SUBMISSION FROM WEST DUNBARTONSHIRE COUNCIL

1. Introduction

1.1 West Dunbartonshire first examined the possibility of introducing the Scottish Living Wage in June 2009 and following careful consideration of the potential impact on existing pay and grading structures took the decision to introduce the Scottish Living Wage in November 2010, implementing retrospectively from May 2010 by means of a collective agreement with local Trades Unions. The Council welcomes the opportunity to provide evidence to the Local Government and Regeneration Committee’s Inquiry into the Living Wage in Scotland and to provide an insight to the Committee in relation to into many of the important issues considered as part of the successful implementation.

2. Background

2.1 The Scottish Living Wage Campaign (SLWC) seeks to tackle issues of low pay and is supported by a range of community, trade union and campaigning organisations including the Scottish Trade Union Congress (STUC), the Poverty Alliance, the Scottish Churches Social Inclusion Network and the Scottish Interfaith Council.

2.2 There are different thresholds for calculating low pay and hence how much a living wage is. The Joseph Rowntree Foundation’s Minimum Income Standard (MIS) http://www.jrf.org.uk/publications/minimum-income-standard-2010 Project defines the minimum income needed by a family or individual to ensure an acceptable standard of living. Based on this and associated statistical information the Scottish living wage is currently set at £7.20.

3. Addressing Low Pay

3.1 West Dunbartonshire Council is committed to addressing low pay and the pay and grading structure introduced in March 2009 as part of the Single Status Agreement made significant inroads into addressing low pay issues within the Council while providing for the first time a pay and grading structure that complies with equal pay legislation.

3.2 Upon implementation of the new pay and grading structure as part of the local implementation of the National Single Status Agreement the minimum hourly rate on the lowest grade (Grade 1) was set at £6.36 while the maximum hourly rate on Grade 1 was £6.96. At that time approximately 400 employees were paid on an hourly rate of less than £7.15 per hour.

4. Development of Pay Model

4.1 On 1 March 2009 West Dunbartonshire Council introduced a new pay and grading structure as part of the local implementation of the National Single Status Agreement. The new pay and grading structure consisted of 12 grades, each with 4 incremental steps, with a minimum hourly rate of £6.32 and a maximum hourly rate of £6.92 (based on 2009/2010 salary points) on
the lowest grade,(Grade 1). Employees were placed on the scale upon implementation of the Single Status Agreement and were eligible to receive incremental progression to the maximum point of the scale.

4.2 In developing the WDC pay and grading structure recognised statistical techniques, national guidance on the development of pay and grading structures and guidance from the former Equal Opportunities Commission were fully utilised. Statistical techniques including regression analysis were used to determine the relationship of job evaluation points (determined using the Scottish Councils’ Job Evaluation Scheme) to pay. This analysis identified clusters of jobs with similar demands and also gaps in these clusters in which to place grade boundaries. The outcomes of the regression analysis were also used to anchor the pay points of the new grades to the nationally agreed spinal column pay points for Scottish Joint Council (SJC) employees. The pay structure developed was fully examined and endorsed through an Equality Impact Assessment to ensure that the pay structure fully met the Council’s duties under the Equal Pay Act. This framework would provide a robust defence against future equality claims.

4.3 West Dunbartonshire Council has a statutory duty to provide equal pay for its employees and to conduct regular equal pay audits. Failure to meet these statutory responsibilities may result in future costly litigation and possible enforcement action by the Equalities and Human Rights Commission.

5. Implementation Issues

5.1 While all Scottish local authorities have the flexibility to determine their own pay grades, all hourly rates for SJC employees are determined nationally through agreements reached at the Scottish Joint Council, which negotiates on behalf of Local Government Employees and is comprised of both employers and Trade Unions. In considering the implementation of the Scottish Minimum wage in 2009 there was no hourly rate corresponding to £7.00 and the lowest hourly rate set nationally at that time was £6.13 per hour.

5.2 As part of the 2008/2009 SJC pay agreement it was agreed that an SJC Working Group would be established to consider Trade Union assertions of low pay in Scottish local government and at the time of considering implementation discussions were underway at a national level in this regard. To support the Employers Function at COSLA in these discussions all Councils were requested to provide details on their current pay and grading structures as well as the number of staff on pay points below £7 per hour and the implications relating to pay and grading frameworks. Concerns were expressed that bottom loading of local government pay would be extremely contentious as it carried potential legal risks. The key risk being that bottom loading of pay structures based on job evaluation outcomes would seriously compromise the validity of these structures and potentially leave Councils vulnerable to legal challenge under the requirements of the Equal Pay Act.
Any move towards a Living Wage had the potential to distort the pay and grading models developed by Councils based on the evaluation of job roles and consequently the link between job content and payment established through the application of statistical methodology.

5.3 Advice received from the Scottish Joint Council at that time was that authorities should develop pay structures based on job evaluation outcomes and utilise the nationally set of spinal column points as agreed with Trade Unions as part of the national pay bargaining process.

**Equality Impact Assessment**

5.4 In light of the considerable work that was undertaken to create a Pay and Grading structure that fully met West Dunbartonshire Council’s equality duty and provided a robust defence against further costly litigation, an independent external assessment of the equality impact on the introduction of the Scottish Living Wage to the pay and grading arrangements was undertaken. This was considered essential to ensure that any alterations to the pay and grading structure were fully considered in relation to the Council’s statutory equality duty and that any potential risks to the Council from future direct or indirect sex discrimination claims were highlighted. The assessment, undertaken in 2009, examined the proposal to place all employees in grade 1 on a fixed salary point reflecting the Scottish Living Wage.

5.5 While it was noted that any proposal to adopt a minimum wage would provide financial benefit to approximately 400 of the lowest paid employees within the Council, the majority of whom are female, it also gave rise to a number of concerns the most significant of which were:

- the rate would no longer reflect the assessment of the job content through the job evaluation process,
- the differential in pay rates between grade 1 and 2 would be significantly reduced whilst the differential in job content would not have changed
- The adoption of an arbitrary rate not linked to job evaluation and the statistical methodology used to develop the pay structure would undermine the integrity of the pay structure
- The deployment of separate methods of setting pay for different groups of employees within the same job population (to whom a common Job Evaluation scheme applies) potentially would render the Council vulnerable to a challenge that the pay structure is fundamentally flawed.

5.6 The Equality Impact Assessment of the proposal highlighted real concerns that the introduction of a minimum wage level would distort the pay and grading model developed upon the evaluation of roles and the link between job content and payment levels established through the application of statistical methodology. It concluded that by undermining the integrity of the overarching pay and grading structure the Council would be vulnerable to legal challenge and be at risk in relation to the provision of a robust defence of
its pay structure in relation to the requirements of the Equal Pay Act. To move away from such a robust process and utilise hourly rates on an arbitrary basis could leave the authority exposed to potential legal challenge especially if one particular job group or groups were seen to be advantaged without a solid foundation in relation to job evaluation outcomes.

6. **Risk Analysis**

6.1 Following examination of the independent Equality Assessment undertaken and the conclusions contained therein, significant risks associated with the proposed alterations to the pay and grading structure were identified. The major risk relating to the introduction of the Scottish Living Wage related to undermining the integrity of the pay structure, particularly outwith the national framework of hourly rates, and to the possible impact on the Council’s ability to meet its equality duties. Furthermore to implement any such change would have moved the Council away from the national agreement and associated guidance on Single Status implementation.

6.2 In exploring any alteration to the pay and grading structure consideration was also given to the impact on competitiveness of resulting salary increases and to the impact this may have on the ability to retain services in house. In addition increases to salaries would require to be justifiable in line with current auditing arrangements and expectations under Best Value to demonstrate competitiveness.

7. **Financial Implications**

7.1 The estimated costs associated with implementing a £7.15 Scottish Living Wage for a full financial year based on 2010/11 salary was £200,000. Associated costs would be recurring from implementation date and would require to be included in any future budget provision. Any subsequent increase in the level set as the Scottish Living Wage would require to be included in future budget provision.

8. **Implementation**

8.1 Within West Dunbartonshire Council there was a clear political will to consider the introduction of the Scottish Living Wage however implementation was constrained by concerns and risks relating to any adjustment to the current pay and grading structure. In order to move this forward West Dunbartonshire Council agreed in November 2010 that discussions with Trade Unions and Management should focus on the achievement of a collective agreement to support introduction without recourse to alteration of the pay and grading structure and thereby maintain the integrity of the pay model. The introduction of the Scottish Living Wage with full agreement from the Trade Unions was seen as being integral to its successful introduction.

8.2 The commitment to the introduction of the Scottish Living Wage would sit alongside the pay model and anyone whose hourly rate of pay fell below this level would be uplifted to the “living wage” rate of pay. The proposed
approach for the introduction of the “living wage” does not change the pay and grading structure but provides a separate and discrete arrangement to address low pay that will require review on a regular basis. There is a clear objective justification for the introduction of an hourly rate that is different to that outlined within the current pay model and this provides the evidence to support a material factor defence not linked to sex in the event of any future claim in relation to pay inequality. Additionally the Council would be in a stronger position to defend any potential challenge while the Scottish Living Wage level sits below Grade 2 on the pay and grading structure, as it does currently. However this position would require to be fully reviewed in the light of any future change to the “Scottish Living Wage” rate.

8.3 Any uplift in salary to the “living wage” rate of pay would be treated as contractual earnings and as such would attract both employee and employers superannuation contributions.

8.4 Consideration was also given to whether the implementation of the Scottish Living Wage could be further extended to external contractors providing services on behalf of the Council. On receipt of legal advice it was agreed that West Dunbartonshire could not set salary levels in relation to external service providers.

8.5 The Collective Agreement reached prior to implementation also excluded Apprentices and employees on training contracts from the Scottish Living Wage however any apprentice rates tracked to Grade 1 of the council pay and grading structure would be reviewed in light of implementation arrangements.

9. Conclusions

9.1 In considering the implementation of the Scottish Living Wage West Dunbartonshire Council thoroughly considered the associated risks and challenges, particularly in relation to the setting of pay rates not linked to job evaluation outcomes. This approach was particularly relevant as historical practice of setting pay rates without recourse to robust job evaluation methodology has exposed the Council to costly litigation.

9.2 However in order to meet the commitment to address low pay through introduction of the Scottish Living Wage while mitigating associated risks and maintaining the pay framework developed through the use of the Scottish Councils’ Job Evaluation Scheme outputs mapped to nationally agreed salary points it was agreed that the Council would seek a collective agreement with the Trade Unions on the introduction of the Scottish Living Wage as separate to the existing pay model. Low pay would be addressed through an allowance not tainted by sex, reviewed on a regular basis and supported by Trades Unions thus mitigating an element of risk.

9.3 The introduction of the Scottish Living Wage within West Dunbartonshire Council was a complex and challenging issue requiring careful consideration of a range of legal, budgetary and HR issues particularly at a time when the Council had recently concluded the implementation of Single Status. Careful consideration of the issues and challenges has allowed the successful
implementation of the Scottish Living Wage within a robust pay and grading framework.

West Dunbartonshire Council

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