

## OPEN LETTER

1 October 2018

Caroline Dinenage MP  
Minister of State for Care  
Department of Health and Social Care  
39 Victoria Street  
London  
SW1H 0EU

Kelly Tolhurst MP  
Parliamentary Under Secretary of State, Minister for Small Business, Consumers  
and Corporate Responsibility  
Department for Business, Energy & Industrial Strategy  
1 Victoria Street  
London  
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Dear Ministers

Payments for sleep in support have been subject to much wrangling. There is no need to re-visit history but as the infrastructure organisations that support the delivery of care, health and education services we are pressing for urgent clarity from government.

As you will be aware Unison are seeking to appeal the Royal Mencap v Tomlinson-Blake Court of Appeal judgment and it is likely to be some time before the outcome of that process is known. This, in the absence of any clarity from the government as to how sleep-ins should be remunerated, has reintroduced uncertainty across the care, health and education sectors. Consequently there is an increasingly significant risk that commissioners and providers will move in ad hoc ways thereby jeopardising the delivery of essential overnight support services. Employers include people with personal budgets or direct payments who are managing the uncertainty with their staff as well as the personal impact on the support necessary to live their lives.

We urge the Department for Business, Energy and Industrial Strategy to revise guidance and give commissioners, employers and, most importantly our staff the certainty they need.

There is no getting away from the stark reality that adult social care faces a £3.5 billion funding gap by 2025 just to maintain existing levels of care and this makes addressing the workforce challenge extremely difficult. Government must clarify what hard working staff are entitled to, and precisely how it, and commissioners, will fund this.

We therefore urge government to:

1. Immediately clarify its position on sleep-in payments at the earliest possible opportunity, and issue the necessary guidance in accordance with the law.
2. 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 which would put further pressure on already stretched adult social care budgets. If the Court of Appeal decision is overturned, Government must fund the retrospective and ongoing higher costs providers will face with genuinely new money given funding pressures.
3. Work with the sector to produce information so that people who use services and their families, the workforce, employers and commissioners understand how sleep-in work should be remunerated.
4. Work with providers and local government on a sustainable funding solution that will ensure care workers are valued and fairly paid. A thriving workforce is essential for achieving our shared vision of high quality integrated health and care support tailored to the needs of individuals, families, carers and communities.

This is an open letter because despite successive efforts to attract government's attention to this long-standing issue the engagement with the sector remains patchy.

Yours sincerely

Steve Scown  
Chair  
Voluntary Organisations Disability Group

Cllr Ian Hudspeth  
Chairman  
Community Wellbeing Board  
Local Government Association

Professor Martin Green OBE  
Chief Executive  
Care England

Claire Dorer  
Chief Executive  
National Association of Independent Schools & Non-Maintained Special Schools

Samantha Clark  
Chief Executive  
Learning Disability England

Kathy Roberts  
Chief Executive  
Association of Mental Health Providers

Clare Howard  
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Lisa Lenton  
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Michael Voges  
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Melanie Weatherley  
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Learning Disability Voices