



VODG position on the payment of overnight ‘sleep in’ support

The importance of overnight support

Good social care services support people to live in their local communities and enable them to be more independent. Some people require overnight support – known as ‘sleep in’ services. This means staff sleep through the night but are on site to respond to requests for care if needed.

The Voluntary Organisations Disability Group (VODG) recognises that social care such as sleep in support is of intrinsic value to society and the workforce that delivers this should be valued and rewarded.

The confusion over how sleep in support is paid and funded

However, long-running uncertainty about how much sleep in staff are paid and how their wages are funded has created huge uncertainty and confusion in the sector for many years. The current funding of social care, and subsequent local commissioning, fails to fully recognise the contribution that staff make to improving people’s lives.

Historically, sleep in staff received a flat rate payment of between £35-£45 per in shift, with minimum wage levels applying only when they were awake.

Since 2016, many social care providers adopted a top up payment approach. This meant that the minimum wage was paid, on average, throughout the night irrespective of whether a care worker was awake or asleep. In July 2018, a Court of Appeal judgment (in the joined cases of *Mencap v Tomlinson-Blake* and *Shannon v Rampersad*) overturned a previous decision, with the result that sleep in workers do not have to be paid the national minimum wage throughout the night.

The current legal situation is that the national minimum wage does not apply for time spent asleep and available at work, and regulations regarding pay currently only apply when staff are awake for working



purposes. However, this could change now Unison is granted its recent Supreme Court application to challenge the Court of Appeal judgment.

We have grave concerns that the absence of clear regulations for the payment of overnight sleep in work will lead the social care market to operate in ad hoc and uncoordinated ways. We fear this will lead to inconsistent commissioning and provision arrangements locally.

VODG therefore welcomes a ministerial commitment made in December 2018 that “The government is sending a clear message that the judgment should not be used as an opportunity to make ad-hoc changes to the fees paid to providers. Commissioners and providers should be working together to determine a fair rate of pay for sleep-in shifts to fit their local labour market conditions.”

We also agree with the Local Government Association (LGA) that emphasised the “significant confusion” that currently exists. The LGA adds:

“Although each authority will determine its own response to the Court of Appeal’s decision, given that the issue appears not to be fully settled yet, maintaining the status quo may be the most appropriate course of action.” Most local authorities had moved to funding top up payments to enable the minimum wage to be paid, on average, over the night.

VODG’s view on solutions to the sleep situation

VODG is adamant that commissioners should not use the recent Court of Appeal judgment to reduce fees for overnight support.

The existing fragility of social care services is well documented. There is an urgent need for a long-term sustainable funding to be made available to shore up adult social care that faces a £3.5 billion funding gap by 2025 just to maintain existing levels of care.

VODG wants the government to clarify what hard working staff are entitled to, and precisely how it, and commissioners, will fund this.

We believe commissioners and providers should be working together to find a solution to the current impasse.



To resolve the confusion around sleep in payments VODG calls on government to:

- consult widely with workers, employers, commissioners and other stakeholders on an appropriate rate of pay for sleeping at work and, through a statutory instrument or other means, introduce a rate of pay for time spent asleep
- instruct the Low Pay Commission to, each year, consult, review and recommend a rate for time spent asleep
- work with infrastructure organisations to produce information so that people who use services and their families, the workforce, employers and commissioners understand how sleep-ins should be remunerated
- confirm that the current legal position means employers will not face potential HMRC retrospective action to recover underpayment of national minimum wage for sleep in work
- work with providers and local government on a sustainable funding solution to ensure care workers are valued and fairly paid.

VODG action on sleep in payment issues

VODG continues to monitor and campaign on sleep in issues. Our work includes understanding more about the current commissioning climate. We have also argued in a [cross sector open letter](#) that government inaction over sleep in payments is a risk to overnight care services. VODG has shared this position statement with responsible Ministers.

Voluntary Organisations Disability Group (VODG)
18 March 2019