

Application of the London Living Wage in Contracts

December 2012 (updated June 2014)

www.southwark.gov.uk

This document sets out guidance on the Southwark Council commitment to encourage our contractors and sub-contractors to pay the London Living Wage to their staff when they provide works or services in council premises or in Greater London.

What is the London Living Wage?

The London Living Wage (LLW) is a campaign initiated by the community organisation, London Citizens in 2001 and is championed by the Greater London Assembly. It is also supported by trade unions and anti-poverty agencies. The LLW is a voluntary minimum hourly rate set by the Greater London Authority to ensure a decent standard of living. The London Living Wage is £8.55 per hour for 2012-2013.

Why does Southwark support the London Living Wage?

Economic Background: Southwark

According to the English Indices of Deprivation 2010, Southwark is the 41st most deprived local authority district in England, out of 326 local authority districts. In December 2011, it had an unemployment rate of 10.5%, compared with 9.3% across London and has a significantly high proportion of Job Seeker Allowance claimants who have been claiming over 2 years – 7% compared to an inner London average of 4% and regional average of 3%. The London Living Wage could improve those statistics by helping more residents out of poverty and into decently paid employment.

Improved Quality Of Service

Both the GLA Economic Development unit and London Economics have identified the benefits of implementing LLW including:

- easier recruitment and retention - reducing recruitment costs
- reduced staff turnover
- higher quality staff
- better attendance
- better productivity, motivation and loyalty
- Improved worker morale
- better quality of service
- improved reputation

A Fairer Future For All In Southwark

In the Council Plan agreed in July 2011 the Leader set out his vision for a fairer future for all in Southwark:

“The Council will create a fairer future for all in Southwark by: protecting the most vulnerable; by looking after every penny as if it was our own; by working with local people, communities and businesses to innovate, improve and transform public services; and standing up for everyone’s rights. As a central London borough, our mission is to enhance the things that make Southwark special – its immense diversity and vast depths of untapped potential. Helping to unlock those talents, with nobody left behind, is what we are about as a Council. People in the borough should be able to enjoy the enormous benefits and seize the opportunities that living in central London offers. The Council has its part to play as one of many working to deliver a fairer future.”

We believe that to achieve this vision all staff working within our borough deserve a fair wage reflecting the environment in which they work, regardless of whether they are employed directly by the Council or by our contractors or sub-contractors. We also believe that the payment of a fair wage can improve the quality of service provided in a contract, reduce staff turnover and produce a more motivated and productive workforce. Including this issue within our procurement of works and services will enable us to perform our functions in a way which aims to achieve continuous improvement in their delivery and achieve key policy priorities.

How is the London Living Wage to be implemented?

Council Assembly on 29 February 2012 agreed its revenue budget with the introduction of clear plans to ensure that the London Living Wage (LLW) benefits not only the Council's directly employed staff but also those who work for the Council through contractors over the next three years. The presumption will now be that LLW will be included in new contracts where services/works are to be provided on council premises or in the London area, and where best value can be demonstrated on a case by case basis. This commitment will be subject to rigorous procurement processes linked to quality improvement in the services being delivered.

With effect from 29 February 2012,:

- There is a presumption that the London Living Wage will apply to all new contracts for the provision of services or works, which are to be performed either on council premises, or in the Greater London area.
- In such contracts, the London Living Wage will apply to all relevant staff working directly on the contract in question, and will also apply to any relevant staff employed by sub-contractors (excluding apprentices and interns).
- In the planning of all contracts, the appropriateness and best value/cost implications of including the LLW must be considered on a case-by-case basis, recorded in writing and set out in any required Gateway One Report. Where LLW is not appropriate it must not be included in the contract and detailed reasons why LLW is not appropriate should be set out in the Gateway One Report.
- Where LLW is included gateway reports and contract documents must include:
 - How the requirement for LLW will be evaluated
 - How the payment of LLW, associated quality improvements and cost implications will be monitored.

In November 2012 Southwark Council became an officially accredited London Living Wage Employer. This scheme is administered by Citizens UK and the Living Wage Foundation.

Legal Implications

The general power of competence under the **Localism Act 2012**, subject to the pre-existing limitations of **S17 Local Government Act 1988** as amended by **Local Government Best Value (Exclusion of Non-commercial considerations) Order 2001 (SI 2001 909)** enables the Council to have regard to minimum rates of pay in a contractual process to the extent they are **relevant to the delivery of best value**.

S3 Local Government Act 1999 requires best value authorities to “make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. This allows the council to require payment of LLW where we believe this will result in better value services being provided under the contract, on the basis that the contractor’s staff will be more likely to be able and/or motivated if paid at least this rate.

CI 2 Public Services (Social Value) Act 2012 [will impose] a duty on the Council to consider how to improve the economic, social, and environmental well-being of our area by what we are proposing to procure and how that improvement might be achieved through the procurement process for all services (or predominantly services) contracts subject to the EU procurement regulations. This legislation has amended s17 Local Government Act 1988 to enable non-commercial matters to be considered to the extent that the council considers it necessary or expedient to do so to enable or facilitate compliance with this duty.

The following points should be taken into account for each procurement and have also been taken into account when formulating this guidance:

- The council must determine genuinely and reasonably that the LLW is an appropriate way of ensuring a better value for money service;
- The council must be reasonably satisfied that the extra cost to the council is reflected in enhanced quality of service;
- In order to show it is acting reasonably the council can not make a blanket policy but must consider each procurement on a case-by-case basis;
- The LLW policy will apply only to contracts performed on council premises, or otherwise essentially in the London area;
- In the planning of the contracts, the relevance of LWW can be considered, but where it is considered inappropriate e.g. because the contract is not to be performed by staff living in London then there would be no grounds to require the LWW.
- A blanket policy of not inviting or considering tenders from contractors who are unwilling to agree to a LLW clause in their contract could be challenged as unlawful;

Frequently Asked Questions

When do I need to consider LLW and how?

Whether or not LLW is to be required must be considered for all new contracts from 1 March 2012. The issue will need to be addressed as early as possible in your procurement planning and set out in detail in your Gateway One Report.

What factors should I consider when deciding if LLW should be required?

The following are factors to be considered which may support the inclusion of a LLW requirement in contracts, or which may carry weight to decide not to include the requirement

Factors indicating LLW would be appropriate in the contract	Factors indicating LLW may not be appropriate
Service provided in Southwark premises	Service provided elsewhere than Southwark premises
Service provided in London	Service provided outside London
Service provided alongside Southwark staff	Service completely separate to Southwark staff
Contractor staff working on the same project as Southwark staff	
People providing the service likely to be drawn from local workforce	

Factors indicating LLW would be appropriate in the contract	Factors indicating LLW may not be appropriate
Mixed economy of contractors already paying LLW	No existing contractors paying LLW
Positive feedback from likely contractors on paying LLW	Clear indication that contractors are likely to withdraw from competition if LLW sought to such an extent that competition is distorted
Quality enhancements in service foreseeable and likely	No likely change in service quality
Specification enhancements can be built into contract	No opportunity to change service specification
Public facing service / involvement in customer care	Back office service
Southwark council led procurement	Use of framework or other contract arrangements

Where can I find out more information about the London Living Wage?

[A Fairer London: The 2012 Living Wage in London | Greater London Authority](#) – this explains how the LLW is calculated, the organisations which support it, case studies and background information.

I am procuring a large contract which bundles together different services. Some of them will be based within Southwark but others are not. Should I require LLW for all, none or part only of this contract?

It is unlikely that LLW will be applicable to discrete services which are located away from Southwark – however, there may be instances where the provision of those services is so inter-connected with “in-borough” services that a different view could be reached with legal advice. It is possible to draft your contract so that LLW is required only for the provision of specified services. Example clauses are available from [Corporate Services: Contracts](#) in Legal Services.

Which contractor or sub-contractor employees will this apply to? Some of the sub-contractors are likely to provide only very sporadic or one off services within council premises or Greater London. How do I address this in my main contract?

The accreditation licence which the council has entered into with the Living Wage Foundation sets out the criteria which must be applied to work out whether London Living Wage is to be paid to an employee or not. These requirements have been reflected in some standard contract clauses which are attached to this note. These clauses must not be amended without discussion with the Contracts team in Legal Services.

Further Information

Please contact [Corporate Services: Contracts](#) in Legal Services.

SAMPLE CONTRACT CLAUSES

1. London Living Wage

1.1. Definitions

For the purposes of this Clause:

“Relevant Staff”	shall mean all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the [Works or Services] for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year.
“Equivalent Hourly Wage”	shall mean the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act),
“the London Living Wage”	shall mean the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure,

1.2. Contractors obligations

The Contractor will:

- ensure that all Relevant Staff employed or engaged by the Contractor are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- ensure that all Relevant Staff employed or engaged by its subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- provide to the Employer such information concerning the London Living Wage and the performance of its obligations under this Clause [] as the Employer may reasonably require and within the deadlines it reasonably imposes;
- co-operate and provide all reasonable assistance to the Employer in monitoring the effects of the London Living Wage including without limitation assisting us in conducting surveys and assembling data in respect of the affect of payment of London Living Wage to Relevant Staff.

1.3. Default

- 1.3.1. For the avoidance of doubt, any breach by the Contractor of this Clause [] may be a material breach in relation to which the Employer is entitled to rely on its termination rights under the Contract.

Example Gateway Report wording

Gateway 1 - Social Considerations

Example1

The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, contractors and subcontractors engaged by the council to provide works or services within Southwark pay their staff at a minimum rate equivalent to the LLW rate. It is expected that payment of the LLW by the successful contractor for this contract will result in quality improvements for the council. These should include *[examples: a higher calibre of multi-skilled operatives that will contribute to the [delivery of works on site/provision of the services within Southwark] OR more experienced staff OR continuity of service provision resulting from reduced turnover of staff]* and will provide best value for the council. It is therefore considered appropriate for the payment of LLW to be required. The successful contractor will be expected to meet LLW requirements and contract conditions requiring the payment of LLW will be included in the tender documents. As part of the tender process, bidders will also be required to confirm how productivity will be improved by payment of LLW. Following award, these quality improvements and any cost implications will be monitored as part of the contract review process.

Gateway 2 - Social Considerations

The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, our contractors and subcontractors pay staff at a minimum rate equivalent to the LLW rate. The Gateway 1 report dated [] confirmed, for the reasons stated in that report, payment of LLW was an appropriate and best value requirement for this contract. *[insert name of successful contractor]* has confirmed that they *[already/will] [meet/exceed]* the LLW requirements. Following award, quality improvements and costs implications linked to the payment of LLW will be monitored as part of the contract review process.

FLOW CHART FOR INCLUSION OF LONDON LIVING WAGE

