

**NORTH LANARKSHIRE COUNCIL
REPORT**

To: CORPORATE SERVICES COMMITTEE		Subject: ADDRESSING FAIR WORK PRACTICES, INCLUDING THE LIVING WAGE IN PROCUREMENT
From: HEAD OF CORPORATE PROPERTY AND PROCUREMENT		
Date: 26 OCTOBER 2015	Ref: JG/GP	

1. Purpose of the report

- 1.1 The purpose of the report is to update Committee in relation to statutory guidance issued by the Scottish Government setting out how to address Fair Work practices, including the Living Wage in procurement and how the guidance is being incorporated into the Councils procurement process and procedures.

2. Background

- 2.1 The Scottish Government, in February 2015, issued a Procurement Policy Note (SPPN 4/2012) setting out general guidance on how and when Fair Work practices, including payment of the Living Wage, should be considered in the course of a public procurement exercise. This was issued in advance of the full implementation of the Procurement Reform (Scotland) Act 2014 and the statutory guidance to be published under the Act.
- 2.2 The statutory guidance subsequently issued by the Scottish Government on 6 October 2015, builds on the content of the February Policy Note and now requires Public Bodies, with effect from 1 November 2015, to consider how to address Fair Work practices in relevant public contracts. Organisations bidding for public contracts will now be assessed, in part, on their adoption of Fair Work practices, which may include –
- paying the Living Wage;
 - no involvement in the practice of employee blacklisting;
 - no unnecessary use of zero hours contracts; and
 - giving workers an active voice in the workplace.
- 2.3 The statutory guidance applies to goods and services contracts worth more than £50,000, and works contracts worth more than £2,000,000.
- 2.4 During the passage of the Procurement Reform (Scotland) Act 2014, the Scottish Government sought clarification from the European Commission as to whether it was compatible with European legislation that a public authority requires their contractors to pay a Living Wage. The European Commission's response was that any requirement that contractors pay their employees higher than the UK's National Minimum Wage, as part of a tendering process or public contract, is unlikely to be compatible with European law. This response is set out in the Scottish Procurement Policy Note (SPPN 4/2012) and is supported by relevant European case law. Therefore the current advice from the European Commission and the Scottish Government is that while a Living Wage can be encouraged it cannot be mandated. There is a risk of a successful legal challenge if the Council were to make payment of a Living Wage a requirement of a contract.

- 2.5 To be compatible with European procurement rules, there must also be a direct connection between the quality of the service and how the contractor interacts with its employees. A suitable candidate is likely to be a contract from the traditionally “low wage” sectors such as catering, security, cleaning or care work.
- 2.6 The Council is committed to looking at Fair Work practices including the Living Wage through procurement. This includes exploring ways in which it can encourage its subsidiaries and contractors to commit to the Living Wage, as part of the procurement process, whilst remaining within the procurement rules.

3. Proposals

- 3.1 The Council recognises that the quality of a contract will often depend upon having a properly managed, motivated and remunerated workforce. It is therefore proposed to encourage payment of the Living Wage as part of a package of Fair Work measures, which includes terms and conditions such as training and development, holiday provision and family friendly policies, as well as discouraging “zero hours contracts” where they have a negative impact upon employee conditions and any practice of employee blacklisting.
- 3.2 In accordance with the statutory guidance, it is proposed that the quality of these Fair Work related matters is used in part to assess the quality of a bidder’s tender response, as it is unlikely to be permissible to make workforce-related matters a mandatory requirement, as outlined at Para 2.4. Fair Work practices will account for between 10-15% of the total quality score but as this only forms part of the overall evaluation, this may not guarantee that the Councils aspiration in terms of the Living Wage, zero hours contracts etc is met in every instance.
- 3.3 This approach has been used recently and successfully by the Scottish Government in a contract for catering services. As a result of the emphasis on the quality of workforce measures, all bidders included a Living Wage in their tender response. The cost of the service did increase as a result but some of the costs were borne by the contractors.
- 3.4 A report produced by the Resolution Foundation and the Institute for Public Policy Research “Beyond the Bottom Line” indicates the costs of contractors introducing a Living Wage at the request of the contracting authority such as the Council, are likely to be passed on to the Council in increased costs for the contracted goods, works or services. Any increase in costs will be dependent upon the sector, the number of employees paid below a Living Wage and the costs of maintaining a differential between these employees and the grades of employees above them. Based upon the experience of the Scottish Government, other Councils and initial communications between COSLA and national care home providers, early indications are a cost increase of between 2-6% may be sought by suppliers to implement Living Wage rates and maintain differential of pay grades where there are high numbers of employees paid less than the Living Wage.
- 3.5 The Council already has a small number of procurements underway, which in accordance with the statutory guidance, include Fair Work’ practices’ as one of criteria on which tender responses will be evaluated. As these procurements complete, we will be better placed to report on their success and any financial or other implications for the Council.
- 3.6 Committee may also be aware that consideration of Fair Work practices is a key component of the recently agreed procurement strategy for the Glasgow and Clyde Valley City Deal Programme of which the Council is a participant, and will form part of the tender evaluation for all City Deal procurements where relevant.
- 3.7 In addition to new procurements, for existing contracts, through contract management activity, it is proposed to ask contractors to provide the Council with information in relation to the payment of the Living Wage and the use of Zero Hours contracts in relation to staff

providing goods, services or works to the Council. This will allow the Council to understand the extent to which the Living Wage is paid and/or the use of Zero Hours contracts in the Council supply chain. However, it should be noted that contractors are not legally obliged to provide this information.

- 3.8 Most public authorities in Scotland are looking at how best to incorporate Fair Work practices into the procurement process and knowledge and advice is being shared to ensure that the Council is at the forefront of best practice.

4. Recommendation

- 4.1 The Committee is requested to note the contents of this report.

A handwritten signature in black ink that reads "John Gordon". The signature is written in a cursive style with a large, looped 'J' and 'G'.

John Gordon

Head of Corporate Property & Procurement

For further information on this report please contact John Gordon, Head of Corporate Property & Procurement on Ext 2225.