**

There are a number of ways that a council can vary a current contract with providers in order to pay the Living Wage of £8.25 per hour. These are detailed below, and it may be necessary to adopt a range of approaches, or take a

staged approach and implement the commitment using one mechanism while considering another mechanism for a longer term approach.

- 3.8 For the purpose of clarity, there is no suggestion that those providers who indicate that they will not pay the Scottish Living Wage will be adversely affected in terms of current workload within Glasgow. However it recognised that the workforce of such organisations will be adversely affected by their employers stance on this. By the same token however, such providers should also not expect to receive any additional resources from a scheme whose express intention is to fund payment of the Scottish Living Wage, if they refuse to agree to pay this amount.
- 3.9 The main options are (all conditional on providers volunteering to pay £8.25 per hour to care worker);
- (i) apply a percentage increase across-the-board: uplift all contract values/hourly rates by a uniform amount
  - (ii) apply a differing percentage increase per provider, through individual negotiation based on their particular costs.
  - (iii) set a standard rate within which the £8.25 per hour is affordable.
  - (iv) set a suite of rates.

#### **4. Provider Survey**

- 4.1 We received returns from 73 providers to our survey, this equated to 73% of those surveyed. Providers were asked a range of questions designed to allow us to establish, amongst other things, the numbers of employees affected by this issue, whether providers already pay the Scottish Living Wage or had intentions to do so, and what they considered should be the means of distributing the additional funding. A summary report outlining the main findings of the survey is attached at Appendix 1.
- 4.2 In terms of the means of distributing the additional funding providers' views were varied. 33% preferred a standard percentage uplift, 25% requested that a standard rate be set for each local authority within which the £8.25 per hour for care workers would be affordable, and 23% expressed a preference for a differing percentage increase per provider through individual negotiation based on particular costs.
- 4.3 It should be noted that we did not receive a return from all providers, and that some of those providers that did reply indicated that they did not intend to meet the commitment to pay the Scottish Living Wage.

#### **5. The Proposal**

- 5.1 We would propose to adopt Option 2(i) – contract variation - a standard percentage uplift. We need to be mindful that our approach to applying the uplift should mitigate the risk of legal challenge.

- 5.2 Adopting any of the other options outlined at 3.6 could result in a situation where the outcome of the recently concluded framework exercise would hypothetically have been different had the new rates been in place. Such a situation could potentially result in a legal challenge, which could lead to significant delay in the award of these funds and the time taken to make it available to providers. It should also be noted that the application of a percentage uplift was the most popular option with providers who responded to the survey.
- 5.3 On consideration of the totality of resources available to us, together with the total annual value of payments to providers of care services (excluding care homes), we have calculated that an uplift of 3.1% is appropriate on current rates.
- 5.4 While we are required to provide funding to providers from 1 October 2016, it is our intention to backdate funding to cover the period from 1 April 2016.
- 5.5 It is considered that in advance of distributing additional resources, we now require to contact every provider with whom we currently contract to establish whether they intend or not to pay their social care staff the minimum of £8.25 per hour. We would also request confirmation that where possible / appropriate back payment of any monies will be made to staff prior to Christmas 2016. Where providers indicate that they did not intend to pay the minimum of £8.25 per hour from 1 October 2016, no additional payment would be made.

## **6. Risks and Issues**

- 6.1 The following risks and issues have been highlighted as part of the preparation work that has been undertaken:
- The proposed options are untested, however, have been the subject of much debate at Scottish Government, COSLA, Local Authority and provider level, so issues around the implementation are well known and understood. It is possible that an aggrieved provider may challenge the recommended option, but the same risk sits with every local authority regardless of the option they decide to implement. It is considered that the recommended option is the fairest, most transparent and least bureaucratic option to implement, as well as being most closely aligned to the underlying goals of the additional funding and what it is trying to achieve. All action will be taken to minimise any risks as far as possible
  - Any proposed approach has the potential to be challenged such is the scale of diversity, legal technicality and costs involved.
  - The majority of providers have indicated that there is the risk of a negative financial impact to their organisation in implementing the Scottish Living Wage commitment. This could result in notifications to withdraw from contracts.
  - Some providers have indicated that the implementation of the Scottish Living Wage relies on moving to new rates as part of the Framework, as well as an uplift to those rates.

- Providers are concerned that a reduction in differentials between care and non-care staff will adversely impact non-care staff and their organisation's pay structures.
- We are also aware that some of our contractors deliver services to children and young people as well as adults with staff on the same pay structures and that therefore both sets of staff will have to be included in the considerations in order not to create equal pay issues within provider organisations.
- The available Scottish Government funding does not adequately address the issue of sleepover costs, which historically have not been payable on a 'per hour' basis, but recent European rulings on this matter has changed this to hourly payments.

6.2 We believe the proposal to make a standard percentage uplift is the most robust mitigating action we can take to minimise some of the risks noted above and this will enable us to make a significant contribution to our provider organisations within the set timescales. Indeed, the proposal to backdate the percentage uplift to 1<sup>st</sup> April, we believe will provide additional comfort to those provider organisations committed to paying the Scottish Living Wage and may assist the addressing some of the concerns that they have expressed.

6.3 We have added a risk to our risk register to highlight the challenge and potential impact of meeting the Scottish Living Wage. This will be regularly reviewed and monitored.

6.4 The Proof of Concept work outlined above aims to ensure we can find innovative approaches to ensure that the outcomes for our service users are met within a context of reduced resources, whilst addressing any potential anomalies that the percentage uplift might bring.

## **7. Recommendations**

7.1 The Integration Joint Board is asked to:

- iv) Consider and agree the provision of funding of £5.3m to providers to allow payment of the Scottish Living Wage (£8.25 per hour) to adult services social care workers and some children and young people's workers from 1 October, all as more fully set out in this report, noting that this funding would be backdated to 1 April 2016;
- v) Agree that option 2(i) be implemented, which will apply a 3.1% uplift to current provider rates, excluding the care home sector; and,
- vi) Agree that adult care home fee rates are aligned to National Care Home Contract rates from 11<sup>th</sup> April and 1<sup>st</sup> October 2016 as per the National Care Home Contract settlement.



## Appendix 1: SLW Survey Summary Findings

- 1.1 **Responses.** The survey was applicable to 100 providers to participate in. Seventy-three providers submitted a set of valid responses for which this report is based on. This represents a response rate of 73%.
- 1.2 **Background Information [73].** Half of providers were local (52.1%) or national (47.9%) and three-quarters (75.3%) were voluntary/charitable. Providers provided services to a range of care groups: Older People (49.3%), Learning Disability (42.5%), Physical Disability (35.6%), Mental Health/Mental Difficulties (28.8%) and Children and Families and/or Homelessness (27.4%). Providers provided a range of services: housing support (60.3%), care and support (49.3%), care home and/or home care (care at home) (41.1%), supported living/accommodation (37%) and day services/day opportunities/employability (28.8%). Almost three-quarters of providers are currently contracted by another Local Authority other than the Council.
- 1.3 **WTE Staff and Pay Bandings [73 and 67].** A total of 5,140.3 WTE social care staff currently provide care and support services for the 73 providers contracted by the Council. Sixty-seven providers provided a valid breakdown of the hourly pay bandings for the 4,209.3 WTE social care staff:
  - 2,512.1 WTE at £8.25 or above – three-fifths (59.7%)
  - 858.6 WTE at £7.85 to £8.24 – a fifth (20.4%) and
  - 838.6 WTE at £7.20 to £7.84 – a fifth (19.9%).
- 1.4 **Annual Leave/Sickness Cover [67].** Over a third (37%) of providers mainly manage annual leave/sickness cover for their social care staff through their WTE staff and just under a quarter (23.3%) mainly through overtime.
- 1.5 **Percentage Uplift [70].** Seven percent was reported the average percentage uplift in provider organisations' salary costs to pay their social care staff the SLW as a minimum as it relates to services contracted by the Council, and 6.6% was reported as the average percentage uplift in their social care and/or housing support services.
- 1.6 **25% Provider Contribution [73].** Just over a half (52.1%) of providers reported that they cannot make a 25% contribution to the implementing the SLW commitment, but just under a half (47.9%) reported that they already have or can.
- 1.7 **Distribution Method [73].** A third (32.9%) of providers reported that they prefer the additional funding for the SLW commitment to be distributed by applying a percentage increase across the board. Around a quarter prefer that a standard rate be set for each Local Authority within which the £8.25 per hour for care workers is affordable (24.7%) or a differing percentage increase is applied per provider through individual negotiation based on particular costs (23.3%).
- 1.8 **Implementation [73 and 56].** Just over three-tenths (31.5%) of providers reported that they have already implemented the SLW commitment, and just over a further three-fifths (61.6%) of providers indicated that they intend on implementing it – almost all providers (68, 93.1%). Of these 68 providers, 56 (82.4%) of them indicated when their social care staff would be paid the SLW:

two-fifths (41.1%) already have and just under three-fifths (57.1%) will between 1 October and 31 December 2016.

- 1.9 **Risks [73].** The majority of providers reported that there is the risk of a negative financial impact to their organisation in implementing the SLW commitment – seven in 10 (71.2%). Just under a quarter (23.3%) of providers indicated that there is the risk of them being unable to meet social care outcomes for individuals and/or the risk of a negative impact on the quality of care.
- 1.10 **Readiness [71].** A quarter (25.4%) of providers reported that they are partially ready to implement the SLW commitment from 1 October, and a similar proportion (23.9%) of them implicated that they are fully ready.
- 1.11 **Other Comments [33].** Thirty-three (45.2%) providers provided additional comments to the survey. The main ones included:
- providers are committed to collaboratively implementing the SLW, and it relies on the distribution of the additional health and social care integration funding
  - some providers confirmed that they have already implemented the SLW, although it continues to impact on their financial position and future service levels
  - implementation of the SLW also relies on the move to new rates as part of the Framework, as well as an increase to them
  - the provision of sleepovers has a significant impact on the cost of implementing the SLW commitment
  - providers are concerned that any reduction in differentials between different grades/levels of staff can lead to a reduced incentive for staff to move to promoted roles and
  - implementation of the SLW commitment by smaller providers may disproportionately impact them compared to larger providers.

## DIRECTION FROM THE GLASGOW CITY INTEGRATION JOINT BOARD

1	Reference number	210916-9-a
2	Date direction issued by Integration Joint Board	21 September 2016
3	Date from which direction takes effect	21 September 2016
4	Direction to:	Glasgow City Council only
5	Does this direction supersede, amend or cancel a previous direction – if yes, include the reference number(s)	No
6	Functions covered by direction	Adult Social Care Services
7	Full text of direction	<p>Glasgow City Council is directed to:</p> <ul style="list-style-type: none"> <li>• uprate current provider rates for adult care services by 3.1%, backdated to 1 April 2016.</li> <li>• align adult care home fee rates to National Care Home Contract rates from 11 April 2016 and 1 October 2016 per the National Care Home Contract settlement. both as outlined at xxx</li> </ul>
8	Budget allocated by Integration Joint Board to carry out direction	<ul style="list-style-type: none"> <li>• uprate current provider rates for adult care services by 3.1% backdated to 1 April 2016 : £4.371m</li> <li>• align adult care home fee rates to National Care Home Contract rates from 11 April 2016 and 1 October 2016 per the National Care Home Contract settlement : £922,000</li> </ul>
9	Performance monitoring arrangements	In line with the agreed Performance Management Framework of the Glasgow City Integration Joint Board and the Glasgow City Health and Social Care Partnership.
10	Date direction will be reviewed	April 2017