2017/18 Cost Pressures report

Care and Support West and this Cost Pressures report

Care and Support West is the Care Association covering the B&NES, Bristol, North Somerset and South Gloucestershire areas. We currently have close to 150 member organisations drawn from residential, nursing and domiciliary care services for older people and residential, supported living and community support services for people with learning disabilities and mental health support needs.

As an Association this is the fifth year we have submitted a Cost Pressure report to all four of the ex Avon local authorities. These are increasingly concerning times and as the Care Association responsible for formally representing the views of our members and providers of social care services, we want once more to make sure that the difficult issues they are facing are clearly and effectively identified.

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Executive Summary

The financial precipice facing social care services should not be news to anyone involved with the sector. We have highlighted concerns to local authorities over many years and hope that now the situation is being taken increasingly seriously. A combination of local authority costing models that don't reflect the actual cost of care, year on year settlements that have been well below inflation and additional costs including statutory annual leave and pension contributions which providers have just been expected to absorb have collectively served to squeeze many providers to the very edge of financial viability. Local Authorities are seeing the number of provider failures on the up and even CQC have recently described the sustainability of social care as at a tipping point.

We recognise that local authorities are between a rock and a hard place. On the one hand central government systematically strip away available funding against a backdrop of increasing requirements for social care. On the other hand the introduction of the Care Act 2014 places a number of clear and explicit duties on local authorities in relation to ensuring that there is a diverse, viable and high quality social care market available for those that need it. We also acknowledge that local authorities are being placed in an unsustainable position but providers can no longer continue to be the passive recipients of inadequate funding. As a Care Association committed to this sector and the vulnerable people it supports, we want to work with commissioners to ensure that the sector gets the funding it requires to develop and deliver the social care services that people and society need both now and in the future.

The Social Care sector has shown a surprising degree of resilience to the funding pressures over the last few years although these are increasingly taking their toll. However, the pressures that the sector now faces in relation to having to keep pace with the increasing National Minimum Wage (NMW) requirements are likely to eclipse them all. If additional funding is not provided to adequately address this issue, the projected increases in the NMW will serve to destroy the sector. This cannot be overstated.

The year on year increases in the NMW since 1st April 2016 are serving to quickly erode any pay advantage that social care providers might have had historically over NMW employers. For many this advantage will already have gone with the increase in the NMW to £7.50. For almost all the rest, any remaining advantage will have been reduced to a matter of pence.

The duties and responsibilities placed on local authorities by the Care Act however are not limited to ensuring that providers are able to be NMW compliant. These duties and responsibilities extend to ensuring that providers can attract, retain and develop staff in such a way that they are able to deliver high quality services and that providers are able to realise sufficient financial returns to ensure a healthy and sustainable level of provision in the long term. We do not believe these duties are being properly met.

It is well documented that as a sector Social Care is already unable to recruit and retain the staff it needs. Skills for Care use the National Minimum Data Sets information to estimate that around 6.8% of roles in adult social care are currently vacant. This equates to around 84,000 positions. They estimate that the turnover rate of directly employed staff working in the adult social care sector is around 27.3%, or around 339,000 leavers per year. The turnover rate is higher for registered nursing roles (35.9%), for care worker roles (33.5%) and within domiciliary providers (38.1%).

Of additional concern is the picture of staff turnover rates in Social Care increasing steadily year on year whilst the need for staff is predicted to need to increase by another 18% by 2025. Add to this the fact that the sector has an aging workforce with half its staff aged 45 and over and the number of staff aged under 25 remaining stubbornly low for the fifth consecutive year at just 11.6% of the workforce. We underestimate the nature and extent of this problem at our peril.

What is going to become increasingly evident is that just being able to meet NMW requirements is not going to be enough for social care providers to recruit and retain the workforce they need. It never has been. Sectors need staff. Increasingly organisations that operate under normal market conditions are having to increase the rates they pay their staff in order to secure the workforce they need in a competitive market place. Social Care is going to have to follow suit or it will be left behind. That said, ensuring providers are at the very least able to be fully NMW compliant still needs to be addressed as a matter of absolute priority.

In terms of recognition that doing just enough will not be sufficient, some level of precedent around this has already been set. The Scottish government has responded to homecare worker recruitment problems by diverting £250m of NHS cash to fund a higher minimum wage of £8.25 an hour. This will be applicable to all care workers from October 2016. The recognition is that doing the minimum is not enough and what is required is to do what is necessary.

The need to recruit and retain a growing proportion of younger staff

As a sector Social Care needs to dramatically improve its ability to recruit and retain younger people. The government has created a differentiation between the minimum rates that need to be paid to staff who are under 25 compared to those who are 25 and over. However, if providers differentiate along these lines and pay staff under 25 less for doing exactly the same job as people who are 25 and over, this is going to dramatically limit their ability to recruit the very staff they so desperately need.

We already have a recruitment crisis and local authorities have a duty to help 'foster, enhance and appropriately incentivise this vital workforce to underpin effective, high quality services'. Funding providers in such a way that they are forced to differentiate between what they pay people under 25 and over 25 will serve to do the exact opposite. It will not only inhibit the sectors ability to deliver the provision of today, it will also impede its ability to develop the provision of tomorrow.

Luckily many local authorities understand this predicament and do not fund providers in such a way that they are forced to make this distinction. Unhappily however, others don't. Although the law may allow for this discrimination, it is still discrimination. We would ask what a local authority's position might be if this 'legalised discrimination' was introduced in relation to another protected characteristic such as sex or race say? Do we believe in equal opportunities … or not?

The need to maintain viable pay structures

The cost of NMW compliance is not just about what is paid to front line staff, it also has to ensure that viable pay structures are maintained. As providers have to increase what they pay to their front line staff, they will also need to increase what they pay to roles higher up the pay scale.

In addition in order to try and recruit and retain staff, providers generally have a number of salary points, typically entry level, mid-point and top of scale for each pay grade. This enables them to reward staff for experience, qualifications and / or length of service. The lowest rate paid to front line workers may need to be £7.50 an hour but that 'band' is likely to have a £7.75 mid-point and £8.00 top of scale rate in it as well.

The market currently also ensures that staff who support more complex or challenging people are paid at a higher rate to reflect the more difficult job they do. If these services are going to continue to be able to attract sufficient staff, this pay advantage will need to be maintained. More and more social care is about supporting people with complex needs. If the financial remuneration is not there to reflect this, people will not choose to work in these services.

Sleep ins and NMW compliance

An area of major concern is the slowness of local authorities to pay rates that enable providers to also pay sleep ins at the NMW. This is particularly an issue for providers of learning disability and mental health services in both Residential Care and Supported Living settings.

The guidance from the .gov.uk website is clear that 'time spent at work and under certain work-related responsibilities even when workers are allowed to sleep (whether or not a place to sleep is provided), counts as working time.' Hours worked as sleep ins therefore also need to be included in any NMW calculations.

Providers of these services have traditionally only been able to afford to pay sleep ins at around £35 to £40 a night. This equates to £3.89 to £4.44 an hour. For the most part they would have been compliant with NMW requirements historically as they would have been paying day time rates around £7.20 - £7.50 an hour during a time period when the NMW was rising gently year on year from £6.19 and £6.70 an hour. At the time they had room for manoeuvre but this is no longer there.

The extent to which a person doing sleep ins is at least in receipt of the NMW is not only dependent upon the rate they are paid but also upon whether they are full time or part time and the number of sleep ins they do. If all hours are not at least paid at the NMW, it becomes complicated and time consuming to keep track of each staff member's NMW compliance.

We use this report to work through a number of scenarios but in summary, if staff are paid at the new NMW of £7.50 an hour they would need to receive £70 per sleep in from 1st April 2017 in order for NMW requirements to be met. As the NMW goes up, so too will the amount that providers have to pay staff for sleep ins.

As the amount paid to staff for sleep ins increases, then so the differential between this and the amount staff receive for doing waking nights will also need to be maintained.

Moving forward

Staffing is a provider's main cost. If you stick the NMW through the ceiling, then the cost of social care is going to go up and not down. This is a very clear and obvious relationship and we get frustrated with local authorities and the 'experts' they use as consultants who try and suggest it can be any different. Within this context, tendering exercises for Dom Care and Community Support services which are designed to save money are clearly doomed to failure and are creating a lot of unnecessary anxiety and bad feeling. They are a waste of everybody's time, commissioners and providers alike.

As councils make their financial decisions in relation to 2017/18, it is vital that commissioners and elected members are mindful of the tipping point that CQC refer to in relation to the sustainability of Social Care. We would also remind them of their duties under the Care Act to effectively ensure that the sector is sufficiently funded to maintain the range and quality of services that are required and to ensure that there is an adequate and appropriately trained workforce.

Recommendations

1. We urge local authorities to take advantage of the opportunity that has been made available to them in terms of the additional 3% precept that they are able to charge on Council Tax in both 2017/18 and 2018/19. It is important that the Council Tax precept is used to ensure that providers are at the very least able to meet NMW requirements including for travel time and sleep in hours.

2. The timing and extent of increases in the NMW will affect providers differently. There needs to be a fair mechanism in place which enables providers to evidence the impact of any additional costs required to ensure NMW compliance and once evidenced these should be promptly paid. We are happy to work with local authorities to develop models to do this.

3. In order to avoid discrimination, division and a policy which would adversely affect the ability of providers to attract the younger staff they desperately need, we would urge commissioners to pay rates that enable providers to pay all their staff (certainly those over 21) the same for doing the same job on the condition that providers then commit to passing these payments on to staff in practice.

4. In order to enable the sector to function, there will need to be a commitment from commissioners to retaining pay differentials both between and within pay grades and to pay a premium to organisations supporting people with more complex needs.

5. The ability for providers to be NMW compliant when sleep ins are taken into account has changed dramatically over a short space of time. Where services require a sleep in, we would also urge commissioners to fund providers so that they are able to pay their staff (certainly those over 21) the full NMW for sleep ins, again on the condition that they commit to passing this on to staff in practice. There is also a need to pay providers in such a way that they are able to maintain the differential between sleep ins and waking nights.

Our offer of help

The reality is that Social Care is going to cost more or increasingly it won't exist. That should be clear to those who understand the financial pressures it faces. Whether it 'tips' will depend on how this situation is responded to. If ever there is a time for proper partnership working, it is now.

We fully agree that local authorities need significantly more help from central government to solve the long-term crisis in social care and we are very willing to support them in relation to this. This report is designed to make the reality of the situation faced by providers very clear.

As the local Care Association we have close to 150 provider organisations as members. We have the expertise needed to work with local authorities to create fair frameworks to enable providers to evidence the impact of the NMW and to develop costing frameworks which can both benchmark but are flexible enough to reflect the actual costs of care as these change. Please engage with us to further our collective cause.

Introduction

This is now the fifth year that Care and Support West has submitted a formal Cost Pressures report to the local authority and prior to that we had formal discussions with local authority representatives for many years. This year we want to ensure that this report is available to local authority commissioners, commissioners from the CCG and elected members.

Each year we have detailed the specific cost pressures facing providers at that time but also highlighted the cumulative pressure on providers of them being expected to just carry more and more costs year on year.

For several years now we have also sympathised with the plight of local authorities. We do recognise that they are between a rock and a hard place. Budgets have shrunk significantly and continue to do so and yet the demand for adult social care services and duties in relation to providing for these have arguably never been greater.

The inadequacy of Central Government's response to the funding crisis in social care is a concern to both providers and local authorities alike. In their 20016 Budget Survey report, ADASS are clear about the extent of the financial problem facing social care services and we welcome this.

We want to work with local authorities and we need to if we are collectively going to avert what will become a catastrophic situation if the increasing financial concerns facing social care providers are not adequately addressed. There is now no shortage of reputable reports in which the nature and extent of the problems are laid bare. We include links to the following documents at the end of this report for further reading:

1. Bournemouth University (May 2015) '*Pathways to Recruitment Perceptions of employment in the Health and Social Care Sector*'.
2. Care Quality Commission (October 2016) '*State of healthcare and adult social care in England 2015/16*'.
3. International Longevity Centre UK (December 2015) '*The end of formal adult Social Care - A provocation by ILC-UK*'.

4. The Kings Fund and Nuffield Trust (September 2016) '*Social Care for Older People; Home truths*'.
5. National Care Forum's (2016) '*Personnel Statistics*' report.
6. Skills for Care (September 2016) '*State of the adult social care sector and workforce in England'*.
7. UKHCA (October 2016) '*The Homecare deficit 2016*'.

Even CQC, who are notoriously reluctant to give any views on the costs of care, suggest in their 2015/16 'State of healthcare and adult social care in England' report that the sustainability of adult social care may be approaching a 'tipping point'.

The foundations of the problem are not new. They have been building up layer upon layer based on the combined impact of local authorities using costing models that don't reflect the actual cost of care, year on year settlements that have been well below inflation and additional costs such as VAT and National Insurance rises, increased training, insurance and quality assurance costs and statutory requirements such as additional annual leave and pension provision which providers have just been expected to absorb. No business can just keep going indefinitely as its financial viability is steadily eroded year on year.

In addition society needs to plan for the future. If the business conditions are not right, providers are not going to be able to attract the finance they need to invest in developing the social care services that people will need in ever greater numbers. A lack of courage and commitment from central government to properly address this issue and short term year on year financial thinking on the part of local authorities are resulting in the nation collectively sleep walking into what will become a social care crisis.

The key concern currently and the one we want to focus on in this report is the impact of the continued increase in the National Minimum Wage (NMW).

We are using the term the National Minimum Wage (NMW) rather than the National Living Wage. The term the National Living Wage was hijacked by George Osborne as part of his July 2015 Budget. The 'actual' Living Wage as independently calculated by the Living Wage Commission based on what employees and their families need to live is currently £8.45 outside of London and £9.75 in London (http://www.livingwage.org.uk/what-living-wage). We feel it was an act of cynical political opportunism for George Osborne to hijack this term and apply it to a rate that is not related to meeting the actual costs of living. We are therefore calling it what it is, i.e. the new National Minimum Wage.

We all recognise that there are significant funding shortfalls just in relation to the NMW never mind an actual Living Wage. What needs to be understood however is that if these funding shortfalls are not adequately addressed, the projected increases in the NMW will destroy the sector. We are not overstating this. The NMW has already increased from £6.70 to £7.20 an hour in April 2016 it will increase again to £7.50 in April 2017. This will represent an 11% rise on the pre April 2016 figure in a year. The NMW is currently projected to go up to around £9.15 by 2020. If this increase materialises, it will have risen at an increase of 36.5% on the pre April 2016 figure in a 4 to 5 year period. Without additional funding the sector will not be standing in its current form long before this level is reached.

The NMW issue however is not just about the headline figures. There are layers of complexity associated with it and we want commissioners and elected members to have a full grasp of what these are.

In their 2016 Budget Survey ADASS state that at least 65% of councils have experienced actual provider failure in the last 6 months. In addition the survey cites evidence of providers (particularly those of homecare services) handing back council funded contracts because they just can't afford to do continue delivering them. This is what we mean when we say that these tendering exercises designed to reduce the cost of domiciliary care and community support services are a waste of everybody's time.

The key tables from the ADASS Budget survey identify the following:

Number of councils where at least one provider has ceased trading in the last 6 months

	Number of councils	Predicted number of people affected
Home care	48	3925
Residential / Nursing care	77	2464

Contracts handed back in the last 6 months

	Number of councils	Predicted number of people affected
Home care	59	3715
Residential / Nursing care	32	720

(ADASS Budget Survey 2016)

Local Authorities duties under the Care Act

We said at the outset that we recognise that local authorities are between a rock and a hard place. On the one hand central government systematically strip away available funding against a backdrop of an increasing requirement for social care. On the other hand the introduction of the Care Act 2014 places a number of clear and explicit duties on local authorities in relation to ensuring that there is a diverse, viable and high quality social care market available for those that need it. The latest version of the Statutory Guidance to the Care Act identifies these duties and responsibilities as follows:

Local authorities must facilitate markets that offer a diverse range of high-quality and appropriate services. In doing so, they must have regard to ensuring the continuous improvement of those services and encouraging a workforce which effectively underpins the market through standards, skills, qualifications and apprenticeships

(Care and support statutory guidance: (4.21): December 2016)

People working in the care sector play a central role in providing high quality services. Local authorities must consider how to help foster, enhance and appropriately incentivise this vital workforce to underpin effective, high quality services.

(Care and support statutory guidance: (4.28): December 2016)

When commissioning services, local authorities should assure themselves and have evidence that service providers deliver services through staff remunerated so as to retain an effective workforce. Remuneration must be at least

sufficient to comply with the national minimum wage legislation for hourly pay or equivalent salary.

(Care and support statutory guidance: (4.30): December 2016)

When commissioning services, local authorities should assure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care.

This should support and promote the wellbeing of people who receive care and support, and allow for the service provider ability to meet statutory obligations to pay at least the national minimum wage and provide effective training and development of staff.

It should also allow retention of staff commensurate with delivering services to the agreed quality, and encourage innovation and improvement.

(Care and support statutory guidance: (4.31): December 2016)

Local authorities ……… should understand that reasonable fee levels allow for a reasonable rate of return by independent providers that is sufficient to allow the overall pool of efficient providers to remain sustainable in the long term.

(Care and support statutory guidance: (4.31): December 2016)

SHAPING SUSTAINABLE MARKETS

Local authorities must work to develop markets for care and support that - whilst recognising that individual providers may exit the market from time to time - ensure the overall provision of services remains healthy in terms of the sufficiency of adequate provision of high quality care and support needed to meet expected needs. This will ensure that there are a range of appropriate and high quality providers and services for people to choose from.

(Care and support statutory guidance: (4.33): December 2016)

… Local authorities must not undertake any actions which may threaten the sustainability of the market as a whole, that is, the pool of providers able to deliver services of an appropriate quality – for example, by setting fee levels below an amount which is not sustainable for providers in the long-term.

(Care and support statutory guidance: (4.35): December 2016)

The responsibilities and legal duties being placed on local authorities are in no way solely about local authorities ensuring that providers are able to be compliant in terms of paying the NMW. That is the very least they are expected to do.

The duties and responsibilities extend to ensuring that providers can attract, retain and develop staff in such a way that they are able to deliver high quality services and to allow them sufficient levels of return to ensure that there is a healthy and sustainable level of provision in the long term.

It shouldn't need to be stated but clearly enabling providers to be NMW compliant and enabling them to attract and retain the staff they need and to develop and deliver the required range and quality of services are in no way one and the same thing.

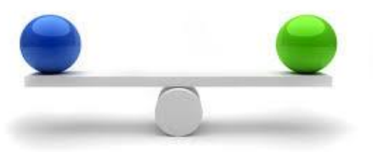
Increases in the National Minimum Wage: the impact on the Social Care sector

Where we were prior to 1st April 2016

Historically the majority of care providers (although by no means all) would have been paying their front line staff at a rate that was significantly above the NMW. In general, providers of learning disability and mental health services have tended to pay their front line staff slightly higher basic rates than those paid in older people's services. The situation is somewhat complicated however when sleep ins rates (which are used more in LD and MH services) and travel time (used extensively in Dom Care) are taken into account. Relevant case law and HMRC guidance are both very clear that hours worked as sleep ins and travel time are 'working time' and need to be included in NMW calculations.

When the NMW reaches £7.50 an hour in April 2017, more and more providers are going to find themselves unable to comply with the NMW requirements.

The increasingly level NMW playing field and the impact of this on staff recruitment and retention



Prior to 1st April 2016 the majority of social care providers would have had an advantage over NMW employers. They would have been paying more than the NMW to their lowest paid staff and would have in place pay structures which pay more to longer serving staff and / or staff who take on more responsibility.

However very soon, this advantage will have been completely wiped out and social care providers will become just another NMW employer. For many this advantage will already have gone with the increase in the NMW to £7.50. For the rest, any remaining advantage will be reduced to a matter of pence.

It is well documented that as a sector Social Care is already unable to recruit and retain the staff it needs.

A detailed analysis of the nature and extent of this problem can be found in Skills for Care’s “State of the adult social care sector and workforce in England’ report (September 2016) and the National Care Forum’s 2016 Personnel Statistics report. Relevant ‘headlines from these reports include:

- The number of adult social care jobs has increased by 18% since 2009 (by 240,000 jobs). If the adult social care workforce needs to grows proportionally to be in line with the projected number of people aged 65 and over, then the number of adult social care jobs will need to increase by a further 18% by 2025, (to 1.83 million jobs).
- Skills for Care estimates that 6.8% of roles in adult social care were vacant. This equates to approximately 84,000 vacancies at any one time.
- The vacancy rate between 2012/13 and 2015/16 had risen each year, from 4.5% in 2012/13 to 6.8% in 2015/16.
- Skills for Care estimates that the turnover rate of directly employed staff working in the adult social care sector was 27.3%. This equates to approximately 339,000 leavers per year.
- The turnover rate was even higher for registered nursing roles (35.9%) and care worker roles (33.5%)
- The care worker turnover rate within domiciliary providers was 38.1%.
- Turnover rates increased steadily, by 4.7 percentage points, between 2012/13 and 2015/16 and a large proportion of staff turnover is a result of people leaving the sector soon after joining.
- Half of the workforce are aged over 45 and the number of staff aged under 25 remains low for the fifth consecutive year at just 11.6% of

> the workforce … the sector has an aging workforce and is already really struggling to attract and retain the younger staff that it needs.

To summarise, Social Care is going to need a lot more workers to meet the increasing demand for these services in the future as people are both living longer and increasingly have multiple and complex conditions. The sector however is unable to recruit and retain the staff it needs to meet current demand and unless something significant is done about it, this gap is just going to widen. An additional problem that we collectively need to be thinking about is the sector's current inability to attract the younger staff it needs. A number of reasons for the sectors inability to recruit and retain staff are identified in a research study by Bournemouth University entitled '*Pathways to Recruitment Perceptions of employment in the Health and Social Care Sector*'. It is not the only factor but one of the key disincentives to recruiting and retaining staff was found to be low pay in the sector.

Sectors need staff. Social Care is clearly a vocation and isn't for everyone. That said, those people who might be open to working in Social Care when it paid slightly more than other competing sectors (particularly retail) are increasingly finding themselves faced with a situation where there is nothing to choose between what they can get paid working in Social Care and what they can get paid working in other sectors.

Increasingly organisations that operate under normal market conditions are increasing the rates they pay their staff in order to secure the workforce they need in a competitive market place. Whilst they may swallow some of these additional costs initially, in time they will be passing them on to their customers.

The Social Care sector is going to need to be able to compete with this. For the sector to survive never mind thrive and local authorities to meet their responsibilities under the Care Act 2014, providers are going to have to pay their staff effective market rates and they will need to do this from a position of ongoing financial viability. That said ensuring providers are at the very least able to be fully NMW compliant still needs to be addressed as a matter of absolute priority.

In terms of recognition that doing just enough will not be sufficient some level of precedent has already been set. The Scottish government has responded to homecare worker recruitment problems by diverting £250m of NHS cash to fund a higher minimum wage of £8.25 an hour. This will be applicable to all care workers from October 2016. The recognition is that doing the minimum is not enough and what is required is to do what is necessary.

Side issues worthy of note

High staff turnover rates bring with them increased (wasted) costs. Additional advertising costs, additional management time in recruiting and inducting staff, additional DBS check costs and additional training costs. A Chartered Institute of Personnel and Development (CIPD) study estimated that the cost of recruiting and training a new member of staff is between £2,000 and £5,000.

In addition the Skills for Care report highlights that ‘higher staff turnover rates mean that providers are less able to provide continuity of care for their service users and that ‘it is possible to demonstrate an association between lower staff turnover rates and higher CQC ratings’. Again it should go without saying and equally it should be no surprise that a clear link between the stability of staff teams and service quality can be established.

The need to maintain adequate pay differentials both within and between pay grades

In our discussions with local authorities there is clearly a recognition that providers need to maintain realistic pay structures (differentials) between roles with different skill requirements and levels of responsibility. As the NMW goes up, this will clearly have a direct knock on effect for providers in that they will also need to increase the rates they pay to their more senior staff.

The table below draws some comparisons in relation to the impact of the NMW to £7.50 on pay differential between roles. The 'typical current hourly rates' have been pulled out as averages cited within the National Minimum Data Sets. They are designed to be illustrative of the extent of current pay differentials rather than in any way definitive in terms of rates.

Role	Typical current hourly rates	Rates required to maintain the differential from April 2017
Carer / Support Worker	£7.25	£7.50
Senior Carer / Support Worker	£8.01	£8.26
Front line manager / Team Leader	£10.00	£10.25
Registered Manager	£12.80	£13.05

As the NMW goes up, so the rates of pay relating to all roles and responsibilities needs to go up. These increases don't create any additional advantage for employers or employees, they purely maintains the current differential.

If we project forward to April 2020, we will be looking at figures in the region of those below just to maintain the current differentials:

Role	Rates by April 2020
Carer / Support Worker	£9.15
Senior Carer / Support Worker	£9.91
Front line manager / Team Leader	£11.90
Registered Manager	£14.70

None of this accounts for the fact that there is a staff recruitment crisis in general and a chronic shortage of Registered Managers (and Registered Nurses) in particular. There is a compelling case that in terms of the ability to recruit and retain staff effectively, the current typical rates of pay for social care roles are not fit for purpose. One of the conclusions from the Bournemouth University '*Pathways to recruitment*' study is that 'improving pay to reflect the complex demands of care roles would help recruitment as well as raise the status of the sector.'

The requirement for a pay differential within roles

What also needs to be recognised is that in order to try and recruit and retain staff, providers often have a number of salary points (typically entry level, mid-point and top of scale) for each pay grade. This enables them to be able to reward staff for experience, qualifications and / or length of service. The lowest rate paid to front line workers may need to be £7.50 an hour but that 'band' is likely to have a £7.75 mid-point and £8.00 top of scale rate in it as well. For this reason providers are going to have to be looking to cost each salary level around mid-points rather than bottom of scale.

The requirement for a pay differential to reflect the complexity of service provision

The market currently also ensures that staff who support more complex or challenging people are paid at a higher rate to reflect the more difficult job that they do. The effect of the increases in the NMW will be to wipe out this pay advantage and with it a key reason why people choose to work with these clients. More and more social care is about supporting people with complex needs. If these services are going to continue to be able to attract sufficient staff, this pay advantage will need to be maintained.

The cost of NMW compliance is therefore not just about the additional cost for front line staff. It also has to ensure that viable pay structures are maintained both within organisations and between organisations working with clients who have different complexity of care and support needs.

The impact of paying lower rates to people under 25

We have already talked about the difficulty the sector has in recruiting younger people. When the NMW of £7.20 was introduced in April 2016 it was applicable to staff who are 25 and over. Prior to this the NMW had been applicable to workers over 21 so effectively the age at which it becomes applicable has been raised by 4 years. By doing this, the government has at a stroke introduced another major barrier to the sectors ability to attract the younger workers it so desperately needs and a massive disincentive to encouraging these younger workers to choose Social Care as a career option.

Year	**21 to 24**	**25 and over**
From 1st April 2017	£7.05	£7.50
From 1st April 2016	£6.70 £6.95 (from 1st 0ct 16)	£7.20

Previous rates

Year	**18 to 20**	**21 and over**
2015	£5.30	£6.70
2014	£5.13	£6.50
2013	£5.03	£6.31
2012	£4.98	£6.19

When the NMW applied to people who were 21 and over, firstly, less people would have been excluded or adversely affected by the age cut off. Secondly, of those that were, many of them would have been new to the workforce … possibly students or young people still living in the family home. What they earned would have been important to them for sure, but potentially less critical. As people leave college or find themselves having to make their own way in the world what they earn becomes more of a pressing concern.

Organisations need staff. As a sector Social Care has an aging work force and needs to dramatically improve its ability to recruit and retain younger people. If providers pay less to people who are under 25 than they do to people who are 25 and over for doing exactly the same job, this is going to dramatically impact on their ability to recruit the staff they need.

Those organisations and sectors that provide terms and conditions that appeal to younger people are going to be the ones that recruit and retain them. We already have a recruitment crisis and yet local authorities have a duty to help foster, enhance and appropriately incentivise this vital workforce to underpin effective, high quality services. Funding providers in such a way that they are forced to differentiate between what they pay people under 25 and over 25 will do the exact opposite. It will not only inhibit the sectors ability to deliver the provision of today, it will also impede our ability to develop the provision of tomorrow.

Although the law may allow for this discrimination, it is still discrimination. What would the local authority's position be if this 'legalised discrimination' was introduced in relation to another protected characteristic such as sex or race say? Do we believe in equal opportunities … or not?

Side issue worthy of note

The proportion of an organisations workforce that is under 25 at any one time is in constant flux. People grow older. Staff come and go. What happens when the proportion of a staff team that is over 25 changes after any original settlement? Is extra funding going to be provided if it goes up? Are providers going to be expected to hand some funding back if it goes down?

The problems of differentiating between what you pay staff who are over 25 with those who are under 25 for doing exactly the same job are complex and making this distinction is divisive, discriminatory and corrosive. The solution is very simple. Social Care providers should be funded at a level that means that they are able to pay all their staff (certainly those over 21) the same for doing the same job on the condition that they implement this equality of treatment in practice.

Sleep ins and NMW compliance

A lot of providers of learning disability and mental health services in particular (both Residential Care and Supported Living) provide sleep in cover as part of people's support packages.

The guidance from the .gov.uk website - https://www.gov.uk/minimum-wage-different-types-work states that 'time spent at work and under certain work-related responsibilities even when workers are allowed to sleep (whether or not a place to sleep is provided), counts as working time.' This is consistent with the current case law around sleep ins as typically worked within the care sector and this issue needs to be taken far more seriously by commissioners of these services.

Providers who operate sleep ins are now facing a massive problem and are seeing their costs increase dramatically in this area. Typically the majority of providers have only been able to afford to pay sleep ins at around £30 to £40 per night, (generally for a 9 hour sleep in). If we take the midpoint of this (£35) then this equates to £3.89 an hour. The cost of a these sleep ins at £7.50 an hour is £67.50 which is a difference of £32.50 a night. This difference in cost equates to £11,862.50 a year per sleep in.

If / when the NMW rises to £9.15 an hour by 2020 then providers will need to be paying their staff £82.35 for a sleep in. Compared to current sleep in rates, this would equate to a difference of £47.35 a night (£17,282.75 a year) per sleep in and that is without the proportional increase in on costs. Most organisations that operate sleep ins operate more than one. The more sleep ins an organisation delivers, clearly the greater the problem they face.

Various NMW compliance scenarios when sleep ins are taken into account

The extent to which staff doing sleep ins are at least in receipt of the NMW is dependent upon not only the rate they are paid but also upon whether they are full time or part time and the number of sleep ins they do.

The HMRC guidance in determining whether or not you are paying staff at a rate that complies with NMW requirements is '*Take the total number of hours worked by an employee over the month (or suitable period of time) (including those for sleep-ins). Divide by the remuneration that will be earned over the pay period. If this figure equals or exceeds the NMW then this is compliant with the case law'.* Using this guidance, we will now work through a few scenarios:

Scenario 1: Staff are paid at the new NMW of £7.50 an hour for their contracted hours and £40 per sleep in.

Contracted hours	**Sleep in hours/ week**	**Total hours per week**	**Average hourly rate**
37.5	9 (1 sleep in)	46.5	£6.91
37.5	13.5 (1.5 sleep ins)	51	£6.69
37.5	18 (2 sleep ins)	55.5	£6.51
30	9 (1 sleep in)	39	£6.79
30	13.5 (1.5 sleep ins)	43.5	£6.55
30	18 (2 sleep ins)	48	£6.35
22.5	9 (1 sleep in)	31.5	£6.63
22.5	13.5 (1.5 sleep ins)	36	£6.35
22.5	18 (2 sleep ins)	40.5	£6.14

None of these (pretty typical) scenarios will be compliant with NMW requirements as of 1st April 2017. In fact, none of the permutations outlined above would be NMW compliant even if sleep ins were paid at £65 a night.

Scenario 2: Staff are paid at the new NMW of £7.50 an hour for their contracted hours and £70 per sleep in.

Contracted hours	Sleep in hours/ week	Total hours per week	Average hourly rate
37.5	9 (1 sleep in)	46.5	£7.55
37.5	13.5 (1.5 sleep ins)	51	£7.57
37.5	18 (2 sleep ins)	55.5	£7.59
30	9 (1 sleep in)	39	£7.56
30	13.5 (1.5 sleep ins)	43.5	£7.59
30	18 (2 sleep ins)	48	£7.60
22.5	9 (1 sleep in)	31.5	£7.58
22.5	13.5 (1.5 sleep ins)	36	£7.60
22.5	18 (2 sleep ins)	40.5	£7.62

It requires sleep in payments to be raised to £70 for all these permutations be compliant with NMW requirements as of 1st April 2017 if staff are paid at the new NMW of £7.50 and hour. Even at £70 per sleep in, they are only just compliant and they won't be next time the NMW increases. A potential advantage of paying sleep ins at the NMW is that this may serve to increase their attractiveness to staff considering working in Social Care.

An alternative option is to increase the baseline hourly rate so that it is significantly above the new NMW and keep the rate of the sleep ins lower. Using a figure closer to the actual Living Wage as a basis for pay structures in Social Care might overall serve as a better strategy for improving staff recruitment and retention for the sector.

Scenario 3: Staff are paid £8.50 and hour and receive £50 for a sleep in

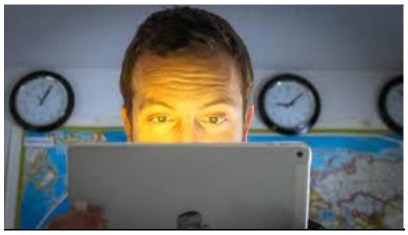
Contracted hours	Sleep in hours / week	Total hours per week	Average hourly rate
37.5	9 (1 sleep in)	46.5	£7.93
37.5	13.5 (1.5 sleep ins)	51	£7.72
37.5	18 (2 sleep ins)	55.5	£7.55
30	9 (1 sleep in)	39	£7.82
30	13.5 (1.5 sleep ins)	43.5	£7.59
30	18 (2 sleep ins)	48	£7.40
22.5	9 (1 sleep in)	31.5	£7.66
22.5	13.5 (1.5 sleep ins)	36	£7.40
22.5	18 (2 sleep ins)	40.5	£7.19

In this scenario, sufficient permutations would probably be compliant with NMW requirements as of 1st April 2017 to be workable (just). Generally staff tend to average 1 - 1.5 sleep ins a week rather than 2 and in the main full time staff do more sleep ins than part time staff. This is not always the case however, as sometimes providers agree to part time staff doing higher numbers of sleep ins if it suits both parties.

Whether or not an organisation is fully complaint with NMW requirements therefore varies between staff members as well as from week to week depending on their contracted hours and how many sleep ins they do. Keeping tabs on all of this is going to be an additional job for already overstretched managers and administrators which will be complex and time consuming to manage.

Again the solution is very simple. If the basic rate paid to front line staff is not to be increased significantly, where services require a sleep in, Social Care providers should be funded so that they are able to pay their staff (certainly those over 21) the full NMW for sleep ins on the condition that they pass this in to staff in practice. A potential benefit of this would be that services which require sleep ins to be worked might become increasingly attractive to staff.

The knock on effect of the increase in sleep in costs on current waking night rates



Sleep ins are currently paid in the region of £35 a night and waking nights are generally paid in the region of £80 - £90 a night. Waking nights are already some of the most difficult shifts to cover and staff are not going to work them for the NMW. Waking night shifts command (and deserve) a premium.

If the price of a sleep in goes up to £67.50 a night then there will be an increasing pressure to at least maintain the existing differential with waking nights. This means that waking night payments are likely going to have to rise to at least £100 per shift and probably more. Each year as the NMW rises there will also be a pressure to push up the payment for waking nights.

Moving forward

Where we see the sector currently

We know that local authorities are tasked with making savings wherever they can. As Adult Social Care represents a major proportion of their total budget, we know it comes in for extensive and increasingly unrealistic scrutiny.

The reality for providers is that staffing is their main cost. This is well known. If you stick the NMW through the ceiling, then the cost of social care is going to go up and not down. It is a very clear and obvious relationship and we get frustrated with local authorities and the 'experts' they use as consultants who try and suggest it can be any different. It can't.

The fact that the cost of care is going to go up not down does seem to be increasingly understood in relation to residential services. However local authorities are still engaging in tendering exercises for Domiciliary Care and Community Support services which are essentially designed to drive down hourly rates and save money. Within the context laid out in this report, these tenders are clearly doomed to failure. Remember even ADASS are reporting that providers are handing many of them back as unviable. These exercises are creating a lot of unnecessary anxiety and bad feeling and are actually a waste of everybody's time (commissioners and providers alike). Yes the local authority has some significant financial problems but these retendering initiatives are not a solution. Unless they are costed at realistic rates they are not going to work and if they are costed at realistic rates they are not going to save money.

In terms of rates for Dom Care, the UKHCA's Minimum Price for Homecare (version 3.1) calculated this to be £16.70 and hour when the NMW was £7.20 an hour. When the NMW goes up to £7.50 an hour in April 2017, so too will the UKHCA's minimum price.

We support the UKHCA's Minimum Price for Homecare exercise. It is by design a very transparent and stripped down formula. There is no fat on it and as such it really does provide a thoroughly indicative 'minimum price'.

Where there are known to be problems recruiting and retaining staff (which is generally the case in Domiciliary Care) and / or where staff are supporting more complex clients, providers are going to have to pay front line workers significantly above the NMW. In these situations they are also just not going to be able to pay people under 25 less for doing exactly the same job. The rates they charge commissioners for these community based services are therefore going to have to reflect these factors.

As councils make their financial decisions in relation to 2017/18, it is vital that commissioners and elected members are mindful of the tipping point that CQC refer to in relation to the sustainability of Social Care. Local Authorities have a duty under the Care Act to ensure that the sector is sufficiently funded to maintain the range and quality of services that are required and to ensure that there is an adequate and appropriately trained workforce. The Care Act is very clear about this. We therefore want commissioners and elected members to have a detailed understanding of the exact nature of the problems that providers are facing.

We fully agree that local authorities need significantly more help from central government to solve the long-term crisis in social care and we are very willing to support them in this. As an association we are happy to lobby MPs and use our relationships with national Care Associations to lobby central government. We are already doing this independently and would be increasingly happy to 'lay out the facts' in conjunction with local authorities.

Whilst we don't believe that NMW compliance alone will address the issues faced by the sector (it never has historically), it is still a fundamental first step. The sector has already been placed under the spotlight by HMRC in relation to National Minimum Wage compliance. Providers that are not compliant are fined and named and shamed. It is not fair that they be put in this position by circumstances beyond their control and commissioners would be in clear breach of the Care Act if they were to do so.

Recommendations

1. We urge local authorities to take advantage of the opportunity that has been made available in terms of the additional 3% precept that they are able to charge on Council Tax in both 2017/18 and 2018/19. It is important that the Council Tax precept is used to ensure that providers are at the very least able to meet NMW requirements including for travel time and sleep in hours. Local Authorities make the case that this is not enough. Maybe not, but every penny of it is increasingly going to be needed.

2. The timing and extent of increases in the NMW will affect providers differently. There needs to be a fair mechanism in place which enables providers to evidence the impact of any additional costs required to ensure NMW compliance and once evidenced these should be promptly paid. We are happy to work with local authorities to develop models to do this.

3. In order to avoid discrimination, division and a policy which would adversely affect the ability of providers to attract the younger staff they desperately need, we would urge commissioners to pay rates that enable providers to pay all their staff (certainly those over 21) the same for doing the same job on the condition that providers then commit to passing these payments on to staff in practice.

4. In order to enable the sector to function, there will need to be a commitment from commissioners to retaining pay differentials both between and within pay grades and to pay a premium to organisations supporting people with more complex needs.

5. The ability for providers to be NMW compliant when sleep ins are taken into account has changed dramatically over a short space of time. Where services require a sleep in, we would also urge commissioners to fund providers so that they are able to pay their staff (certainly those over 21) the full NMW for sleep ins, again on the condition that they commit to passing this on to staff in practice. There is also a need to pay providers in such a way that they are able to maintain the differential between sleep ins and waking nights.

Addressing future cost pressures

Feedback from providers of all service types is that they are just not able to adhere to the outdated costing models and bed prices used by local authorities and are submitting their own costings for packages. Local authorities do appear to be recognising the inadequacy of their own costing models and are increasingly willing to / being forced to pay sensible market rates. We welcome this.

If local authorities want to revisit their costing models then we are willing to look at these with them. We don't object to the idea of local authorities being able to benchmark costs but if a costing model is going to offer a true benchmark (rather than just being designed to suppress costs) it is going to have to be realistic and reflect the actual cost of care. It also needs to be recognised that providers costs change year on year and as we all know these are going up.

The main current cost pressure is the NMW but it is not the only one. There is the requirement for providers to pay employer pension contributions (increasing from 1%-3% of gross income).

The sector largely seems to be waiting for further clarification in relation to whether holiday pay should be paid on overtime worked (of which there is a lot). If so, this is going to be another truly significant extra cost. Also if sleep ins are working time and are worked in excess of basic contracted hours, (which currently they generally are), is holiday pay going to have to be paid on these working hours as well?

Although inflation has been at record low levels in 2015 and 2016, the impact of Brexit in sending the £ through the floor might well result in us seeing inflation starting to increase sharply in the coming year.

Each year providers are going to have to review their costs to reflect the pressures they face and for a benchmarking framework to be effective it will have to capture these. None have previously done this and providers have generally lost faith in them.

The reality is that Social Care is going to cost more or increasingly it won't exist. That should be clear to those who understand the financial pressures it faces. Whether it 'tips' will depend on how this situation is responded to. We want to work with commissioners to ensure that they are aware of the realty of the situation and to help lobby for the funding that they, the sector and ultimately our society actually needs.

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