

My organisation is a medium sized charity and has run care homes and provided supported living services in the West Midlands for over 20 years. We employ 300 staff to support 85 people in these services and another 65 in day opportunities and deliver 1100 hours of support and 27 sleep-ins every day. We turnover £5.5 million and have a net worth equivalent to 3 months turnover (£1.4m) of which about 40% is invested in properties for people we support and the balance is utilised for working capital. We pride ourselves on being a lean responsive organisation aiming to deliver best value services with the highest possible quality. However, the income we secure is predominantly via local authority tenders, so margins are always tight.

This issue is critical. Had our organisation chosen to pay sleep ins at the minimum rate for the past 6 years then we would simply not have secured any work unless every provider was tendering on the same basis. The Government has since 26 July 2017 set the sleep-in rate at the minimum wage rate. Everyone will now tender on that basis, but the Government should be in no doubt that organisations such as mine have not been charging at one level and paying its staff at another.

About half of our staff undertake sleep-in duties and we started paying a top-up to the national minimum wage in May 2017. We estimate the annual cost of this to be £255,000 including on-costs which would put us in a loss making situation unless funded. We have some interim arrangements with commissioners to cover costs in some areas, but unless converted into long term funding from all, our volunteer trustees would be forced to hand back the services. We have already been unable to respond to some requests to take on new work and we are concerned this issue will make sleep-ins unaffordable and precipitate a return to larger institutions. Small efficient services with small staff teams are the most at risk.

None of our commissioners will commit to funding backpay. Our trustees have already discussed the impact of a significant liability for back pay. We have calculated the full 6 year back pay liability to be in the region of £1.5m - our total cash reserves are £1.4m. This would make the charity insolvent and they would act immediately to hand the charity to administrators to avoid illegal insolvent trading. This would be a catastrophic step not only for the people we support, who are amongst the most vulnerable in society, but also for our staff and their families. It is difficult to imagine just how traumatic this would be and for what purpose?

We have escaped HMRC attention to date because we have a loyal and understanding staff team who don't want to put the charity or people we support at risk. But payment of the top up is a divisive step which is wiping out differentials between junior/senior staff and the incentives for working in complex or challenging services. One of our Team Leaders has expressed outrage that junior staff have caught up with his earnings, whilst he retains responsibility for stepping in to cover all shifts. Our waking night staff cannot understand why they are now only earning a few pence more than their colleagues who are asleep. Many staff who undertake sleep ins also do waking shifts and sleep ins are seen by many staff as an easy way of supplementing income. No one historically ever questioned a fixed rate for a sleep-in shift, particularly ones where there is limited chance of disturbance. Employment Tribunals have seemingly pushed the boundaries of what is considered to be 'working time' far beyond what the Government through HMRC has been historically advising it to be.

We have coped with the lowest legal wage gradually catching up with support worker pay, which has the effect of making recruitment even harder, together with our commissioners basing fee reviews on NLW, but to value sleeping duties at the same rate as the challenging day job is an insult too far for many of our staff.

To ensure the independent future of people with serious learning disabilities the Government should pay back-pay liabilities in full. But perhaps they should also consider implementing a National Sleep-in rate which provides some pay differentiation between the support worker who is awake and working and the support worker who is asleep.