

**Title/Subject:** Living Wage in Adult Social Care

**Meeting:** Integration Joint Board

**Date:** 5 August 2016

**Submitted By:** Chief Officer

**Action:** For Decision

## **1. INTRODUCTION**

- 1.1 The purpose of this report is for the Integration Joint Board to consider the implications of implementing the Living Wage in externally commissioned adult social care services and to approve a methodology for implementation, in partnership with service providers.

## **2. RECOMMENDATIONS**

The Integration Joint Board is asked to:

- 2.1 note the implications and options for implementation of the Living Wage in externally commissioned adult social care services.
- 2.2 agree to delegate authority within available resources to the Head of Procurement & Housing Property (Falkirk Council) to engage with providers, as outlined in paragraphs 4.2 and 4.3 (Option 4), and to report back on the outcome of the implementation process.
- 2.3 agree to the commencement of a new tendering process for currently externally commissioned Homecare and Community Care Services, to facilitate a contract start of October 2017, i.e.: at the end of the current Community Care contract.

## **3. BACKGROUND**

- 3.1 Guidance has recently been issued by the Scottish Government, COSLA, Scottish Care and the Coalition of Care and Support Providers supporting the implementation of the Living Wage in social care. The objective of the guidance is to address the impact of low pay within the social care sector, particularly in relation to recruitment, retention and service quality.

- 3.2 Funding of £3.54m has been allocated to the Falkirk Partnership to support the implementation of the Living Wage from October 2016 and other associated adult social care cost pressures. COSLA have confirmed that funding previously provided as part of the Fairer Working Fund has also now been included in the total allocated funding for 2016/17.
- 3.3 In February 2016, Falkirk Council considered the Revenue Budget Report for Falkirk Council for 2016/17. This report highlighted the funding being made available for implementation of the Living Wage and noted the difficulties in accurately assessing the cost of delivering the Living Wage by externally commissioned providers. At that time, the Scottish Government acknowledged that “a more finely grained analysis of the situation regarding wages and fair working practices within the contracted out care services” would be necessary. Hence the reason that the target implementation date was extended to 1 October 2016. At that time a prudent approach was taken and an assumption made that the full level of funding would be required.
- 3.4 In June 2016, the Integration Joint Board received a report estimating that the additional costs from implementation of the Living Wage would be £2.9m against a total budget of £4.6m, leaving a surplus of 1.7m. Since that time, negotiations with providers have been on-going, giving a better understanding of the cost drivers for providers and more transparency and understanding of current costs. The picture will continue to develop as agreements with providers are concluded. Updates to the available budget have also been made to reflect the treatment of the Fairer Working Fund. Revised estimates are outlined in section 4.3 and Appendix 1. These estimates will, however, be partially dependent on the approach agreed by the Board.
- 3.5 Whilst the objective of the funding and supporting guidance is welcomed, providers cannot be compelled to implement the Living Wage. As such, implementation will require to be achieved through an inclusive and collaborative process. The Scottish Government have highlighted that any Council that does not deliver the commitments set out in the spending package, including delivery of the Living Wage, could be subject to sanctions, i.e.: the funding can be recovered from the Council. Whilst we cannot force providers to pay the Living Wage, it is clear that we are expected to use our leverage with providers to achieve delivery of the Living Wage.
- 3.6 The scale of provision by care providers is significant with c£58m spent per annum, with over 100 different provider organisations. There are also a variety of agreements in place across the provider base, ranging from national contracts, e.g. National Residential Care Home Contract to locally based historical service agreements. Whilst the aim would be to implement the Living Wage in a consistent manner, implementation must also be undertaken in a manner reflective of the specific agreements currently in place.
- 3.7 There are 6 primary categories of adult social care spend, i.e.:

| Category                   | Est. Annual Value | Comments   |
|----------------------------|-------------------|--|
| Residential (Older People) | £21m              | National Care Home Contract. Rates negotiated annually by COSLA/Scotland Excel.  |
| Residential (Adults)       | £12m              | Individual agreements per residential home for adults in area services. Outwith area service agreements based on host authority rates. |
| Homecare                   | £6m               | Falkirk Partnership Contract due to expire October 2016, with option for 2 one year extensions.  |
| Community Care             | £15m              | Falkirk Partnership Contract due to expire October 2017.   |
| Day Care                   | £2m               | Individual service agreements per day care facility.   |
| Other                      | £2m               | Miscellaneous service agreements, including direct support and respite and short-break care.   |

- 3.8 There are a variety of options that could be adopted in terms of implementation. The purpose of this report is therefore to provide the Board with an assessment of the main options and the associated financial implications, in order to agree an appropriate negotiating strategy for implementation.

#### 4. IMPLEMENTATION OPTIONS

- 4.1 In order to inform the consideration of the various implementation options, reference has been made to the supporting guidance. Dialogue has also been undertaken with some providers, Scottish Care and consideration of approaches by other Partnerships has also taken place. Whilst this research has been informative, it is clear that each Partnership will require to implement a “local” approach, reflecting the specific circumstances of the market in the area and the respective contracts and provider agreements that are currently in place within their respective areas.
- 4.2 In considering the options for implementation, Residential Care (both Older People and Adults) requires to be considered separately. Agreement on Older People Residential Care has already been made through COSLA and agreed rates are in place for implementation from October 2016. Considering the similar cost base of Adult Residential Home providers, it would be proposed to use the basis of the national contract as the maximum ceiling for rate negotiations with providers of Adult Residential care.
- 4.3 The main implementation options/approaches that have been considered for all other areas of care are:

**Option 1 - Re-tendering** – This approach has been discounted at this time due to the following factors:

- This approach would not be applicable across the full range of social care expenditure;
- Implementation by October 2016 could not be achieved due to the timescales associated with a tendering exercise;
- Providers have also expressed concern with this approach, given the negative impacts that re-tendering may have on the stability and morale of the workforce and that competitive tendering is seen as one of the factors currently influencing low pay in the sector.

Notwithstanding that this option has been discounted at this time, it would be proposed that preparations commence towards the establishment of a combined Homecare and Community Care Contract, effective from October 2017, i.e.: at the end of the current Community Care contract.

**Option 2 - Standard % uplift** – Consideration has been given to the application of a standard % uplift to current rates, reflective of the differential between the National Living Wage (previously National Minimum Wage) and the Living Wage, i.e.: an increase of £1.05 (15%), the differential between £7.20 and £8.25.

The total cost of this option would be c£3.75m.

This option has also been discounted due to the following:

- This approach is contrary to best value and would reward those providers with higher, more uncompetitive rates;
- The approach assumes that all providers only pay the national minimum wage and does not recognise providers who already pay or are close to paying their staff the Living Wage.

**Option 3 - Single applicable hourly rate** – Consideration has been given to the application of a single hourly rate c£16.50, reflective of the average rate identified through dialogue with a number of providers to facilitate them implement the Living Wage. The adoption of a single hourly rate is also a model being considered by other Partnerships.

This option would cost a total of c£3m.

Whilst this approach more closely reflects the emerging national position, application has been discounted for the following reasons:

- A significant number of current providers (c20) already charge in excess of £16.50 and as such would require to reduce their current rates. This is not considered practical and could impact adversely on continuity of current care provision;
- A reduction in rates could not be enforced and as such it is anticipated that such providers would not progress implementation of the Living Wage to their staff. This would therefore be contrary to the overall objective;

- The approach would also be contrary to the principles of achieving implementation through collaboration and would lead to very difficult provider relationships.

**Option 4 - Adjusted single applicable hourly rate** – In order to address the weaknesses of the above approach, whilst reflecting the emerging national position, consideration has been given to the application of a single hourly rate up to maximum of £16.50 for those providers with rates currently below that level and a maximum increase of £0.50p per hour for those currently above £16.50.

This option would cost a total of c£3.2m, against a budget of £4.4m. The remaining £1.2m would be available to offset on-going social care spend pressures.

This approach is considered to offer a number of advantages over the other options detailed above. In particular, this would provide a more inclusive and collaborative approach to implementation, which is anticipated to provide a greater opportunity for ensuring the delivery of the Living Wage by October 2016.

- 4.4 It should be noted that the above estimates are based on part year implementation for 2016/17 only. As such, the cost estimates will increase significantly in 2017/18 and work is underway to provide full year cost estimates. The Scottish Government have confirmed that funding available for Local Authorities and Integration Joint Boards for 2017/18 is unlikely to be known until December 2016.
- 4.5 When agreement has been reached with each individual provider, contractual agreements will be implemented to ensure that they adhere to their obligations to pay their staff the Living Wage and that they do not adversely impact on other terms and conditions of employment. A monitoring system will also be implemented to ensure these obligations are met on an on-going basis.
- 4.6 The Scottish Government and COSLA have issued a request for information from all partnerships, which seeks to gather information on implementation of the Living Wage commitment and to provide an opportunity for Chief Officers to inform the future considerations of the policy. The deadline for the return to be submitted to the Scottish Government and COSLA was the 18 July 2016.

## 5. CONCLUSIONS

- 5.1 The implementation of the Living Wage in adult social care is considered to address the impacts of low pay in the sector and will positively impact on recruitment, retention and consequently service quality.
- 5.2 Agreement on an implementation mechanism for Older People Residential Care has been reached and this will be implemented from October 2016. It is

proposed that this mechanism is mirrored in terms of provider negotiations for Adult Residential Care.

- 5.3 There are, however, a variety of other options that can be adopted to support the implementation of the Living Wage in the other areas of social care provision. On balance, an adjusted single applicable hourly rate, as outlined in paragraph 4.3 (Option 4) above, is considered to be the most appropriate implementation approach.
- 5.4 Going forward it would be proposed that work commences of preparing a new tendering exercise for Homecare and Community Care, with the objective of having a new contract in place for October 2017. The new contract would consider fully the adoption of fair working practices, in accordance with applicable procurement legislation and supporting guidance.

### **Resource Implications**

Details of the estimated financial implications of the proposed implementation option 4 are attached in Appendix 1. The estimated total cost is £3.2m, including allowance for annual cost inflation (2.5%), due to the increase in the national minimum wage and other associated pay inflation costs.

The estimated total cost is within the overall available funding of £4.4m for 2016/17. It should, however, be noted that no funding agreement has been determined for 2017/18. In addition, the costs for 2016/17 reflect part year impacts, i.e.: from October 2016 and as such future year costs will be higher.

It should also be recognised that demand pressures will impact adversely on any funding differential.

This provides welcome additional capacity in 2016/17 to help meet the broader budgetary pressures the Integration Joint Board is facing.

### **Impact on IJB Outcomes and Priorities**

The implementation of the Living Wage within adult social care will support the delivery of the Falkirk Integrated Strategic Plan 2016-2019 objectives.

### **Legal & Risk Implications**

Providers cannot be legally enforced to adopt the Living Wage. As such, agreement on adoption must be achieved inclusively and collaboratively. It is anticipated that collaborative negotiation will deliver a much higher level of implementation, whilst mitigating some of the risks of potential challenge from providers.

### **Consultation**

Preliminary dialogue has taken place with some providers; Scottish Care and other Partnerships. Following consideration by the Board, it would thereafter be proposed that detailed discussions take place directly with all providers with a view to achieving agreement on implementation of the Living Wage by October 2016. These discussions would be in line with the parameters agreed by the Board.

### **Equalities Assessment**

The implementation of the Living Wage is considered to have a positive impact on addressing low pay and poverty, within a sector where low pay is prevalent.

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Approved for submission by: Patricia Cassidy, Chief Officer

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**Date: 27 July 2016**

### **List of Background Papers:**

1. Scottish Government Finance Circulars
2. COSLA National Care Home Contract Agreement
3. Guidance to support delivery of the Living Wage commitment to Care at Home and Housing Support.

## **APPENDIX 1**

| <b>Category</b>               | <b>Est. Annual Value</b> | <b>Est. Average Increase</b> | <b>Est. Cost 2016/17</b> | <b>Comments</b>   |
|-------------------------------|--------------------------|------------------------------|--------------------------|---|
| Residential (Older People)    | £21m                     | 4.5%                         | £0.95m                   | NCHC settlement – 2.5% full year & 3.9% half year   |
| Residential (Adults)          | £12m                     | 4.5%                         | £0.50m                   | Negotiation on a home by home basis up to a maximum reflective of the above NCHC settlement   |
| Homecare                      | £6m                      | 10.0%                        | £0.60m                   | Based on para 4.3 option 4, using a maximum hourly rate of £16.50 for providers currently below £16.50 and a maximum £0.50p uplift for those above £16.50 |
| Community Care                | £15m                     | 5.0%                         | £0.75m                   | As above  |
| Day Care                      | £2m                      | 10.0%                        | £0.20m                   | As above  |
| Other                         | £2m                      | 10.0%                        | £0.20m                   | As above  |
| <b>TOTAL EXPENDITURE</b>      | <b>£58m</b>              |                              | <b>£3.2m</b>             |   |
| <b>FUNDING</b>                |                          |                              |                          |   |
| Budgeted Inflation            |                          |                              | £0.9m                    |   |
| Additional Grant Funding      |                          |                              | £3.5m                    |   |
| Fairer Working Fund           |                          |                              | £0.0m                    | Included within the above funding   |
| <b>TOTAL FUNDING</b>          |                          |                              | <b>£4.4m</b>             |   |
| <b>Estimated Differential</b> |                          |                              | <b>£1.2m</b>             |   |