



# Department of Health & Social Care

*Helen Whately MP  
Minister of State for Care*



*Vicky Ford MP  
Parliamentary Under-Secretary of  
State for Children and Families*

10 May 2020

Dear Chief Executives and Directors of Adult and Children's Social Services,

## **Commissioning Sleep-In Shifts in Adult Social Care and Children's Services**

The Supreme Court judgment in the joined cases of Royal Mencap Society v Tomlinson – Blake and Shannon v Rampersad was published on March 19 2021. It upheld the Court of Appeal judgment and current interpretation of the law.

It upheld that the workers in the two cases were not entitled to the National Minimum Wage for the whole of their sleep-in shifts and were to be treated as working for National Minimum Wage only when awake for the purposes of working. This clarifies the position for both historic arrears and future payment in these circumstances.

Following the judgment, the Department for Business, Energy and Industrial Strategy has carried out a review of their minimum wage guidance and have published updated [guidance](#). This guidance represents the correct interpretation of the law and should be followed by all providers of adult and children's social care/residential education with whom you commission placements. This also applies to Local Authority in-house provisions. The revised guidance will endeavour to provide Local Authorities and providers with as much clarity as possible regarding the circumstances within which care providers are under a legal obligation to pay the National Minimum Wage and National Living Wage. Local Authorities should be working with providers, and within current frameworks, to ensure that they are not only complying with legislation, but that care workers are supported and remunerated so as to retain an effective workforce.

Stakeholders from both sectors have expressed concerns about the possible impacts should there be a rapid price reduction for sleep-ins by commissioners. As commissioners and providers of adult and children's social care we would encourage you to carefully consider impacts on market and workforce stability in your response to this judgment. We recognise the importance of continuing to attract people to do this vital work and ensuring that good quality care is well provided.

We are aware the pandemic has already caused financial difficulties which is why we made £4.6 billion available to local authorities to address pressures on local services including adult and child social care. This is alongside access to an additional £1 billion of funding for adult social care provided at the Spending Review and £1.8bn of funding specifically for social care to respond to the pandemic.

This judgment should not be used as an opportunity to make rapid or ad-hoc changes to the fees paid to providers without consultation. The Government is committed to delivering a sustainable care system with a sustainable workforce that is fit for the future needs of our communities. Fundamentally, it is in everyone's interest – commissioners, providers and service users – to have a stable care sector. This

Government will continue to work with commissioners and providers to fully understand the impact of the recent judgment.

Thank you for your ongoing efforts through this challenging time and we look forward to continuing to work with you to deliver the best possible services for vulnerable adults, children, and their families.

A handwritten signature in blue ink, appearing to read 'Helen Whately', with a large, sweeping underline.

HELEN WHATELY MP  
MINISTER OF STATE FOR CARE

A handwritten signature in black ink, appearing to read 'Vicky Ford', with a long, sweeping underline.

VICKY FORD MP  
MINISTER FOR CHILDREN AND FAMILIES