

# **Voluntary Organisations Disability Group Representation to the Low Pay Commission**

**June 2021**

## **About VODG**

VODG is the national infrastructure body representing organisations within the voluntary sector who work alongside disabled people. Our members' work is focused on enabling disabled people of all ages to live the lives they choose. VODG believes that an ambitious, trusted and vibrant voluntary sector that works together plays a unique role in achieving this aim. VODG members work with around a million disabled people, employ more than 85,000 staff and have a combined annual turnover in excess of £2.8 billion.

VODG welcomes the opportunity to submit this representation to the Low Pay Commission (LPC). We use this paper to draw out those issues most relevant to disability, care and support providers and the people they support. This submission is informed by engagement with our member organisations via a dedicated meeting on this consultation, which Bryan Sanderson, Chair of the LPC, and LPC colleagues attended, and further membership engagement and follow up.

## **1. Context**

There are 14.1 million disabled people in the UK, representing 21% of the population and 19% of working age adults.<sup>2</sup> In England, 21% of the population reports having a disability. The provision of essential services to disabled people in ways that promote independence, choice and control, as well as supporting their families and carers is a statutory obligation. The hallmark of a fair and equitable society includes fully meeting people's needs and enabling disabled people to have full choice and control over their lives, and to be included in society.

Services to enable disabled people in England to live independently are delivered in a variety of settings and care and support is provided via a diverse range of services. People with lifelong disabilities are supported by the state, through local authorities and health, to have their care and health needs met. In our part of the sector, unlike in other areas of social care, it is rare to see disabled people paying for their own support. There are no 'self funders' as is seen in older people's care for example, and fees paid by commissioners do not match NMW uplifts.

Across the sector the pandemic has shone a bright light on the valuable work that social care workers and their organisations carry out across the country to support people in vulnerable circumstances each and every day. Whilst social care work can be seen as noble in intent, it is also important to recognise that people work in the sector to earn a living, and to build careers. An important bedrock to these motivations must be a decent rate of pay.

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This submission seeks to address those questions included in the LPC consultation scope that are relevant to the VODG membership, alongside addressing additional themes related to National Minimum Wage (NMW) and National Living Wage (NLW) rates that we would encourage the LPC to consider as part of this consultation.

## 2. Introduction

The provision of essential care and support services to people with life-long disabilities is the hallmark of an equitable society that supports and protects its citizens. Behind the provision of care and support services is a workforce that each day is supporting disabled people to live independent lives and the contribution of this workforce must be recognised in a fair and equitable system of reward.

Delivered by over 1.5 million people<sup>1</sup>, social care services are a lifeline for many disabled people. The COVID-19 pandemic has led to wider public recognition of the social care workforce and as care services lead the way and respond to the challenges brought about by the pandemic, now is the time to raise the status of those working in the sector and of the services supporting older and disabled people.

The number of adult social care jobs in England as at 2019/20 was estimated at 1.65 million.<sup>2</sup> Social care is a large and growing workforce, but high staff vacancy and turnover rates remain – and the pandemic has not relieved such pressures. In England, the introduction of the mandatory vaccinations for people working in care homes<sup>3</sup> is expected to weaken workforce supply, amongst a proportionately small but hugely significant number of care staff that are hesitant to have a vaccination.<sup>4</sup>

Increases to the NLW and NMW, including the increase to £8.91 in 2021, have, in principle, always been warmly welcomed by providers. Social care is a labour-intensive sector, and the workforce should be recognised for the essential work they carry out. Indeed, given the impact care staff and the services they provide have on the lives of disabled people, the government should actively seek out solutions that lift disability services out of the low pay sector.

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<sup>1</sup> Skills for Care (2020) *The size and structure of the adult social care workforce in England, 2020*. [www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/Size-of-the-adult-social-care-sector/Size-and-Structure-2020.pdf](http://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/Size-of-the-adult-social-care-sector/Size-and-Structure-2020.pdf)

<sup>2</sup> *Ibid.*

<sup>3</sup> Department of Health and Social Care (2021) *Everyone working in care homes to be fully vaccinated under new law to protect residents*. [www.gov.uk/government/news/everyone-working-in-care-homes-to-be-fully-vaccinated-under-new-law-to-protect-residents?wp-linkindex=3&](https://www.gov.uk/government/news/everyone-working-in-care-homes-to-be-fully-vaccinated-under-new-law-to-protect-residents?wp-linkindex=3&)

<sup>4</sup> Voluntary Organisations Disability Group (2021) *Representation to the Department of Health and Social Care: Making vaccination a condition of deployment in older adult care homes consultation*. [www.vodg.org.uk/wp-content/uploads/20210521-Mandatory-vaccines-in-older-adult-care-homes-VODG-submission-vfn.pdf](http://www.vodg.org.uk/wp-content/uploads/20210521-Mandatory-vaccines-in-older-adult-care-homes-VODG-submission-vfn.pdf)

While fair and sustainable NLW and NMWs represent an important step towards securing a sustainable workforce, helping to address the recruitment and retention challenges faced across the sector, they also represent significant, unfunded cost pressures for providers, particularly voluntary sector providers which do not recoup these costs through the local authority fees paid to them.

It is, therefore, pertinent for the LPC to differentiate between the number of employees within the public sector, or funded from the public purse, and those of other industries, such as retail or hospitality. The latter are areas of the economy that can, if they choose, raise prices to in turn raise pay rates. This cannot happen in public sector services with funding being increased from central government and can only accelerate a race to the bottom.

If we are to improve retention rates over the long term, then workforce pay and conditions must be improved so that job seekers see social care as not only a fulfilling career but also one that is financially rewarding. The bedrock to fairly delivered social care services must be fair pay, and for us, that can only be achieved through a greater investment via the public purse. And, there can be a return on this investment. The adult social care sector was estimated to contribute £41.2 billion per annum to the economy in England alone, and investment here will pay back.<sup>5</sup>

### **3. Economic outlook and business conditions**

The current economic outlook and business conditions for voluntary sector providers of care and support services to disabled people for the period up to April 2022 is precarious. The COVID-19 pandemic has brought about additional and significant financial pressures for the sector as well magnifying long-standing systemic issues that are in urgent need of address. VODG member organisations report that existing financial pressures will continue into 2022 and there are signs that the situation is likely to worsen in subsequent years.

And as VODG members prepare budgets for 2022/23, taking into account increases to NMW, many report having to “trim the fat” in other areas to meet those levels. To pay workers at NMW and real living wage (RLW) levels, providers have already had to make savings elsewhere and consequently employee rewards and benefits are being cut, terms and conditions eroded and for some organisations, redundancies are being made to ensure that frontline staff can be employed at NMW / NLW levels in subsequent years.

Another route being taken is that of giving a pay increase to staff members who will fall below the NLW level and giving a lower pay increase to other staff, if any at all. This ultimately narrows the gap between those on NLW levels and those above, and narrowing those differentials means that managerial and supervisory roles are

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<sup>5</sup> Skills for Care (2020) *The State of the adult social care sector and workforce in England*.  
[www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/The-state-of-the-adult-social-care-sector-and-workforce-2020.pdf](http://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/The-state-of-the-adult-social-care-sector-and-workforce-2020.pdf)

increasingly becoming unattractive – more work and responsibility for very little extra pay. Consequently, providers, including some VODG members, feel they have moved from a position of choice over a pool of candidates attracted by the vocational aspect of social care roles, with good terms and conditions, to being grateful that candidates turn up for interview and then being hopeful that they will accept the job, and stay in post. Pay differentials also impact on recruitment and retention in other areas of the sector beyond ‘first line’ care work. For example, pay rates for positions in finance, HR, marketing etc, also do not compare to similar roles in other sectors.

The staff turnover rate for adult social care currently stands at 30.4%.<sup>6</sup> People often use social care roles as ‘filler’ work before moving on to better paid, less stressful jobs in other sectors. Furthermore, as other industries, such as hospitality and retail open back up and improve economically, social care providers face greater competition from these sectors in terms of recruitment and retention of their workforce.

VODG members also express frustration at having to pay NLW for jobs in the social care sector, a sector that has, in recent, months been looked upon as a crucial frontline response against the COVID-19 pandemic. Providers want to pay staff at fair and reasonable rates for the type of work delivered and believe the fact that many social care workers are driven by strong values should not be used to maintain a low pay sector – indeed, “goodwill does not pay the bills”. It is also worth noting, that although the private and public sector may face similar challenges, the resulting impact is that profits are reduced, which can be made up elsewhere.

While there is a proportion of people who draw on social care services and pay for their own support, when it comes to disability services, by and large they are exclusively funded by the state. Voluntary sector social care providers do not have the freedom that many other employers have to raise their prices and in turn raise their income, particularly when commissioners are not increasing their uplifts in line with the rising costs associated with increases to the NLW.

The additional stress of supporting people during lockdown and even coming out of lockdowns has made an already challenging job even more challenging and with providers reporting that uplifts in fees from commissioners are not increasing in line with NLW increases, the reality for the social care sector is worrying. Indeed, Jeremy Hunt, Chair of the Health and Social Care Committee, on publication of the ‘Workforce Burnout and Resilience in the NHS and Social Care’ report has said: “Workforce burnout across the NHS and care systems now presents an extraordinarily dangerous risk to the future functioning of both services.”<sup>7</sup>

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<sup>6</sup> Skills for Care (2020) *The size and structure of the adult social care workforce in England, 2020*. [www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/Size-of-the-adult-social-care-sector/Size-and-Structure-2020.pdf](http://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/Size-of-the-adult-social-care-sector/Size-and-Structure-2020.pdf)

<sup>7</sup> UK Parliament (2021) *Overhaul needed to tackle NHS and social care workforce burnout emergency*. <https://committees.parliament.uk/committee/81/health-and-social-care-committee/news/155698/>

## 4. Impact of NLW on different groups of workers

In the year to October-December 2020, 52.3% of disabled people were in employment, down from 54.1% a year previously. Over the last year, the proportion of disabled people who are in employment has gone down, while the proportion who are either unemployed, or economically inactive, has gone up.<sup>8</sup> In 2018, average pay for disabled employees was 12.2% lower than average pay for non-disabled employees.<sup>9</sup>

Research undertaken for the Equality and Human Rights Commission has also shown that disabled people are more likely to be paid below the NLW than non-disabled people and more disabled people are less likely to have a paid job, than non-disabled people. This double disadvantage reflects the wider social inequalities and barriers faced by disabled people.<sup>10</sup>

Disabled people are more likely to have jobs in the low-paid sectors such as hospitality, retail, catering, etc. Many VODG members that support disabled people to find and maintain employment also express concerns about a dichotomy existing between wages and benefits – the lower the rate of pay, the more likely someone will believe it is better to stay on benefits. However, such organisations will often carry out the better off in work calculations and find most of the people they support will be better off in employment, which makes it all the more concerning that disabled people are more likely to be paid the minimum levels of pay compared to non-disabled people.

## 5. NLW's impact across the UK

The NLW has been described by VODG members as too much of a 'blunt instrument'. VODG members who provide services across England express that paying the NLW to employees in different areas of England – the northeast vs the southeast for example – is frustrating because the cost of living, cost of housing etc is very different and therefore does not help employers with recruitment and retention challenges.

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<sup>8</sup> House of Commons Library (2021) *Disabled People in Employment*.  
<https://commonslibrary.parliament.uk/research-briefings/cbp-7540/>

<sup>9</sup> Office of National Statistics (2019) *Disability Pay Gaps in the UK 2018*  
<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/articles/disabilitypaygapsintheuk/2018#disabled-employees-earned-on-average-122-less-than-non-disabled-people>

<sup>10</sup> Equality and Human Rights Commission (2017) *The Disability Pay Gap*.  
[www.equalityhumanrights.com/sites/default/files/research-report-107-the-disability-pay-gap.pdf](http://www.equalityhumanrights.com/sites/default/files/research-report-107-the-disability-pay-gap.pdf)



## 6. Projections for an April 2024 £10.33 NLW rate

The key to implementation of NLW rates is affordability, which then supports sustainability and the ability to carry out multi-year forecasting. While in principle, our members believe in the NLW and NMW, and aspire to offer at least the RLW, the reality is that the books must balance to do so.

Many voluntary sector providers do not have confidence that future costs associated with NLW increases will be supported by uplifts from health and social care commissioning, so the alternative must be to cut budgets in other areas including terms and conditions and employee benefits. This is counter-productive in an area struggling to recruit staff, especially now the UK has left the EU.

Enhanced terms and conditions are what differentiates employers and helps retain people in the social care sector as opposed to moving into other sectors, but policies such as flexible working and the ability to support working parents (particularly given 82% of social care workforce identifies as female<sup>11</sup>) become harder to offer when monies have to be diverted to pay NLW increases.

Additionally, during an engagement session with VODG members, it was put forward that £10.33 per hour is what some providers are currently paying first line managers, a role that comes with extra responsibility. The problem that many foresee, however, is in aspiring to pay a NLW of £10.33 to lower-level workers, they will not be able to increase pay for more senior and managerial roles. Alongside an impact on recruitment and retention, this will further reinforce a damaging reputation that the social care sector is a low pay sector, with, increasingly, little additional benefits on offer, which is not helpful to fill existing gaps in the workforce nor look to the future.

## 7. Sleep in payments and the NMW

In March 2021, the Supreme Court upheld a 2018 Court of Appeal decision that social care workers who sleep during night shifts are entitled to the NMW *only* when they are awake and supporting people who require overnight support services.<sup>12</sup> Such sleep in services are, for a significant number of providers, a vital form of support for the disabled people for whom they offer care and support. For the vast majority of workers carrying out a sleep in shift, it will be undisturbed – indeed, VODG members estimate that in only approximately 5% of sleep in shifts will a worker be disturbed.

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<sup>11</sup> Skills for Care (2020) *The size and structure of the adult social care workforce in England, 2020*. [www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/Size-of-the-adult-social-care-sector/Size-and-Structure-2020.pdf](http://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/Size-of-the-adult-social-care-sector/Size-and-Structure-2020.pdf)

<sup>12</sup> Supreme Court (2021) *Royal Mencap Society (Respondent) v Tomlinson-Blake (Appellant)*. [www.supremecourt.uk/cases/uksc-2018-0160.html](http://www.supremecourt.uk/cases/uksc-2018-0160.html)

Following the Supreme Court ruling, sleep in work now sits outside of NMW regulations. This is now an unusual position where this type of work is unregulated and the lack of clarity for employees and employers risks creating significant confusion and a lack of protection. The difficulty with this present situation is further compounded by local authorities seeking to cut rates for sleep in work.

In 2016 and 2017, when lower courts ruled that workers were entitled to the NMW for every hour of a sleep in shift, many employers moved to topping up flat rates to meet what was the interpretation of the law at that time. Some commissioners agreed to provide additional funding within contracts in order to support providers to do this. As a result, those workers became used to being paid a rate above the NMW, and a custom and practice has now been established. However, while some local authorities agreed to this practice, others did not and providers had to decide whether to not pay top ups, use reserves, or make cuts in other areas to do so. As a result, the practice surrounding the payment of sleep in shifts is not consistent across organisations and rates of pay are inequitable across the workforce.

For those providers being funded for sleep ins by local authorities, an immediate and growing concern currently being felt is that some commissioners are reverting to a lower rate (below the NMW) for sleep in work. The knock-on effect will mean providers pass on those cuts to their workforce and in turn, will struggle with workforce supply for overnight work. Some difficult conversations around contracts are beginning to take place. For example, as this (redacted) communication from one local authority commissioner demonstrates:

“As you will be aware, the ... was an early adopter of increased sleep-in rates, in response to the initial Employment Tribunal judgement in 2016 which ruled in favour of the claimants. I hope you will agree that the actions at this time provided a high degree of reassurance and stability to the market, at significant cost to the ... Following subsequent judgements, the ... adopted a cautious position, and we have not sought to reduce sleep in rates until the final Supreme Court Judgement was published. This placed considerable pressure on the budget over that period.

Now that the Supreme Court judgement is published, we need to review our position in relation to sleep ins and agree a sustainable rate which reflects the new legal reality. If possible, we would like to do this in partnership with you. However, I cannot overstate the urgency for the to reduce sleep in rates to a more sustainable level. We are seeking full engagement from your organisation on this issue.” (Letter from one local authority commissioner to its social care providers)

VODG is aware that this is not isolated, and other conversations are happening across local authorities.

While it is understood that it is not within the LPC's current remit to consider pay for sleep in payments, VODG is asking the LPC to take urgent action. VODG believes that government must intervene and set a rate of pay for sleep in work following a process of consultation with workers, employers, commissioners, and other stakeholders. In particular, the government should instruct the LPC to consult, review and recommend a NMW rate for time spent asleep. In line with previous practice, government should also issue guidance to commissioners that they should not reduce payment for sleep in shifts pending the Low Pay Commission review, being mindful of local government's market shaping responsibilities.

Unless the LPC can establish a national sleep-in rate we will see more and more commissioners cut rates and providers will have to reduce levels of pay and employees will be worse off.

There is, at present, a window of opportunity for the government to put in place an equitable solution. The majority impact of commissioners moving back to a flat rate of pay for sleep in, will likely be seen at the start of the 2022/23 financial year. We have seen strikes on the issue of sleep in pay in some parts of the country before, and those could be repeated if this situation is not urgently resolved.

Separate to this consultation response we will share with the LPC our legal advice on how a NMW rate for sleep in work could be achieved.

## 8. Conclusion

The reality facing many voluntary sector providers of social care services is that when the NLW goes up, there is rarely a corresponding increase in public funding. In effect, this means that while the government is accepting the LPC's recommendations, it does not also address the additional financial burden on the public purse. Social care and health commissioners are put in an impossible position, as are employers.

For providers this means that difficult decisions are constantly being made and which often affects the benefits and rewards that help recruit and retain a high-quality workforce and the significant sector change we need to see to address growing care needs in our country. This could lead to poorer quality services, and in the most extreme cases, organisational failure, or withdrawal from care markets.

The last year has clearly shown that money is available nationally when there is a priority and VODG would urge the LPC to consider how it can further influence the government to now prioritise this issue and go further to encourage the Treasury to invest in public funding to support our shared ambitions for minimum wage at a high and affordable level.

**Ends**

For more information or to arrange a further a discussion with VODG or our members, please contact [research.policy@vodg.org.uk](mailto:research.policy@vodg.org.uk)