

Report

Cabinet



Part 1

Date: 13th February 2019

Item No: 9

Subject **Signing up to the Welsh Government Code of Practice, Ethical Employment in Supply Chains**

Purpose To request Cabinet approval to sign up to the Code of Practice

Author Head of Finance
Procurement Manager

Ward All

Summary A Code of Practice has been established by the Welsh Government to support the development of more ethical supply chains to deliver contracts for the Welsh public sector and third sector organisations in receipt of public funds.

Evidence illustrates that unethical employment practices are taking place in supply chains throughout Wales and beyond.

This Code is designed to ensure that workers in public sector supply chains are employed ethically and in compliance with both the letter and spirit of UK, EU, and international laws.

Local Authorities in Wales are expected by the Welsh Government to sign up to and adopt the policy, and embed the twelve principles of the Code of Practice into the Council in a meaningful and proportionate manner.

Proposal (1) To approve signing up to the Code of Practice
(2) To approve the implementation plan shown in Appendix 1, to be overseen by the Deputy Leader in his role as 'champion' for ethical procurement / practices

Action by Deputy Leader
Head of Finance

Timetable Immediate

This report was prepared after consultation with:

- Chief Executive
- Strategic Directors
- Heads of Service
- Cabinet Member for Assets, Equalities & Member Development

Background

The Welsh public sector spends around £6bn every year on goods, services and works involving international supply chains. A huge range of goods, works and services are purchased by every part of the public sector but the unifying factor is that people are involved in each stage of these supply chains.

It is therefore vital that, at every stage, there are good employment practices for the millions of employees. Good employment practices, which empower and reward workers, help to improve the quality of life of people here in Wales and further afield and, in turn, result in better quality goods and services. Poor – and even unethical – practices, such as the unfair use of zero hours contracts, can lead to poor morale, high staff turnover and, in some cases, can be dangerous and exploitative.

Although slavery was outlawed many years ago, and is illegal throughout the world, it is an endemic problem in some industries and in some parts of the world. Indeed, cases of people being held in conditions of modern slavery are discovered within the UK. We must do more to ensure these practices cannot take place in Wales and in our public sector supply chains around the world.

The Code covers the following employment issues:

- Modern Slavery and human rights abuses
 - Blacklisting
 - False self-employment
 - Unfair use of umbrella schemes and zero hours contracts
- and
- Paying the Living Wage

In this respect Local Authorities in Wales are expected by the Welsh Government to sign up to and adopt the policy, and embed the twelve principles of the Code of Practice into the Council in a meaningful and proportionate manner.

In order to embed the twelve principles, an Action Plan on what Newport City Council will do to meet the Codes commitments has been produced and is attached in Appendix A.

There are no direct legal implications of either signing up to the Code of Practice or not.

There are no direct staffing issues of either signing up to the Code of Practice or not.

Financial Summary

| | Year 1 (Current) £ | Year 2 £ | Year 3 £ | Ongoing £ | Notes including budgets heads affected |
|---------------------------------|-----------------------------------|---------------------|---------------------|----------------------|---|
| Costs (Income) | | | | | Not applicable |
| Net Costs (Savings) | | | | | |
| Net Impact on Budget | | | | | |

Risks

| Risk | Impact of Risk if it occurs* (H/M/L) | Probability of risk occurring (H/M/L) | What is the Council doing or what has it done to avoid the risk or reduce its effect | Who is responsible for dealing with the risk? |
|--|--------------------------------------|---------------------------------------|---|---|
| Not signing up to the Code of Practice | M | L | All Councils in Wales are expected to sign up to the Code. Not signing up will expose the Council to challenge from WG and potentially bad publicity. There is little that can be done to mitigate this risk. | Cabinet/Leader |
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* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

This code of practice is closely associated with a number of council policies and priorities, with strong positive links to the authority's Corporate Plan. Well-being Objective 4 within the plan commits the authority to developing 'cohesive and sustainable communities by working towards 'a globally responsible Wales', this code of practice is an important step in meeting that challenge.

Adopting the code of practice would also help the authority fulfil its obligations under the Equality Act by making a positive contribution to the authority's general equality duty. The code of practice also sits well alongside the authority's Strategic Equality Plan, specifically Equality Objective 9 that acknowledges the strong role the authority has to play in strategic leadership in the field of equalities.

Options Available and considered

Newport City Council has the option to either sign up to the Code of Practice or to not sign up.

Preferred Option and Why

The preferred option is to sign up to the Code of Practice. Adopting the policy and embedding the twelve principles into our working practices can only help improve the lives of employees working for suppliers that provide goods, works or services to the Council.

Comments of Chief Financial Officer

The action plan represents a list of activities required to meet the key principles of the WG Code of Practice and approval of this will show the Council's commitment and intent to support this, in practical terms. Most actions have no financial implications but where there is, they will need to be understood before implementation and appropriate budget provisions made, as needed.

There are no timescales for implementation of the actions plan set by WG. Therefore, the Council will implement the action plan in line with the timescales shown and move towards meeting the key principles as resources allow.

Comments of Monitoring Officer

The proposal to adopt the Welsh Government Code of Practice on Ethical Employment in supply chains is in accordance with the Council's statutory powers under Section 135 of the Local Government Act 1972 and section 17 of the Local Government Act 1988. Under the 1988 Act, it was originally unlawful

for local authorities to have regard to “non-commercial” matters when procuring goods and services and entering into supply contracts. Any non-commercial considerations were prohibited, both in relation to the selection of tenders and the terms and conditions of local authority contracts. However, those rules have now been substantially relaxed and the Local Government Best Value (Exclusion of Non-commercial Considerations) (Wales) Order 2002 repealed those parts of section 17 that related to the terms and conditions of employment of supply contractors. The Council is also able to have regard to “social value” considerations, and not just commercial factors, when contracting for supplies and services. For the most part, the ethical standards required in the Code are already embodied within procurement processes and contract conditions, particularly outsourcing contracts and staff transfer arrangements. However, the adoption of the Code and its oversight by the Cabinet Member for Assets and Member Development will formalise the process and provide a more robust and transparent arrangement for monitoring implementation and compliance. The Code is more of an operational policy and does not substantively change Contract Standing Orders, and therefore its adoption is an executive decision for the Cabinet.

Comments of Head of People and Business Change

This Welsh Government-established Code of Practice has been designed to support the development of more ethical supply chains across the public sector in Wales. As such the adoption of this Code of Practice represents an important step in the further entrenchment of the 7 Well-being Goals set out in the Well-being of Future Generations Act, with clear positive contributions towards making Newport and Wales a more equal and globally responsible place.

Beyond the Well-being Plan for Newport, this Code of Practice also makes positive contributions towards delivering on the authority’s general equality duty as laid out under the Equality Act, with specific contributions towards helping the authority develop more cohesive communities.

In addition, the integration of the monitoring of the Code of Practice within the Strategic Equalities Annual Report is not only logical but makes it easier for the general public to navigate and understand in a more comprehensive way, the authority’s contributions to the equalities landscape. This makes our work more transparent.

Comments of Cabinet Member

In an era of human slavery, people trafficking and exploitation, it is essential not only that this local authority has ethical principles and practices, but also that it is seen by the community to adopt them. The Code of Practice is a fundamental safeguard in this respect, to ensure that we, as a tier of government, set an example and a lead in ensuring the implementation of our policies, supply chains and processes are ethically based. The current administration is strongly committed to this both in principle and practice.

Local issues

Not applicable

Scrutiny Committees

Not applicable

Equalities Impact Assessment and the Equalities Act 2010

A Fairness & Equalities Impact Assessment has been undertaken and is available to view.

Children and Families (Wales) Measure

No consultation was needed for this report.

Wellbeing of Future Generations (Wales) Act 2015

It is possible that improving the employment practices and opportunities for employees in our supply chain may have a positive effect on households with regards to tackling poverty and helping generate a more prosperous and healthier Wales.

Ethical employment practices throughout the supply chain should improve opportunities in terms of working life for adults, by eradicating poor employment practices, reducing zero hour contracts, improving employer/trade union relationships, eliminating blacklisting practices and providing safeguards against modern slavery. The Council will expect our suppliers to also sign up to the code and promote ethical employment practices to their supply chains. Improving ethical practices in our supply chains may result in Welsh employers being more attractive to potential employment candidates therefore contributing to a more resilient and equal Wales.

The Code of Practice seeks to improve the employment practices of supply chain contractors (where appropriate in certain sectors). This links in with safeguarding protocols with regards to modern slavery. Applying the code can improve working conditions for employees that are employed by suppliers that deliver goods and services to the Council. This in turn can promote better health and wellbeing for those employees who enjoy fair working practices, and helping towards a more globally responsible Wales.

Crime and Disorder Act 1998

Not applicable

Consultation

Not applicable

Background Papers

Set out a list of any relevant background papers and whether they are available to the public.

Dated: 24th January 2018

Newport City Council, Code of Practice Commitments 'Action Plan'

| No | Code of Practice Commitments | What Newport City Council will do to meet the Codes Commitments – Our Action Plan | Current or New Activity & Timeline | Owner(s) |
|-----------|--|---|--|---|
| 1 | <p>Produce a written policy on ethical employment within our own organisation and our supply chains. Once produced we will communicate the policy throughout our organisation and we will review it annually and monitor its effectiveness. As part of this we will:</p> <p>Appoint an Anti-Slavery and Ethical Employment Champion.</p> | <p>We need to produce a written policy on ethical employment within our own organisation and our supply chains and communicate through the Council and via Council internet and Intranet.</p> <p>We need to translate the policy to comply with Welsh Language Standards.</p> <p>Arrange for the policy to be monitored in line with Council procedure every two years.</p> <p>-----</p> <p>Include Policy in all Tender documentation once approved.</p> <p>-----</p> <p>We need to appoint an Anti-Slavery and Ethical Employment Champion in the form of the Cabinet Member for Assets, Equalities & Member Development.</p> | <p>New policy required, to be written, translated and published in February 2019</p> <p>-----</p> <p>New activity, for Procurement to manage from February 2020</p> <p>-----</p> <p>Current position filled by Cllr mark Whitcutt</p> | <p>Head of HR</p> <p>-----</p> <p>Service Manager Procurement</p> <p>-----</p> <p>Cllr Mark Whitcutt appointed</p> |
| 2 | <p>Produce a written policy on whistle blowing to empower staff to raise suspicions of unlawful and unethical employment practices, and which places a responsibility on staff to report criminal activity taking place within our own organisation and our supply chains. Once produced we will</p> | <p>We have an existing policy can be found via; https://intranet.corporate.newport/sites/live/Lists/Announcements/News.aspx?ID=509</p> <p>We need to review existing Whistle Blowing Policy and amend for approval if required.</p> <p>-----</p> <p>We need to Incorporate promotion of the 'Unseen UK' App to raise awareness of Modern Slavery and reporting mechanisms. This will be done as part of internal and external communications and incorporated within 'Modern Slavery' awareness training.</p> | <p>Current policy published on our intranet</p> <p>New activity to review policy in February 2019</p> <p>-----</p> <p>New activity for PP&I to promote the app, and to include within training commencing February 2019</p> | <p>HR</p> <p>-----</p> <p>Policy, Partnership & Involvement</p> |

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| | <p>communicate the policy throughout the organisation. We will review the policy annually and monitor its effectiveness. We will also:</p> <p>Provide a mechanism for people outside our organisation to raise suspicions of unlawful and unethical employment practices.</p> | <p>-----</p> <p>We need to allow people outside the Council that wish to, raise suspicions of unlawful and unethical employment practices. This can be addressed through the Councils website, see http://www.newport.gov.uk/en/Council-Democracy/Equalities-the-Welsh-language/Human-trafficking-and-modern-day-slavery.aspx</p> | <p>-----</p> <p>Current activity, available on our website</p> | <p>-----</p> <p>Policy Partnership & Involvement</p> |
| 3 | <p>Ensure that those involved in buying/procurement and the recruitment and deployment of workers, receive training on modern slavery and ethical employment practices, and keep a record of those that have been trained.</p> | <p>We need to publish a copy of the Code of practice – ethical employment in supply chains via the Authority’s intranet and internet.</p> <p>-----</p> <p>ELearning Tool to be made available to all employees involved in recruitment and procurement, and a record kept of those undertaken training. i.e. all 350 Council supervisors/managers, as well as all HR Officers and Procurement Officers to undertake ELearning training.</p> <p>https://learning.wales.nhs.uk/course/view.php?id=1050 English https://learning.wales.nhs.uk/course/view.php?id=1051 Welsh</p> <p>-----</p> <p>We will signpost staff via Equalities intranet page to the link to WG Anti-Slavery webpage and YouTube video;</p> <p>https://gov.wales/topics/people-and-communities/communities/safety/anti-slavery/?lang=en</p> <p>https://youtu.be/Dh7xovOblvU English</p> | <p>New activity to put on our Procurement and HR intranet pages in February 2019</p> <p>-----</p> <p>New activity to arrange and monitor training for all supervisors and managers by September 2019</p> <p>-----</p> <p>New activity to put on our Equalities intranet page in February 2019</p> | <p>Procurement and HR</p> <p>-----</p> <p>HR OD Team</p> <p>-----</p> <p>Policy Partnership & Involvement</p> |

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| | | https://youtu.be/pEVJn2mKI9Y Welsh | | |
| 4 | <p><i>Ensure that employment practices are considered as part of the procurement process. We will:</i></p> <p>Include a copy of our Policy on Ethical Employment (commitment 1) in all procurement documentation.</p> <p>Include appropriate questions on ethical employment in tenders and assess the responses provided.</p> <p>Incorporate, where appropriate, the elements of the Code of Practice as conditions of contract.</p> <p>Ask suppliers to explain the impact that low costs may have on their workers each time an abnormally low quote or tender is received.</p> | <p>We need to update all procurement documentation to include a copy of the Council Policy, including a copy of the Code as standard documentation.</p> <p>We need to include the standard SQUiD questions from the Code in the Qualification questions for all tenders and evaluate as Pass or Fail.</p> <p>We need to review terms and conditions of contract where necessary to reflect appropriate areas of the Code of Practice.</p> <p>As and when required, Procurement will need to review and clarify with tenderers any bids considered abnormally low.</p> | <p>New activity to include as part of future tenders commencing February 2019</p> | <p>Service Manager Procurement</p> |
| 5 | <p><i>Ensure that the way in which we work with our suppliers does not contribute to the use of illegal or unethical</i></p> | <p>We will need to review requirements when producing service specifications to ensure we do not apply undue cost and pressures to the supply chain through</p> | <p>New activity to commence in February 2019</p> | <p>Procurement and Service Areas</p> |

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| | <p><i>employment practices within the supply chain. We will:</i></p> <p>Ensure that undue cost and time pressures are not applied to any of our suppliers if this is likely to result in unethical treatment of workers.</p> <p>Ensure that our suppliers are paid on time – within 30 days of receipt of valid invoice.</p> | <p>unrealistic or unreasonable service requirements. Procurement Officers to guide service areas during pre-tender stages.</p> <hr/> <p>We need to ensure all contracts stipulate 30 days payment terms on receipt of a valid invoice, including any sub-contractor payments. Standard Qualification questions already require this commitment. Council policy and performance indicator already monitors payments within 30 days.</p> | <hr/> <p>Current activity</p> | <hr/> <p>Procurement and Service Areas</p> |
| 6 | <p>Expect our suppliers to sign up to this Code of Practice to help ensure that ethical employment practices are carried out throughout the supply chain.</p> | <p>We need to ensure that all “Invitation To Tender” documentation has the necessary request for all contractors to consider their commitment to the Code of Practice. Question to be included in Qualification question set.</p> | <p>New activity to commence in February 2019</p> | <p>Service Manager Procurement</p> |
| 7 | <p><i>Assess our expenditure to identify and address issues of modern slavery, human rights abuses and unethical employment practice. We will:</i></p> <p>Carry out regular reviews of expenditure and undertake a risk assessment on the</p> | <p>We will firstly need to seek guidance from Welsh Government on undertaking a review of bought in goods, services and works to understand where the risks of slavery or unethical employment practices are more prevalent. Also consult with other Welsh Authorities through the WLGA Heads of Procurement forum</p> | <p>New activity to commence in February 2019, along with discussions with Norse to adopt the same approach</p> | <p>Service Manager Procurement</p> |

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| | <p>findings, to identify products and/or services where there is a risk of modern slavery and/or illegal or unethical employment practices within the UK and overseas.</p> <p>Work with our suppliers to rectify any issues of illegal or unethical employment practice.</p> <p>Monitor the employment practices of our high risk suppliers, making this a standard agenda item for all contract management meetings/reviews.</p> | <p>to seek out examples of best practice approach. Use this information to monitor expenditure and identify any suspect areas, contracts etc. Newport Norse to be required to comply with all policies and practices to ensure construction contracts on behalf of the Council include all measures around this Policy.</p> <hr/> <p>Note the difference between illegal or unethical. Illegal or suspected illegal practices should be reported to the Police and/or Modern Slavery Helpline 08000 121 700.</p> <p>For unethical employment practices, work with suppliers through Contract Management meetings to discuss and support behavioural change.</p> <hr/> <p>With support from WG as detailed above in identifying high risk suppliers, include standard questions within qualification documents around prosecutions etc in relation to employment practices, and use Contract Management meetings to discuss employment practices. Include advice and guidance on Procurement intranet pages.</p> | <p>on construction/property contracts</p> <hr/> <p>New activity to commence February 2019</p> <hr/> <p>New activity to commence in February 2019</p> | <p>and Newport Norse</p> <hr/> <p>Service Area Managers</p> <hr/> <p>Service Managers & Procurement</p> |
| 8 | <p>Ensure that false self-employment is not undertaken and that umbrella schemes and zero hours contracts are not used unfairly or as a means to:</p> <p>Avoid, or facilitate avoidance of, the payment of tax and National Insurance contributions</p> | <p>We need to have guidance published on our website which provides information to managers on the appropriate use of contracts and employment, particularly around self-employment</p> <p>http://www.newport.gov.uk/documents/Policies/HR-Guidance-on-Engaging-Workers-Service-Providers-and-Individuals.pdf</p> <hr/> <p>We need to engage with the NPS regarding the temporary staff contracts and ensure communications across the organisation including schools.</p> | <p>Current activity, guidance published in May 2017.</p> <p>Current activity</p> | <p>HR</p> |

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| | <p>and the relevant minimum wages.</p> <p>Unduly disadvantage workers in terms of pay and employment rights, job security and career opportunities.</p> <p>Avoid Health and Safety responsibilities.</p> | | | |
| 9 | <p><i>Ensure that workers are free to join a Trade Union or collective agreement and to undertake any related activity and raise worker concerns without risk of discrimination. We will:</i></p> <p>Not make use of blacklists/prohibited lists.</p> <p>Ensure that our suppliers do not make use of blacklists/prohibited lists.</p> <p>Not contract with any supplier that has made use of a blacklist/prohibited list and failed to take steps to put matters right.</p> | <p>We need to ensure new starters are provided information on joining a trade union and are directed to local trade union webpages for more information Facility Time Agreement provides information on support for employees who are trade union representatives.</p> <hr/> <p>We need to have a question set in our tender documentation/SQUiD covering activities known as 'blacklisting' /producing prohibited lists, in order to avoid contracting with suppliers who are not operating lawfully.</p> <hr/> | <p>Current activity</p> <hr/> <p>Current activity</p> <hr/> | <p>HR</p> <hr/> <p>Service Manager Procurement</p> |

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| | Expect our supplier to ensure that Trade Union representatives can access members and contracted workers. | Draft a question for insertion into Qualification question set. | New activity to commence February 2019 | |
| 10 | <p><i>Consider paying at least the Living Wage Foundations Living Wage as a minimum and encourage our suppliers to do the same. We will:</i></p> <p>Consider paying at least the Living Wage Foundations Living Wage to all our staff in the UK.</p> <p>Consider becoming an accredited Living Wage Employer.</p> <p>Encourage our suppliers based overseas to pay a fair wage to all staff and to ensure that staff working in the UK are paid at least the minimum wage.</p> | <p>We need to have an organisation decision that NCC commits to pay the foundation living wage to all eligible employees on a non-contractual basis.</p> <p>We will need to consider becoming an accredited Living Wage Employer</p> <p>-----</p> <p>We need to ensure contract terms and conditions stipulate compliance with the National Minimum Wage Regulations, even though this is law within the UK and employers should comply. A question will be incorporated into the tender qualification stage asking and encouraging suppliers who employ overseas staff how they ensure a fair wage is paid to these employees.</p> | <p>Current activity</p> <p>-----</p> <p>Current activity regarding the minimum wage, and a New question to be included in tender documents regarding overseas staff from February 2019.</p> | <p>HR</p> <p>-----</p> <p>Service Manager Procurement</p> |
| 11 | Produce an annual written statement outlining the steps taken during the financial year, and plans | | | |

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| | <p>for future actions, to ensure that slavery and human trafficking are not taking place in any part of our organisation and its supply chains. We will:</p> <p>Ensure that the statement is signed off at senior management/board level.</p> <p>Publish the statement on our website. If this is not possible, we will provide a copy to anyone within 30 days of a request being made.</p> | <p>The Annual Statement will be incorporated within the Strategic Equalities Annual report and reflect the progress made on the Action Plan. The SEP annual report is signed off at Cabinet and presented to full Council. The report will be published on the NCC Equalities internet page bilingually.</p> | <p>New annual activity to commence 2019/20 financial year.</p> | <p>Policy Partnership & Involvement</p> |
| 12 | <p>For Public Sector to whom the Code of Practice on Workforce Matters (2014) applies:</p> <p>Ensure all those undertaking work on an outsourced contract are treated fairly and equally. We will:</p> <p>Ensure that public sector staff that are transferred as part of a public service which is outsourced to a third party retain their terms and conditions of employment.</p> | <p>We need to ensure that HR / Legal / Trade Unions as standard practice are all consulted and involved in any outsourcing of services to a third party. In line with regulation, staff conditions of employment and pension rights are protected through the application of the Code of Practice on Workforce Matters 2014 and TUPE for all contracts.</p> | <p>Current activity</p> | <p>HR & Legal</p> |

