



LANCASHIRE LEARNING DISABILITY CONSORTIUM

Councillor Graham Gooch
Cabinet Member for Adult Services
Legal and Democratic Services
Lancashire County Council
PO BOX 78
County Hall, Preston
PR1 8XJ

28 February 2019

Dear Councillor Gooch

Proposed cuts to night support payments

We are writing on behalf of the Lancashire Learning Disability Consortium (LLDC) which, as you know, represents a broad coalition of voluntary sector providers of services to people with learning disabilities in Lancashire.

As background, you will be aware that a letter dated 30 October 2018 was sent by the Director of Adult Social Care Transformation which referenced a meeting at County Hall on 17 September 2018 to which certain providers (including some LLDC members) had been invited. This letter proposes reductions in payments for "sleep in" shifts as a response to a Court of Appeal ruling in July 2018 which found that time when employees are expected to be asleep should not be counted as Working Time for the purposes of the National Living Wage or National Minimum Wage calculations. We are now aware that UNISON have been granted leave to appeal this judgement but that an outcome may not be known for some time, possibly into 2020 in light of this we are asking that you can reconsider your proposals.

We, the LLDC, wish to express the concerns of our learning disability providers about the scale of the proposed fee reductions, and are forwarding this letter as part of the current consultation process to the sleep over proposals.

LLDC members (and doubtless many other providers) have the following concerns:

1. The decision to consult and extend the existing rate of £9.42 per hour until around August is welcomed. However there has been no uplift on this rate to enable the full cost recovery should providers continue to pay National Living Wage by the hour for the sleep-in. National Living wage will go up by 4.9% in April. Providers are faced with meeting the shortfall should they continue to pay by the hour.
2. The reductions are too great to be managed safely. Whilst we fully understand that the law has been changed by the Court of Appeal ruling and that top-up payments will no longer be required, our workforce, which is not highly paid, have seen their take home pay enhanced considerably by the night rate enhancements which have been available for several years. Consider a support worker aged over 25 who works 4 sleeps each week (this is by no means unusual). Under the top-up system, from April 2019 those 4 sleeps from 10pm to 8am would have augmented their gross pay by £328.40 (4 x 10 * £8.21) whereas the proposed payment per this proposal is £144.32 (4 * £36.08) after the phase in period of 6 months. The annual reduction in gross pay for that worker will be £9,572. This is a very large reduction in standard of living; the sort that people may well be forced to change careers to avoid. In a sector in which recruitment and retention is currently critical, the loss of incentives like this risks a rapid and catastrophic crisis and may lead to providers handing back contracts on a large scale and either exiting the market or choosing to contract with Authorities who take a different stance.
3. The previous consultation process was not inclusive. At the meeting held on 17th September, there was a broad acceptance that the market had to change and adapt to the new legal landscape. It was, however, the unanimously expressed view that the new flat rate payment should be sufficient to allow a payment to staff of £50 to £55 per night as suggested by sector experts such as Anthony Collins LLP. This would have meant a fee to providers of around £70 as a marginal cost. There was also discussion about whether core cost recovery should be spread across night services as well as day supports, with some providers arguing strongly that this should be the case (a position which would have increased the fee further). The current proposal falls short of the reasonable requests of those consulted by well over £20 per night. It appears that even the handpicked consultee group did not concur with the Council's wish to make drastic reductions in these payments.
4. There is no provision for compliance with the full terms of the judgement. The Court of Appeal made it clear that employers had a responsibility to pay time during which an employee was awake and working during a sleep-in at NLW rate. This does happen (in varying degrees depending on the setting) and providers will now have a legally enforceable duty to pay those hours at the full rate, (including holiday payments on total pay including sleep overs, on-costs etc.) but with no funding to do so. Social workers do not have the capacity to commission and validate claims for hours of disturbance here and there as they arise, so the matter must be addressed in the rate. To fail to do so exposes your care delivery partners to unfunded costs and the risk of prosecution.
5. These issues are further exacerbated with concerns around the length of sleep overs and the problem that should there be any tasks (currently carried out during the sleep over time) which would need to be performed by staff after such a proposed change; these would need to be paid at the NLW. In light of this issue should all the people that are supported by providers be subject to reviews to conclude that the length of sleep over shifts are correct for each individual and any tasks regularly needing carrying out

are in fact not part of a sleep over? This, we recognise would be a very costly and onerous task for the authority, but in order for providers to meet with NLW regulations would be necessary to ensure compliance. It is also necessary to take into account the fact that sleep overs are not a cost free activity and attract costs in terms of administration, arranging sleep over shifts and employers also have responsibilities to provide suitable sleeping facilities, beds, bedding and suitably equipped rooms.

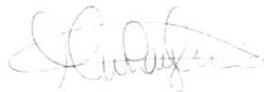
6. The press releases (see <https://www.bbc.co.uk/news/uk-england-lancashire-46343403>) which have sought to justify these proposed cuts using the argument that payments to external providers are being brought into line with in-house staff are, frankly, unacceptable. The reason that in-house staff did not require top-up payments under the previous arrangements is that their day time hourly rate was sufficiently high that such payments were not required. In house staff will suffer no detriment as a result of the proposed changes whereas our staff certainly will. This kind of bad faith communication serves only to undermine trust between commissioner and provider as we seek to support the most vulnerable citizens of Lancashire in challenging circumstances for us all.
7. In light of transparency, honesty and partnership working it would be a positive move to share the true rates paid to the Council's in house staff and then increase day time fees to provide for the Voluntary and Private Sector Providers to be able to pay staff in line with these rates, as any reduction in the sleep over rates may be more palatable for staff if this were the case. As the officers of the county are aware the Laing and Buisson report commissioned by the LLDC in 2016 advised that a fee rate of £15.12 per hour for 2016/17 would only allow for uplift for staff on the NLW and nothing for other staff. This at a time when the NLW was much less than the rate of £8.21 from April 2019.

We ask, therefore, that you withdraw or amend the current proposal, replacing it with one which addresses our concerns and pays at least £70 per night to providers who are commissioned for sleep in. We would like to thank you for the opportunity of a fully inclusive consultation which is currently taking place in this regard and ask that you continue to consult inclusively with stakeholders on any other critical plans. We would be happy to meet with you, or your professional staff, to progress this discussion, should you wish.

Yours sincerely



Sue Pemberton
Chair



Martin Layton
Vice Chair

**Copy to Ian Crabtree, Director of Adult Care Transformation, LCC,
Christ Church Precinct, County Hall, Fishergate Hill, Preston Lancashire PR1 8XJ**

