PRACTICE NOTE FM NUMBER 2
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Including the Living Wage in the NEC4 Facilities Management Contract (FMC)

OVERVIEW

This practice note is written to highlight the importance of paying the Living Wage throughout the supply chain in facilities management contracts. It is particularly appropriate for contracts which include the provision of 'soft services' such as cleaning and security.

The practice note also sets out the differences between the Living Wage, as recommended by the Living Wage Foundation, and the lower statutory pay rates which are set by the UK Government.

This document should be read in conjunction with guidance produced by the Institute of Workplace and Facilities Management (IWFM) and the Living Wage Foundation: *The Living Wage - Why pay it and what does it mean for our profession?* The guidance outlines the tangible benefits and practicalities of paying the Living Wage - despite the additional outlay involved - highlighting independent research which shows powerful evidence of links between higher rates of pay and improved service delivery and performance. This is reinforced by case studies from organisations which pay the Living Wage and testimonies from individual workers who have benefitted. The guidance can be found here.

This practice note then explains how this would be implemented in an NEC4 FMC. However, consideration of changes to the Living Wage may relate to other NEC4 contracts and these principles will still apply to those contracts.

INTRODUCTION

Organisations in the workplace and facilities management profession are increasingly focused on the differences they can make in areas such as wellbeing, comfort, flexibility and accessibility, for the people who work, live and stay in buildings of all types.

While pay is not the only driver for workers, it is a major source of concern, especially for those delivering frontline services. Improving pay not only supports individuals and their families, it can also benefit an organisation's bottom line and local communities.

WHAT IS THE LIVING WAGE?

Often referred to as the 'real' Living Wage, this rate of pay is the only minimum wage based on actual living costs. It is calculated annually by the Resolution Foundation, overseen by the Living Wage Commission, based on a basket of essential goods and services that represent the basic needs of workers and their families, such as housing, food, clothing, utilities, council tax and childcare. These essential goods and services are determined through research on minimum income standards undertaken by Loughborough University's Centre for Research in Social Policy. A higher Living Wage rate applies for workers in London to reflect the higher local living costs.

The Living Wage is promoted by the Living Wage Foundation as the hourly rate full-time workers aged 18 or over need to afford a minimum 'decent' standard of living. New rates are announced during Living Wage Week in November each year; Living Wage employers should introduce the new rates within six months of the announcement.

There are currently more than 8,800 accredited Living Wage employers covering a wide range of sectors and workplace environments, directly employing almost two million people.

To encourage wider uptake of the Living Wage in the facilities management and outsourcing sector - particularly in low-paid sectors such as cleaning, security and hospitality - the Living Wage Foundation set up the Recognised Service Providers scheme. Members not only help to advocate for the real Living Wage to their clients and suppliers, they have committed to paying all directly employed members of staff, not tied to client contracts, the real Living Wage. They have also committed to always offer a real Living Wage bid alongside every market rate submittal to all prospective and current clients. This means that the client always has the choice to implement the Living Wage at the point of tender.

Summary of UK wage rates

	NATIONAL MINIMUM WAGE	NATIONAL LIVING WAGE	LIVING WAGE
Who sets it?	Government	Government	Living Wage Foundation
What is the hourly rate?	£8.36**	£8.91**	£9.50* £10.85* in London
Is it a legal requirement?	Yes	Yes	No
What age groups are covered?	21 to 22 years	23 years and older	18 years and older
How is it set?	Negotiated rate based on recommendations from businesses and trade unions	60% of national median earnings	Based on cost of essential household goods and service
Is there a different rate for London?	No	No	Yes

All rates correct as at 1 November 2021.
* New rates to be announced on 15 November 2021 - for details of the latest Living Wage rates click here.
** New rates from 1 April 2022: National Minimum Wage £9.18, National Living Wage £9.50.

THE BENEFITS OF PAYING THE LIVING WAGE

In addition to the moral and ethical argument for paying higher wages, the benefits for employees and employers include:

- Staff wellbeing - pay is strongly linked to physical and mental health outcomes for individuals: for those on low pay, knowing they can at least meet their living costs helps to reduce stress and sense of vulnerability
- Improved productivity and service levels - paying staff a fair wage raises morale, engagement and motivation; reduces absenteeism and sickness rates; boosts individual and collective performance and productivity; improves customer satisfaction and loyalty; and increases profit margins
- Better recruitment and retention - higher pay improves staff loyalty and engagement; brings down recruitment, training and overall personnel costs; and makes it easier to attract new staff at all levels
- Corporate reputation and social value - being a Living Wage employer helps businesses stand out from competitors and improves reputations within both the business and local communities; improving the spending power of employees or contractors creates a ripple effect through the local economy and has a wider social and economic benefit by lowering government spending on benefits, reducing poverty related crime and improving social mobility

IMPLEMENTATION IN THE FMC

The FMC is an international contract, and therefore does not include any clauses specifically relating to UK practice or law within its core clauses. Any obligations on the *Service Provider* (the FMC term for the contracting organisation) to pay at specific wage levels - in the UK the National Minimum Wage, the National Living Wage or the Living Wage (as discussed here), need to be considered with this in mind.

Those drafting the contract in the UK therefore need to consider three things:

1. The specific wage rates they wish to impose on the *Service Provider*.
2. Whether or not these wage rates are required by law.
3. Whether any change to the wage levels during the contract will be the risk of the *Client* or the *Service Provider*.

Stating the wage rate

Of the three wage rates above, the National Minimum Wage and the National Living Wage are required under UK law. Therefore, the FMC, provided the *law of the contract* is stated to be the Law of England and Wales, or the appropriate alternative in other parts of the UK, has no need to state this wage rate applies, nor any need to pass this requirement along the supply chain.

This is not the case with the Living Wage. This is a requirement by the *Client* that is more onerous than that required by law. The contract therefore needs to place this obligation on the *Service Provider*, and this is best done through the *additional conditions of contract* stated in Contract Data part one. The *Service Provider* will then take account of the implications of this in its pricing of the contract at the tender stage.

Any clause incorporating the Living Wage into the contract needs to be written in the style and language of the NEC. The drafting should include, as appropriate:

- A definition of the Living Wage.
- The requirement that the *Service Provider* does not pay less than the Living Wage.
- A further requirement on the *Service Provider* to ensure where possible that the adoption of the Living Wage is passed along the supply chain to its suppliers and Subcontractors
- A statement as to the implications of breach of this obligation. If the result of a breach is to be considered a reason for termination, then the termination event needs linking to the Termination Table.

Changes to the wage rates

The core clauses in the FMC place the risk of subsequent changes to prices, in this case the wage rates, on the *Service Provider*. Unless the contract allows otherwise, the *Service Provider* therefore takes the risk of any changes throughout the duration of the contract. If the *Client* wishes to accept this risk itself, the procedure in the contract is to make this change of rate a compensation event.

For a change to the National Minimum Wage and the National Living Wage this is best done in one of two ways. The *Client* either incorporates secondary Option X2 – change in the law – into the contract, or adds it as a specific and new compensation event into the Contract Data part one, the *Client's* section. The difference is that X2 will make any change in the law a potential compensation event, while describing the change of rates as a specific compensation event will only consider rate changes, not any other changes in the law.

Option X2 will not work for the Living Wage because a change to this rate is not a change to the law. In this case, the compensation event needs specifically adding.

Clients need to recognise the possibility of an over-recovery here, if the contract also allows for inflation, for example with secondary Option X1. Depending on the inflation index used, the index may also be affected by the change in minimum wages. However, the effect of the wage rate changes on the inflation index used is likely to be small, so only including inflation to recompense a *Service Provider* for changes to the wage rates is likely to be ineffectual.

One point should be made here. The compensation event for the change to the wage rates will only affect the impact those changes have directly on operatives paid below the new rates. It does not give the *Service Provider* any opportunity to be recompensed for any changes the *Service Provider* may need to make to maintain salary differentials.

Acknowledgements

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Find out more about the Living Wage at the Living Wage Foundation

