

**Fol case number: Fol/19/01155**

**(ii) emails, meeting minutes or correspondence between Scottish Government officials and Ministers relating to the payment of the real living wage for overnight support social care workers (including the distribution of additional funds to care providers by local authorities) for the period 1 October 2018 to 30 April 2019 inclusive.**

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 02 November 2018 13:40  
**To:** Cabinet Secretary for Health and Sport  
**Cc:** First Minister; Cabinet Secretary for Finance, Economy and Fair Work; Cabinet Secretary for Communities and Local Government; Minister for Business, Fair Work and Skills; Minister for Local Government, Housing and Planning; DG Health & Social Care; [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Subject:** Scottish Living wage in adult social care : publication of research reports 5 November  
**Attachments:** Scottish Living Wage in Social Care - submission on CCPS research report....doc

Cabinet Secretary for Health and Sport

Copy as above

**Adoption of the Scottish Living wage in adult social care: publication of research reports 5 November**

Please find attached a submission on the findings of two research reports on implementation of the Scottish Living Wage in adult social care. The reports, which were commissioned by Coalition of Care and Support Providers in Scotland (CCPS), are due to be published by CCPS on Monday to coincide with Living Wage week.

[REDACTED]

[REDACTED] | Scottish Government  
St Andrew's House | Regent Road | Edinburgh | EH1 3DG | [REDACTED]

## **ANNEX B**

### **IMPLEMENTING THE SCOTTISH LIVING WAGE IN ADULT SOCIAL CARE: AN EVALUATION OF THE EXPERIENCES OF SOCIAL CARE PARTNERS, AND USEFULNESS OF JOINT GUIDANCE UNIVERSITY OF STRATHCLYDE REPORT**

Full report: <http://www.ccpscotland.org/wp-content/uploads/2018/11/Univ-of-Strathclyde-Living-Wage-implementation-research-November-2018.pdf>

#### **EXECUTIVE SUMMARY:**

##### **Introduction**

- 1 This report presents the results of a qualitative study evaluating the introduction of the Scottish Living Wage to adult social care and the accompanying Joint Guidance. Thirty-six respondents from the Civil Service, sector lead bodies, voluntary and public providers, contracting authorities and trade unions were involved in gathering the data.
- 2 There was consensus among participants that the introduction of the Scottish Living Wage for adult social care workers represented a significant progressive effort by the Scottish Government to improve the working conditions and living standards of front-line staff in the sector.
- 3 There was agreement among providers, lead bodies of employers and contracting authorities that the level of transparency and consultation regarding the introduction of the SLW was limited.

##### **The perspectives of local authorities and IJBs**

- 4 The distribution of funding to resource the SLW in adult social care was viewed as being overly complex, and again there was limited transparency in terms of how decisions regarding final sums are arrived at.
- 5 Local authorities varied in the extent to which they engaged in consultation and correspondence with providers regarding the distribution of funding for the SLW.
- 6 Local authorities varied in their approaches to implementing the SLW ranging from percentage uplifts for all providers to undertaking detailed individual negotiations. Some authorities withheld payments to those providers already paying the SLW.
- 7 Standardised hourly rates, or efforts to minimise variations in hourly rates were reportedly being adopted by some authorities.
- 8 Some local authorities had to make 'efficiencies' in their other services to fund the SLW. Moreover, requests for providers to 'make efficiencies' were increasing as wider resource constraints constrained local authority ability to fund the SLW.
- 9 In response, local authorities experienced warnings from providers that they might have to withdraw from services, where they found requests for efficiencies to be unrealistic.

- 10 Some local authorities were reportedly making the SLW a de facto requirement of tendering.
- 11 Monitoring of provider compliance with the SLW was undertaken, but only limited evidence of non-payment to front-line staff had emerged.
- 12 According to contracting authorities there was limited impact on recruitment and retention. It was further felt that providers would have to focus on non-monetary rewards to attract and retain staff now the SLW levelled the playing field on pay. Implementing the Scottish Living Wage in adult social care 5

### **The provider perspective**

- 13 Providers felt Integrated Joint Boards were remote and too focused on NHS issues. Relationships were also in some cases in their infancy.
- 14 Providers recognised that local democracy had to be respected, but had concerns that the lack of transparency and complexity in the distribution of funding made final decisions appear arbitrary.
- 15 Consultation and information sharing from local authorities regarding the implementation of the SLW was mixed, with some very open, while other imposed solutions.
- 16 Providers with multiple local authority funders faced the complexity of experiencing each of the four payment approaches outlined in the Joint Guidance.
- 17 The level of payments varied considerably with some providers receiving 0% from some authorities.
- 18 Providers questioned the validity of some of the calculations made by officers from authorities. They also reported limited or no use of available templates such as the UKHCA or Implementation Group's published guidance (developed by CCPS) on the cost of care.
- 19 Some relationships with local authorities were becoming strained as a result of difficult discussions regarding the payment of the SLW. This was especially the case where local authorities refused to pay anything to a provider.
- 20 The climate of uncertainty generated by the SLW was leading to some providers raising concerns about their long-term financial stability.
- 21 Concerns were particularly acute over the intention to move to funding the SLW through 'business as usual' in future (that is, no longer allocating an identified resource for this specific purpose), with fears that this may lead to more closures of services or handing back of contracts.

### **Impact on employment and terms and conditions among providers**

- 22 The most common impact on employment was the consequences for pay differentials. A range of differentials between front-line workers and others were affected, including senior more experienced workers, team leaders/supervisors, domestic, catering and maintenance staff.
- 23 Within some providers, delays in receiving funding for the SLW were leading to tensions arising with staff.

- Risks to the sustainability of some providers and services.

37 Across local authority and provider respondents commonly identified enablers for effectively implementing the SLW included:

- Greater consultation by Scottish Government.
- Greater consultation between providers, local authorities and IJBs.
- Reform of Joint Guidance to account for differences in timing and variety of approaches to payment, and sleepovers.
- Further information in Joint Guidance re implications of any future move to funding through 'business as usual'.
- The support of sector bodies such as CCPS, Scottish Care and COSLA.
- Separately identified funding.

38 A series of recommendations for future implementation include:

- Detailed monitoring by Scottish government of funding by local authorities of SLW if and when the 'business as usual' regime begins.
- A distribution formulae that takes account of the degree to which services in local authority areas are outsourced as well as issues such as geography, deprivation and need.
- Explore feasibility of coordinating the timing of local authority payment of increases to providers.
- Engagement of all partners in meaningful discussions re developing a template that recognises the true costs of providing satisfactory levels of care.
- To underpin and resolve concerns regarding differentials and fair work, the partners should consider moves to engage in national collective bargaining or some other coordination of pay and terms and conditions.
- Give greater weighting to workforce matters in procurement guidance.
- Reform Joint Guidance in line with aforementioned concerns of commissioners and providers.
- Commission further research into improvements in employee take-home pay /living standards from the SLW, consequences of handing back contracts and the balance between cost and quality in the award of contracts.

- 24 The narrowing of differentials was having negative consequences on the recruitment and retention of team leaders/supervisors, with existing workers reluctant to take on greater responsibility for limited additional rewards.
- 25 Some providers felt that the SLW initiative was rewarding competitors for being poor payers in the past whereas they paid their workforce a fair wage that rewarded their skills.
- 26 Providers indicated that complying with the SLW represented surrendering a substantial element of control over pay and their independence as an employer.
- 27 There was limited evidence of providers sacrificing other terms and conditions of employment to fund increases in the SLW.
- 28 The impact of the SLW on sleepovers raised significant uncertainty among providers, regarding the ability of local authorities to fund them at a higher rate. Local authorities were already calling for fewer sleepovers raising concerns about quality among providers.
- 29 Absolute levels of pay were increased as a result of the SLW policy, but there were doubts as to whether the relative levels were increased in relation to public sector workers and those in retail and hospitality sectors.

#### **The value of the Joint Guidance**

- 30 Commissioning and contracting authorities used the guidance to a limited extent, while also utilising various peer network groups for advice re the SLW.
- 30 There were areas where commissioners and contracting authorities felt the Joint Guidance could provide more clarity, including: the status of the SLW as a contractual obligation, the implications for self-directed support, the timing of implementation, the consequences for sleepovers (timing of payment and rates), monitoring and compliance, and state aid.
- 30 Local authority respondents indicated that it would be better to introduce funding of SLW through 'business as usual' once it becomes part of the 'culture in practice'.
- 31 Providers valued the Joint Guidance and the efforts of their lead bodies (CCPS and Scottish Care) to represent their interests.
- 32 Problems with the Joint Guidance included limited or no use of it, vagueness in key points such as timing of payments, limited acknowledgement of the different types of providers and services they delivered, funders using the vagueness of certain areas of guidance to be inconsistent in their behaviour, a lack of boldness/ being too 'neutral', and a lack of clarity regarding issues such as relevance of Fair Work.

#### **Barriers and Enablers to implementing the SLW**

- 36 Across local authority and provider respondents commonly identified barriers to effective implementation the SLW included:
  - Multiple payment methods by local authorities.
  - Multiple settlement dates by local authorities.
  - Under-funding of differentials and on-costs.

[Redacted]

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**From:** [Redacted]  
**Sent:** 20 December 2018 12:15  
**To:** Cabinet Secretary for Health and Sport; [Redacted]  
**Cc:** [Redacted]  
**Subject:** Update on the real Living Wage commitment for adult social care workers  
**Attachments:** Letter from Jeane Freeman MSP.pdf

To: Chief Officers, Integration Authorities  
Chief Executives, Local Authorities

Copy: Chief Finance Officers IJBs

Dear Colleague

**Update on the real Living Wage commitment for adult social care workers**

Please find attached a letter from the Cabinet Secretary for Health and Sport about the living wage for adult social care workers.

If you have any queries about the letter, please contact [Redacted]  
[Redacted] Care Support & Rights Division, Scottish Government

[Redacted] half of Cabinet Secretary for Health and Sport

[Redacted]  
St Andrew's House | Regent Road | Edinburgh | EH1 3DG | [Redacted]



T: 0300 244 4000  
E: scottish.ministers@gov.scot

To:  
Chief Officers, Integration Authorities  
Chief Executives, Local Authorities

20 December 2018

*Jeane Freeman*

### **Update on the real Living Wage commitment for adult social care workers**

I am writing to provide an update on the real living wage commitment for staff engaged in adult social care services including the extension of the commitment to overnight support (sleepovers).

I recognise that significant progress has been made in delivering the real living wage commitment. I understand that some Authorities have passed on the additional resources provided by the Scottish Government but that many have not. This causes a particular problem for providers who offer services across multiple Authorities as they cannot pay staff at different rates when they are doing the same job.

Since 2016 the Scottish Government has provided funding to support the delivery of the real living wage commitment, all of which has been baselined annually. This includes £20 million of funding provided to Local Authorities over the last two years to extend the commitment to sleepovers hours during 2018/19. It is my expectation that the rates for 2018/19 should be based on the real living wage rate of £8.75 and, as highlighted in previous guidance, take account of any on-costs.

I would confirm that our commitment to pay the real living wage for sleepover hours, which was announced in October 2017, still stands even with the Court of Appeal's judgment earlier this year in the joined cases of Mencap v Tomlinson-Blake and Shannon v Rampersad ([2018] EWCA Civ 1641), around the application of the National Minimum Wage to sleepovers. It was agreed that the extension of the real living wage commitment to sleepovers should be implemented during 2018/19, with guidance recommending that this should be done as soon as is practical. I would therefore ask that you make every effort to have put in place arrangements by the end of January demonstrating how the real living wage commitment for sleepovers will be implemented by end March 2019.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)



Our draft spending and tax plans for 2019-20 were announced on 12 December. In 2019/20 we are increasing our package of investment in social care and integration to exceed £700 million, underlining our commitment to integration and social care including the real living wage for staff.

*Kind regards*



JEANE FREEMAN

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

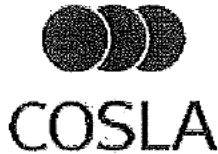
St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



## Schedule of Information/Documents

Fol case number: Fol/19/01155

(i) Correspondence from the Scottish Government to local authorities, health and social care partnerships, care providers and COSLA relating to the payment of the real living wage for overnight support for social care workers (including the distribution of additional funds to care providers by local authorities) for the period 1 October 2018 to 30 April 2019 inclusive.



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

19 October 2017

Dear Chief Officer

As part of the 2017/18 budget we said that we would undertake work to extend the Living Wage to sleepover hours. We have engaged with key stakeholders including health and social care partnerships, providers through CCPS and Scottish Care, and the workforce through Unison. We have identified the risks and challenges of extending the commitment to sleepovers, but believe these can be managed and addressed. **The Cabinet Secretary has decided that Living Wage will be extended to sleepovers during 2018/19.** This will provide time for commissioners and delivery partners to work together to ensure continuity of care to individuals and mitigate the risk of any adverse impact to the workforce.

Further discussion surrounding funding to support the implementation of this will continue and the detail of this will be confirmed as part of the 2018/19 Spending Review process.

Kind regards



**GEOFF HUGGINS**  
Scottish Government



**PAULA McLEAY**  
COSLA



E: [Geoff.Huggins@gov.scot](mailto:Geoff.Huggins@gov.scot)

7 November 2017

Colleagues

You will be aware that on 26 July 2017, the UK Government announced that it had temporarily suspended enforcement activity across the UK (via HMRC) and is waiving historic financial penalties against employers related to sleep-in shift pay in the social care sector. This was in direct response to concerns expressed by providers over the combined impact which financial penalties and arrears of wages could have on the stability and long-term viability of care and support services.

Following this temporary suspension on enforcement activity the UK Government has announced that social care employers will be able to opt into a new Social Care Compliance Scheme (SCCS), giving them up to a year to identify what they owe to workers, supported by advice from HM Revenue and Customs (HMRC). Employers who identify arrears at the end of the self-review period will have up to three months to pay workers.

HMRC will write to social care employers who currently have a complaint against them for allegedly underpaying minimum wage rates for sleep-in shifts to encourage them to sign up to the scheme. Employers that choose not to opt into the scheme will be subject to HMRC's normal enforcement approach.

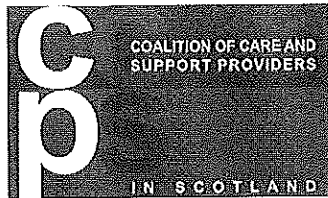
The announcement also states that UKG is exploring options to minimise any impact on the sector. The UKG has opened discussions with the European Commission to determine whether any support, if deemed necessary, would be subject to EU state aid rules. Scottish Government officials will continue to engage with the UKG on this matter.

Further guidance on the SCCS can be found here. If you have any queries these should be directed to Department of Business, Energy and Industrial Strategy.

Kind regards



**GEOFF HUGGINS**  
Scottish Government



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

May 2018

To: Chief Officers HSCPs / LA Chief Executives

## **Update on the Scottish Living Wage commitment for adult social care workers**

This is an update on the Scottish Living Wage commitment for adult social care staff following the finalisation of the Scottish Government's budget for 2018/19. The 2018/19 budget includes a further £66 million to support additional expenditure by local government on social care. In particular, for implementation of the Carers Act, extending our joint commitment to the Living Wage, including sleepovers, and an increase in Free Personal and Nursing Care payments.

As set out in Derek MacKay's letter of December 2017, the Scottish Government is looking to Local Authorities and Health Board partners through Integration Authorities to continue to prioritise their financial support for social care.

There is an expectation that adult social care workers will be paid the Living Wage regardless of whether they work for the public, private or voluntary sectors. This letter seeks to provide clarity on the Living Wage in commissioned services. Local Government pay rates and terms and conditions are handled separately and will be communicated when COSLA and the Trade Unions have agreed the 2018/19 Scottish Joint Council pay settlement.

Although we are aware that when this letter is received, the majority of local budgets and contracts with providers will have been set, we hope this letter offers clarity to the sector on the Living Wage rate, timings for implementation and on sleepovers.

### **Living Wage rate**

The new Living Wage rate of £8.75 was announced on 1 November 2017 by the Living Wage Foundation. The Scottish Government is providing funding in the 2018/19 budget for this uplift to allow this to be passed on to providers to pay their staff. In line with the Living Wage Foundation's recommendation, the expectation is that this should be paid to all adult social care workers by 1 May 2018. Full guidance on implementing the Living Wage in the context of this commitment can be found [here](#).<sup>1</sup> The guidance sets out points to consider in relation to commissioning and procurement practice. It also includes further detail around the additional costs associated with uplifts, such as pensions and other 'on costs'.

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<sup>1</sup>[http://www.cosla.gov.uk/sites/default/files/documents/joint\\_guidance\\_to\\_support\\_delivery\\_of\\_the\\_living\\_wage\\_-\\_scottish\\_governm....pdf](http://www.cosla.gov.uk/sites/default/files/documents/joint_guidance_to_support_delivery_of_the_living_wage_-_scottish_governm....pdf)

## **Sleepovers**

In October 2017 the Cabinet Secretary for Health and Sport announced that the Scottish Living Wage commitment will be extended to sleepover hours to be implemented over the course of 2018/19, providing time for implementation to take place in a planned way.

Funding has been provided to Local Authorities to support the delivery of this commitment during 2018/19 within a commissioned services context. It is recommended that adult social care workers should be paid the Living Wage for sleepovers as soon as is practical during 2018/19. It is of course a matter for local commissioners and providers to reach agreement around the timescales for implementation taking account of prior planning. However in determining timescales, it is important to note that providers may deliver services for more than one local authority while honouring corporate commitments to their staff. To accommodate for this, a collaborative approach between commissioners and providers is encouraged. These conversations may involve multiple commissioners.

In the interim, it should be noted that from 1<sup>st</sup> April 2018, the National Living Wage (or the 'minimum wage') will rise by 33p per hour to £7.83. This will mean an increase in pay for care workers performing sleepover shifts, and additional costs for employers as above, in instances where those shifts are not yet paid at Living Wage rates.

## **Implementation**

The Living Wage in Care Implementation Group which comprises Scottish Government, Coalition of Care and support Providers in Scotland (CCPS), Scottish Care, STUC and COSLA, has been established to support the implementation of the joint commitment.

This group jointly developed the guidance referred to above to support implementation, The importance of a fair, transparent and collaborative funding process, which achieves 'buy-in' from providers, was emphasised in the guidance. Having a shared understanding of the full cost of this commitment is an important part of this process and a tool<sup>2</sup> was developed to support local partners to establish an affordable and sustainable rate for packages of care. Such an approach can help to identify the components of an hourly rate for care and support which would also include on-costs and can be used to facilitate local negotiations on establishing an hourly rate. We would encourage this tool to be deployed routinely and particularly in any circumstance where voluntary agreement cannot be reached without it.

In recent years, Scottish Government budgets have been set on an annual basis. As it stands, no budget has been set beyond 2018/19. This is always challenging in a commissioning context, but we would encourage those commissioning services to continue to support our joint ambition to support Fair Work practices including the Living Wage for those delivering adult social care services.

Significant progress has been made in delivering the Living Wage commitment which has been achieved through the efforts, commitment and partnership working

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<sup>2</sup> <http://www.ccpscotland.org/hot-topics/hourly-rates-wages/tools-and-resources/>

between Health and Social Care Partnerships and providers. We know that this was a difficult task to progress in tight timescales and the Living Wage in Care Implementation Group is committed to supporting providers and partnerships to continue to improve the implementation process in 2018/19.

If you have any questions please do not hesitate to contact [REDACTED] in the Adult Social Care Policy Team in Scottish Government [REDACTED] [@gov.scot](mailto:[REDACTED]@gov.scot)

**Scottish Government, COSLA, CCPS, Scottish Care, STUC**



T: 0300 244 4000  
E: scottish.ministers@gov.scot

To:  
Chief Officers, Integration Authorities  
Chief Executives, Local Authorities

20 December 2018

*Jeane Freeman*

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JEANE FREEMAN

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