

Section 4

Equality

Analysis Toolkit

Night Time Support Rate Reduction

For Decision Making Items

May 2019

Question 1 - What is the nature of and are the key components of the proposal being presented?

A CHANGE IN THE BASIS AND AMOUNT PAID FOR SLEEP IN SHIFTS

In April 2016, as a result of a change in legislation relating to sleep-in shifts (arising from the case of Mrs J Whittlestone v. BJP Home Support Ltd) the county council changed the basis of its sleep-in fees, to reflect all sleeping hours counting towards national living wage. The rate paid to providers was changed from £37.19 per sleep-in to an hourly rate of £8.58 per hour, equating to approximately £81.50 per sleep-in; an increase of £44.31. This fee rate has been inflated each year and currently stands at £9.42 per hour (approximately £89.50 per sleep-in)

On 13 July 2018, the Court of Appeal issued its decision in the Royal Mencap Society v. Tomlinson-Blake ruling and overturned the previous ruling relating to sleep-in shifts:

"Care workers who were required to sleep at, or near, their workplace and be available to provide assistance if required, were available for work rather than actually working. Accordingly, they were not entitled to be paid the national minimum wage for the whole of the sleep-in shift, but only for the time when they were required to be awake for the purpose of working".

As a result of this decision, the county council cabinet approved a proposal to change from paying an hourly rate as detailed above to a flat rate fee of £47.43 per sleep-in shift.

The reduction in rate paid to providers will ultimately translate into a reduction in the amount providers pay staff to complete sleep-in shifts.

Question 2 - Scope of the Proposal

Is the proposal likely to affect people across the county in a similar way or are specific areas likely to be affected – e.g. are a set number of branches/sites to be affected?

All external providers will be affected in the same way: the county council pays the same rate to all external providers.

External provider staff will be affected in different ways as the amounts paid by providers to their staff is determined by the provider according to their individual business model, after taking into account the rate paid to them by the county council.

Question 3 – Protected Characteristics Potentially Affected

Could the proposal have a particular impact on any group of individuals sharing protected characteristics under the Equality Act 2010, namely:

- Age
- Disability including Deaf people
- Gender reassignment
- Pregnancy and maternity
- Race/ethnicity/nationality
- Religion or belief
- Sex/gender
- Sexual orientation
- Marriage or Civil Partnership Status

And what information is available about these groups in the County's population or as service users/customers?

Yes – mainly sex/gender protected characteristic as the workforce is over 80% female compared to a female population in Lancashire of close to 51%.

In terms of ethnicity the workforce is broadly representative of the Lancashire population.

The social care workforce is predominantly British, female (80%) and earning close to national living wage. Skills for care data as at March 18 shows the North West care market demographics as:

	LANCASHIRE
Gender (percentage female)	80.2%
Average age	42.82
Senior care worker - Average hourly rate Within Lancashire border)	£8.45
Senior care worker - Average hourly rate (North West)	£8.63
Care worker - Average hourly rate (Within Lancashire border)	£7.84
Care worker - Average hourly rate (North West)	£7.96
Nationality - British	94.7%

Should the proposal lead to problems of recruitment and retention of staff, strike action, or handing back of contracts there is the potential for an impact on individuals who are recipients of sleep in support who will be disabled people, including older people with a disability.

Question 4 – Engagement/Consultation

How have people/groups been involved in or engaged with in developing this proposal?

Prior to the consultation, the county council invited all existing supported living providers to engage in discussions relating to the legal ruling and a proposal to change the basis of sleep-in payments. 61 organisations were invited and 9 accepted the invitation. A meeting was held on 17 September 2018. This meeting helped to shape the initial proposal put to Cabinet on 3 December 2018. Cabinet approved the proposal, however, further to the 3 December cabinet decision the county council was asked if it would consult with all affected providers in relation to the proposed changes to sleep-in fees. Ordinarily this is not a decision which the county council would consult on, however, cabinet welcomed the opportunity to hear from providers on what this significant change in legal ruling would mean for people affected.

The county council undertook a consultation with providers for a period of 8 weeks. An electronic questionnaire was developed with the support of an existing service provider and affected providers were notified via email and provided with a link to the questionnaire.

61 providers with interests in supported living sleep-in services were emailed to during December 2018 and again in January 2019 to notify them of the intention to consult.

The consultation opened on 28 January 2019 for eight weeks; closing on 25 March 2019. A further reminder email was sent to all providers two weeks prior to the consultation closing

Copies of the consultation were also available in Word and pdf versions and in large print and Easy Read formats.

In total 22 responses were returned on-line.

The consultation questions included a series of questions designed to provide some context about how sleep in services were provided. Information returned included that 60% of respondents' workforce regularly complete sleep in shifts; the average annual salary of staff completing sleep in shifts is in the order of £16,100; the potential reduction in salary for staff was calculated to be in the order of 14% which would be an approximate cash impact on staff completing sleep in shifts of £2,300 per annum.

The main concerns/issues identified by respondents included:

20 respondents indicated the proposal would have a negative impact on their ability to recruit and retain staff. 11 respondents indicated that rates of pay are a key factor in recruiting and retaining staff and that this proposal will reduce staff pay making recruitment and retention more difficult.

20 respondents indicated the proposal will have a negative impact on their ability to deliver effective services, citing the reduction in staff pay as the main reason for this.

10 respondents indicated that they would have problems covering sleep in shifts due to staff not being willing to undertake them. One of our largest providers explained that sleep in shifts were not contractual and were undertaken on a voluntary basis so that a large reduction in pay would lead to staff refusing to cover these duties.

8 respondents indicated that there may be difficulties in terms of contractual sustainability if the proposal went ahead. Others felt that the rate proposed is too low or that it should be more reflective of overheads including national insurance, pensions, holiday pay, apprenticeship levy and allowances for management costs.

Four respondents stated they were aware of other providers' taking strike action. 1 respondent said they may find that their own staff take strike action. None of the largest providers (delivering 38% of the value of supported living) mentioned strike action.

Respondents also suggested the county council should wait for the outcome of the Unison appeal against the Court of Appeal before any

change is implemented and that other Commissioners had not implemented the change so far. There were also concerns that staff morale would be adversely impacted by any change in sleep in payments. It was also suggested that there could be an impact on service users as the quality and consistency of their sleep in support could be adversely impacted.

A separate letter was also received from the Lancashire Learning Disability Consortium which represents a broad coalition of voluntary sector providers of services to people with learning disabilities in Lancashire. The main points in their letter are summarised as:

- The level of cuts is too great to be managed safely;
- The flat rate fee paid to providers should be set to at least £70;
- The proposal does not allow for full compliance with the terms of the Appeal Court judgement as it does not address the issue of payment for disturbed hours, i.e. where staff are not sleeping and are supporting service users;
- It is unfair to link provider sleep in fees to in-house staff payments due to in-house staff hourly rates being sufficiently high to prevent the need for top up payments.

The outcome of this consultation has been used to inform and update the initial proposal of 3 December 2018 and a further proposal will be presented to Cabinet in June 2019.

It was decided that direct consultation with service users would not be held as the proposed change relates to contractual terms and conditions with providers who each have different operating and service delivery models.

Question 5 – Analysing Impact

Could this proposal potentially disadvantage particular groups sharing protected characteristics and if so which groups and in what way? This pays particular attention to the general aims of the Public Sector Equality Duty:

- To eliminate unlawful discrimination, harassment or victimisation because of protected characteristics;
- To advance equality of opportunity for those who share protected characteristics;
- To encourage people who share a relevant protected characteristic to participate in public life;
- To contribute to fostering good relations between those who share a relevant protected characteristic and those who do not/community cohesion;

This proposal will disadvantage workers earning at or close to National Living Wage in addition to a workforce that is predominantly female.

Evidence from the consultation suggests just over half of the workforce would be impacted and this group could face a pay reduction of up to 14%, or approximately £2,300 per annum.

Any reduction of this nature would impact affected employees in relation to meeting financial commitments they may have including supporting their families. For some it may result in seeking other employment or job roles.

Evidence from providers' consultation responses also indicated concerns from providers about their ability to recruit and retain staff and the potential impact this might have on service users in terms of quality and consistency of service/staff. If suitably skilled, trained and experienced staff no longer volunteered to work on sleep in shifts or left their current employment this could impact service users who may have to build up rapport with a range of different people which may affect their confidence in using the service.

The Lancashire Learning Disability Consortium commented that the cuts in rate were too great to be managed safely and respondents to the consultation were concerned that the proposal could make delivery of the service unviable/unsustainable. There is a possibility that if this happened in any significant way it could reduce the opportunity of and availability of sleep in options for service users. Service users' equality

of opportunity or choice to have this type of support would then be adversely affected.

Question 6 –Combined/Cumulative Effect

Could the effects of this proposal combine with other factors or decisions taken at local or national level to exacerbate the impact on any groups?

None anticipated.

Question 7 – Identifying Initial Results of Your Analysis

As a result of the analysis has the original proposal been changed/amended, if so please describe.

The county council has taken into consideration all points raised via the consultation process and this equality impact analysis.

The EIA has assisted in reaching a more informed decision which will assist providers in minimising any impact of the proposed changes in respect of their staffing, quality and continuity of service and the sustainability of their business. It is proposed that the planned implementation of the December 2018 decision relating to sleep-in fees is cancelled. A revised proposal (as detailed in Question 10) will be presented to cabinet in July 2019 which seeks to balance the need to make savings with the impact on this aspect of the care market as highlighted from various sources.

Question 8 - Mitigation

Will any steps be taken to mitigate/reduce any potential adverse effects of the proposal?

The county council has revised its proposal in light of the equality impact analysis and consultation feedback.

The implementation will be delayed from April 2019 to October 2019 and during the period from October 2019 to March 2020 the county council will pay a top up to allow providers to implement the transition to reduced rates. Full details of the new proposal can be found at Question 10.

Question 9 – Balancing the Proposal/Countervailing Factors

This weighs up the reasons for the proposal – e.g. need for budget savings; damaging effects of not taking forward the proposal at this time – against the findings of the analysis.

It is acknowledged that the people for whom these services are commissioned have significant disabilities. Any change in the fee paid to service providers may impact the quality, consistency, or availability of their sleep in service which in turn may impact their quality of life significantly.

It is further acknowledged that the workforce who will be impacted by any change is predominantly female and the possible impact on individual workers may be a 13-14% reduction in salaries for people who are paid at or close to the National Living Wage. This will inevitably adversely impact the financial circumstances of many of these people.

It is also acknowledged that the proposal may result in providers facing increasing difficulties in recruiting and retaining employees and facing increased financial pressures in some cases which may impact on the sustainability of the market.

The County Council has considered the outcome of the engagement and consultation with providers in addition to wider market information and its financial situation. In light of continued budget challenges for the County Council combined with the recent legal decision, a revised, reduced rate for sleep in fees has been recommended which seeks to balance the need to make savings with the impact on this aspect of the care market as highlighted from various sources. The implementation of the initial judgement in relation to sleep in payments resulted in the

County Council's spend on sleep in fees rising by £7 million in 2016/17 and there is an annual cost of approximately £13 million per year to commission external care and support providers to deliver sleep in services to over 1,000 people, predominantly people with learning disabilities.

Question 10 – Final Proposal

In summary, what is the final proposal and which groups may be affected and how?

In light of the consultation response, In June 2019 the county council's Cabinet will be presented with a recommendation to cancel the implementation of the 3 December decision and instead to increase the proposed sleep in fee paid to providers from £47.43 to £61.18. The revised rate is based on the assumption that providers pay their staff £45 per night, representing a reduction in pay in the order of 10% for affected staff. The implementation will be delayed from April 2019 to October 2019.

In addition the county council is recommend a payment of a £13.60 top up from October 2019 to April 2020 to allow providers to implement the transition to reduced rates. The top up rate is based on the assumption that staff are paid £55 per shift during the transition period; representing a reduction in pay in the order of 5% for affected staff

Protected characteristics groups most likely to be adversely impacted remain women in terms of the workforce and disabled people in terms of service users of sleep in services.

Question 11 – Review and Monitoring Arrangements

What arrangements will be put in place to review and monitor the effects of this proposal?

If a decision is made in line with the proposal, the county council will write to all providers confirming the outcome of the June 2019 Cabinet decision. As part of this letter providers will be advised that if they are unable to provide a safe & effective services as a result of this proposal they should develop a service continuity plan and also contact the county council to advise of the issues.

If further action is required, for example if the safety of vulnerable service users cannot be guaranteed the county council will seek to minimise the risk to service users. This will include actions such as arranging for other providers to cover shifts, use of the Night Support service, utilising in-house staff or use of the county councils agency contract.

If concerns in respect of service delivery are raised by providers then the county council will review the safe delivery and effectiveness of the individual services.

Equality Analysis Prepared By John Sleightholme (Financial Intelligence Manager: Policy Information and Commissioning Service) & Jeanette Binns Equality & Cohesion Manager (Equality Analysis & Equality Act Lead)

Equality Analysis Endorsed by Line Manager Dave Carr. Head of Service: Policy, Information and Commissioning (Start Well)

Decision Signed Off By Ian Crabtree. Director of Adult Social Care Transformation

Cabinet Member: Graham Gooch. County Councillor, South Ribble West. Cabinet Member for Adult Services

For further information please contact

Jeanette Binns – Equality & Cohesion Manager

Jeanette.binns@lancashire.gov.uk