



#StopSleepInCrisis

CARE SECTOR RESPONDS TO COURT OVERTURNING STAFF SLEEP-IN BACK PAY- CALLS ON THE GOVERNMENT TO LEGISLATE QUICKLY AND FURTHER FUND SECTOR

Today, 13th July, the court has ruled in favor of Mencap in the case over sleep-in back pay. This overturns an employment tribunal which ruled that workers were entitled to the National Minimum Wage (NMW) for every hour of a sleep-in shift.

Reacting to the decision, the #SolveSleepIns Alliance, a coalition formed to deal with the sleep-in crisis which represents providers for people with learning disabilities in the UK, is calling on the Government to legislate for all care workers to be entitled to the NMW for all shifts, including sleep-ins, and to raise the level of funding provided to Local Authorities (LAs) and care providers in line with new legislation.

The 2015 case resulted in HMRC pursuing care providers offering sleep-in services for six years of back pay for all staff who had performed sleep-in shifts. This bill was estimated to be around £400 million in total for the entire care sector. In 2017, HMRC set up the Social Care Compliance Scheme which gave care providers one year to self-assess their liability and a further three months to pay back workers. Notably, this scheme offered no assistance to providers in assessing their liability, locating their past staff of up to six years ago nor any information on how past and current employees would be paid. Government did not increase money going to LAs or care providers for the sleep-in shifts moving forward nor any new money to cover the back pay.

Public services to care for people with disabilities are funded by LAs. Central Government funding is then provided to LAs who often contract with care providers to deliver services.

The potential monetary shortfall expected by care providers, many of them charities, has already lead to some providers closing and handing back untenable contracts. Personal budget holders, who contract independently with carers, also face a back pay bill of up to six years.

The #SolveSleepIns Alliance, comprised of the Association for Real Change, Care England, Learning Disability England, Learning Disability Voices and VODG, remains committed to paying workers fairly and ensuring care services are funded properly so they can continue to function at the high level people who rely on care services depend on and deserve.

Dr Rhidian Hughes, chief executive of the Voluntary Organisations Disability Group said:

“There are no winners from this decision. Now the Government has a chance to do the right thing - enshrining and supporting the National Minimum Wage (NMW) by ensuring legislation is clear that all workers are entitled to the NMW and funding all essential services at this level.



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“We are calling for additional new money pledged for overnight care to fund the NMW to make sleep-ins fair and fit for the future.

“We call on Government to make clear its intention to introduce urgent legislation so that time spent asleep is taken into account when calculating NLW/NMW.

“There needs to be a clear set of rules about exactly when NLW applies, and for Government to fund these vital statutory services to avoid any future crises. Without this decisive action, our staff remain in an uncertain position with regards to their pay.

“Government must now be completely clear on how sleep-ins are to be paid and funded. If Government wishes to avoid further complication, it must, through revised legislation, clarify what hard working care workers are entitled to, and precisely how it, and local authorities will fund this going forward.

“This decision is not a victory, nor does it provide the substantive clarity necessary, following years of indecision on this vital question for social care services and the valuable care workers who run them.

“People throughout the UK who rely on care services, care workers and the providers of these essential community services deserve a swift resolution - Government must legislate and pledge funding that will support care services now and into the future.”

Tim Cooper, Co-Chair of Learning Disability Voices & CEO at United Response, said:

“We remain committed to paying our staff fairly for the work they do.

“Our workforce is our greatest asset, we believe that National Living Wage (NLW) rates should apply for sleep-in shifts, the Government has said that they agree. We call on the Government to act swiftly and decisively to remove the confusion by setting out in law that NLW applies to sleep in shifts and to remove the fear by ensuring providers are properly funded for all shifts, including sleep-ins, at the NLW.

“There is a moral obligation for the Government to ensure a fair deal for employees and employers alike. It is now over to the Government who need to provide stability for the sector after the last three years of uncertainty.”



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ENDS

Notes to Editors

1. Previous Government guidance meant that sleep-in staff could be paid below NMW for sleep-in shifts. These sleep-in shifts were previously paid around £30 per shift. Based on the 2015 ruling, many care providers have since started paying all staff the NMW for all shifts, including sleep-ins. However, many Local Authorities did not meet this increase in wages, nor did central Government provide further funding for care service. This has resulted in many care providers operating at a loss. Based on a [recent sector survey](#), around 50% of LAs are currently paying higher rates which cover paying the NMW for sleep-ins shifts. The sleep-in funding crisis comes amid an [existing financial crisis in social care](#).
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