

**THE OFFICE OF POLICE AND CRIME COMMISSIONER
FOR DERBYSHIRE
DECISION RECORD**

Request for PCC Decision	Received in OPCC Date: 27 November 2013	OPCC Ref: 82/13
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Title: THE LIVING WAGE

Executive Summary: To be completed by PCC Specialist lead

Derbyshire Constabulary and the Police and Crime Commissioner are already Living Wage employers in respect of staff and police officers. Further consideration should now be given as to whether during a procurement process there is a requirement for contractors to pay a UK Living Wage to their staff, detailed within the report. An additional recommendation (e) was agreed at the meeting.

Decision

Resolved that

- (a) That the Derbyshire Constabulary and the Commissioner for Derbyshire are already Living Wage employers was noted.
- (b) Acting in line with the requirements of the Social Value Act, going forward, as part of the wider consideration as to the relevant 'social value' that could be gained through a proposed contract, consideration is given on a case by case basis as to whether the Living Wage should be included within the contract, either as an award criteria or a contract condition;
- (c) Document Derbyshire Constabulary's key social values, based on the needs of the area and the views of stakeholders/partner agencies (so allowing EMSCU Customer Services to develop guidance/toolkits/training on how such social values must be considered both pre-procurement and during the procurement process);
- (d) Review and update any standard form reports used for the political

leadership/senior managers so that reference to the Act is made and is shown to be considered;

(e) Seek Living Wage Accreditation.

3.2 Subject to recommendation 3.1 that EMSCU Customer Services develop guidance/training material that facilitates their implementation.

Declaration

I confirm that I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with the Code of Conduct for the Police and Crime Commissioner for Derbyshire. Any such interests are recorded below.

None

The above request has my approval.

Electronically Signed

Signature

Commissioner Alan Charles

Date 9 December 2013

PUBLICATION SCHEME CONSIDERATIONS

Is the related Section B report to be published Yes

If no, please indicate relevant exemption

Is the publication of this approval to be deferred No

If Yes, provide reasons below

Date to be deferred to –

NB Statutory Instrument 2011/3050 (as amended by SI 2012/2479) states that: *all decisions made by a PCC are in the types of information that must “be published as soon as practicable after it becomes available to the elected local policing body”.*

OFFICER APPROVAL

Chief Executive or Nominee:

I have been consulted about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report.

I am satisfied that this is an appropriate request to be submitted to the Police and Crime Commissioner

Electronically Signed

Name Mr David Peet

Date: 9 December 2013

STRATEGIC GOVERNANCE BOARD

9 NOVEMBER 2013

REPORT OF THE CHIEF EXECUTIVE

7B: THE LIVING WAGE

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to agree an approach for:-
- a) Including a Living Wage condition in future procurement contracts and
 - b) Next steps in implementing the Public Services (Social Value) Act 2012

2. INFORMATION AND ANALYSIS: LIVING WAGE

- 2.1 The modern UK Living Wage Campaign was launched by members of London Citizens in 2001. In 2005, following a series of successful Living Wage campaigns and growing interest from employers, the Greater London Authority established the Living Wage Unit to calculate the London Living Wage. In 2011, Citizens UK brought together grass roots campaigners and leading employers from across the UK to agree a standard model, calculated by the Centre for Research in Social Policy (CRSP), for setting the UK Living Wage outside of London.
- 2.2 Employers can voluntarily choose to pay their employees a Living Wage and many public and private companies now do so and receive accreditation from the Living Wage Foundation.
- 2.3 At the time of writing, of the 442 organisations accredited by the Living Wage Foundation, 40% were private sector, 40% were third sector and 20% were public sector. Adoption of a Living Wage policy transcends politics as a moral issue; supported by the Mayor of London Boris Johnson, the leader of the opposition, major companies such as Aviva, KPMG and Barclays Bank, and from the third sector, the Joseph Rowntree Foundation.

- 2.4 Adoption of the Living Wage is a voluntary process which is aimed at providing employees and associated contract workers with a rate of pay that enables them to support themselves and their families.
- 2.5 The current statutory minimum wage in the UK is £6.31 per hour, by contrast the London Living Wage is currently £8.80 per hour and for those outside London the current Living Wage is £7.65 per hour. The rates are set annually and independently and are calculated according to the basic cost of living in the UK.
- 2.6 Derbyshire Constabulary and the Police and Crime Commissioner are already Living Wage employers in respect of staff and police officers. A further consideration is now whether, during a procurement process, there is a requirement for contractors to pay a UK Living Wage to their staff if successful, and whether this would infringe EU procurement law/Public Contracts Regulations 2006.
- 2.12 Where social considerations, such as paying employees the Living Wage, are used as award criteria, they must:
- Be relevant and linked to the subject matter of the contract;
 - Be proportionate to the needs of the contracting authority and not discriminatory;
 - Be reasonably specific and expressly mentioned in the OJEU notice and tender documents;
 - Be effective enough to enable identification of the most economically advantageous tender;
 - Not confer an unrestricted freedom of choice.
- 2.13 Where social considerations are incorporated as contract conditions (rather than used as award criteria), they must be:
- Non-discriminatory;
 - Indicated in the OJEU notice or tender documents;

- True contract conditions and not disguised as selection or award criteria – Tenderers' ability to comply with the conditions should not be assessed as part of the selection or award stage, but tenderers must undertake to comply with the conditions if they are successful in being appointed.
- 2.14 In certain circumstances the payment of a Living Wage to workers employed by a contractor may be viewed as improving the social and economic wellbeing of an area and so the Living Wage is likely to be a relevant consideration under the Act, where it is relevant to the contract being procured and where the action (imposition of the Living Wage) is proportionate.
- 2.15 As an advocate of the of the Living Wage within future public contracts the Commissioner sees the advantages of increased spending power benefiting the local economy as well as the increased productivity resulting from increased morale and reduced absenteeism and staff turnover.
- 2.16 There may be cost implications of introducing a Living Wage condition to procurement contracts, especially in the current economic climate. It should be noted that the Federation of Small Businesses has expressed concern there may be an impact on some SMEs where wages represent a high proportion of their cost base.
- 2.17 A rough estimation of the potential increased cost on a low wage (typically) contract currently providing a service to the Constabulary would be about £35k a year should Derbyshire Police introduce the Living Wage for relevant contracts.
- 2.19 This policy would apply directly to Derbyshire let contracts and by negotiation for regional or national basis contracts.

National Guidance: Public Services (Social Value) Act 2012

- 2.20 The Public Services (Social Value) Act 2012 ('the Act') became effective on 31 January 2013. The Act makes it a statutory requirement for public authorities (including Police Forces) to have regard to economic, social and environmental wellbeing in connection with public services contracts and framework agreements.
- 2.21 More specifically public authorities are required to consider:
- How what is proposed to be procured may improve the economic, social and environmental wellbeing of the relevant area (i.e. the area consisting of the area or areas of the one or more authorities on whose behalf a public services contract is, or contracts based on a framework agreement are, intended to be made); and
 - How the contracting authority may act with a view to securing that improvement in conducting the process of procurement.
- 2.22 When considering these matters the Commissioner must consider only matters that are relevant to what is proposed to be procured and in doing so the extent to which it is appropriate in all the circumstances to take those matters into account.
- 2.23 Furthermore, the Commissioner must consider whether to undertake any consultation as to the matters that must be considered as listed above. The Commissioner is not obliged to carry out consultation but must at least consider whether it is appropriate to do so.
- 2.24 The Act only applies to services contracts which are caught by the Public Contracts Regulations 2006, i.e. public services contracts and framework agreements (including Part B services, as well as goods and works contracts procured in combination with services) above the EU total contract value threshold of £173,934.

2.25 It is noted that as part of its Process Project, the East Midlands Strategic Commercial Unit (EMSCU) is currently developing a number of policies, procedures and guidance notes that promote the consideration of economic, social and environmental wellbeing as part of the procurement process. For example, a Small & Medium Enterprises (SME) Policy was recently approved at the EMSCU Programme Board and procurement policies/guidance are scheduled to be produced covering Equality & Diversity and the Environment.

Next step

2.26 As a next step, it is proposed that further consideration be given as to how Derbyshire police might implement the Act. This will be done by

- Being clear on the values of the Commissioner and the Police Force – what are their key social values and those of its stakeholders. Ensuring the values are in line with the corporate strategy and culture. If appropriate, engage consultation with key stakeholders and the third sector;
- Document the relevant social values and how they will be considered in practice;
- Review the PCC's standing orders, contract procedure rules and/or procurement policies so that reference is made to the duty and commissioners understand the core social values;
- Review and update any standard impact forms or processes used in commissioning services so that the duty under the Act is flagged and appropriate action recorded;
- Review and update any standard form reports used for the political leadership/senior managers so that reference to the Act is made and is shown to be considered;
- Consider training the relevant staff within the Police Force/OPCC – the aim of the Act is to embed culture change in the approach to commissioning services. Such training would show the Police Force's/OPCC's commitment to the new duty and how that duty fits in with the overarching EU procurement obligations.

Living Wage

- 2.27 EU procurement law/Public Contracts Regulations 2006, requires contracting arrangements to be relevant and proportionate. It is advised that:-
- In complying with the Social Value Act, pre-procurement consideration is given as to whether the Living Wage:
 - Is a relevant and proportionate matter (award criteria) for the contract in question; or
 - Should be included as a contract performance condition;
 - A Living Wage contract condition must be relevant and proportionate in respect of the contract being tendered and should not seek to go beyond those employees engaged on the contract;
 - The Commissioner will need to ensure transparency about the fact that it has a Living Wage performance condition by making this clear on the face of the OJEU notice and/or the tender documents. Ideally, specific reference should be made to the condition in the OJEU notice.

3. RECOMMENDATIONS

- 3.1 It is recommended that the Strategic Governance Board:
- (a) Notes that the Derbyshire Constabulary and the Commissioner for Derbyshire are already Living Wage employers
 - (b) Acting in line with the requirements of the Social Value Act, going forward, as part of the wider consideration as to the relevant 'social value' that could be gained through a proposed contract, consideration is given on a case by case basis as to whether the Living Wage should be included within the contract, either as an award criteria or a contract condition;
 - (c) Document the Police and Crime Commissioner and Derbyshire Constabulary's key social values, based on the needs of the area and the views of stakeholders/partner agencies (so allowing EMSCU Customer Services to develop guidance/toolkits/training on how such social values must be considered both pre-procurement and during the procurement process);

- (d) Review and update any standard form reports used for the political leadership/senior managers so that reference to the Act is made and is shown to be considered;
- 3.2 Subject to recommendation 3.1 that EMSCU Customer Services develop guidance/training material that facilitates their implementation.

Legal perspective

- 3.3 East Midlands Legal Services confirm the Act places a requirement on each Commissioner to consider the economic, environmental and social benefits of their approaches to procurement before the process starts. Each contracting authority also has to consider whether they should consult on these issues.
- 3.4 Further in respect of the inclusion of a Living Wage condition – consideration should be made on a case by case basis in accordance with paragraph 2.27 above.

4. IMPLICATIONS

All implications are assessed and scored to the table below.

HIGH – supporting explanation and narrative required and to be contained within the report

MEDIUM – narrative to be contained within the report at the discretion of the author

LOW – no narrative required

	LOW	MEDIUM	HIGH
Crime & Disorder	X		
Environmental	X		
Equality & Diversity	X		
Financial	X		
Health & Safety	X		
Human Rights	X		
Legal	X		
Personnel	X		

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