

1

From: [REDACTED]
Sent: 27 October 2017 16:31:04
To: Public Engagement Unit
Cc: Cabinet Secretary for Health and Sport
Subject: FW: Letter to Cab Sec for Health and Sport from Theresa Shearer re Overnight Support - 27-10-17.pdf

Attachments: Letter to Cab Sec for Health and Sport from Theresa Shearer re Overnight Support - 27-10-17.pdf

PEU

Please could you scan this on to MACCS as a diary case.

Thanks

[REDACTED]

From: [REDACTED]
Sent: 27 October 2017 16:24
To: Cabinet Secretary for Health and Sport
Cc: [REDACTED]
Subject: Letter to Cab Sec for Health and Sport from Theresa Shearer re Overnight Support - 27-10-17.pdf

Dear Cabinet Secretary,

Please find attached a letter from Theresa Shearer, CEO, ENABLE Scotland.

Kind regards,

[REDACTED]

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27 October 2017

Shona Robison MSP
Cabinet Secretary for Health and Sport
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

Dear Cabinet Secretary

Scottish Living Wage – Sleepovers

I am writing to welcome your announcement on 19th October that social care staff will receive the Scottish Living Wage for every hour worked – irrespective of whether this is during the day or night. As you know, ENABLE Scotland has strongly advocated for this for some time, and we firmly support your decision to implement this policy during 2018/19.

ENABLE Scotland believes this is simply the right thing to do as it confirms that the contribution of hard working frontline staff who care for and support some of the most vulnerable people in Scotland is both valued and respected.

We fully appreciate that turning this commitment into reality will not be without its challenges.

We welcome the notice you gave the sector last year that the Scottish Government intended for overnight hours to be paid at the Scottish Living Wage, and we welcome the transition period you have announced for implementation, which gives providers and commissioners the opportunity to work with individuals to introduce the change responsibly and ensure they continue to receive the high-quality support that enables them to live the life they choose.

In addressing the challenge of ensuring that every hour spent at work is paid at the Scottish Living Wage, ENABLE Scotland is determined that Government, providers and commissioners must resist any temptation to regress to institutionalised models of care for vulnerable citizens who require overnight support.

We believe it is vital that all stakeholders come together to think creatively about how to make this change work for the people we serve, and I hope we can count on the Scottish Government's support for developing creative solutions that avoid institutionalised models and are true to the principles of Self-directed Support.

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www.enable.org.uk



I would welcome the opportunity to discuss this with you, and to explore how we work together to create solutions to overcome the challenges in the delivery of this policy and the provision of excellent quality social care in Scotland.

If that would be agreeable to you I would be grateful if your officials could liaise with Kayleigh Thorpe, our Head of Policy, Campaigns and Activism, to arrange: kayleigh.thorpe@enable.org.uk

Yours sincerely

A handwritten signature in black ink that reads "Theresa Shearer". The signature is written in a cursive style with a long, sweeping underline that extends across the first few letters of the name.

Theresa Shearer
CEO

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Cabinet Secretary for Health and Sport
Shona Robison MSP



Scottish Government
Riaghaidh na h-Alba
gov.scot

2

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

Mr Neil Findlay MSP
The Scottish Parliament
EDINBURGH
EH99 1SP

Our ref: 2017/0036713, 2017/0030073 & 2017/0036790
October 2017

Mr Findlay

Thank you for your letters regarding extending the Living Wage commitment to Sleepover hours.

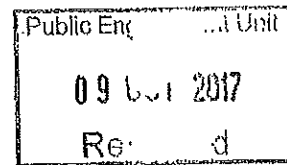
As part of the 2017/18 budget it was agreed that further work be carried out on our commitment to extend the Living Wage to sleepover hours. Officials have taken this work forward with key stakeholders including health and social care partnerships, COSLA, providers through CCPS and Scottish Care, the workforce through Unison and individuals using services. Through this we have identified the risks and challenges facing the sector, alongside providing space to delivery partners to begin to redesign sleepover provision, as appropriate.

It has always been our ambition for all hours to be paid at the living wage and to recognise the hard work of the social care workforce through an increase in pay. It's important that we deliver this in a way that will not cause an adverse impact on the sector. Therefore, after listening carefully to concerns of stakeholders and recognising the views of the system I am pleased to see that this extension will take place during 2018/19. This will provide time for this commitment to be implemented in a way which will ensure continuity of care to individuals and mitigate the risk of any adverse impact to the workforce.

Shona Robison



The Scottish Parliament
Pàrlamaid na h-Alba



The Scottish Government
St Andrews House
Regent Road
Edinburgh
EH1 3DG

03/10/2017

Dear Minister,

I write to you on behalf of my friends at ENABLE Scotland to strongly urge that, in line with your earlier commitment on this issue, a minimum of the Scottish Living Wage rate is awarded to social care sector workers in Scotland for all hours worked, including sleepover shifts.

As you will be aware, social care employees have a vital role in supporting the most vulnerable people in Scotland. For many of these individuals, including people who have complex learning disabilities and who previously would have been supported in institutional settings, the provision of overnight support and sleepover shifts, are an essential part of independent living.

In an era where the social care sector is finding it challenging to recruit and retain staff, it is imperative that social care staff – no matter the time of day worked – are rewarded equitably and fairly for their efforts.

I trust that you will consider my support on this matter and explore this further.

Yours sincerely,

Neil Findlay
MSP for the Lothians (Labour)

Neil Findlay MSP for the Lothians (Labour)
Local Office, 4 Northfield Court, West Calder, EH55 8DS
tel: 01506 873242 e-mail: neil.findlay.msp@parliament.scot
web: www.neilfindlaymsp.com

From: [REDACTED]
Sent: 05 October 2017 13:02:46
To: scottish.ministers@gov.scot
Subject: Letter from Neil Findlay MSP

Attachments: NF Scot Govt Letter re sleepvoer rates Oct 17.pdf

Hi,

Please find attached an electronic copy of a letter from Neil Findlay MSP.

I would be grateful if you could bring this to the attention of the Cabinet Secretary for Health and Sport and ask her to respond to the issues raised.

Many thanks,

[REDACTED]
[REDACTED]
[REDACTED]

p:

[REDACTED]

a:

[REDACTED]

w:

[REDACTED]

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<https://www.facebook.com/NeilFindlayMSP/>>
[http://cdn2.hubspot.net/hubfs/184235/dev_images/signature_app/twitter_sig.png]
<https://twitter.com/neilfindlay_msp?lang=en>

*

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The Scottish Parliament
Pàrlamaid na h-Alba

Shona Robison MSP
Cabinet Secretary for Health and Sport
The Scottish Government
By email: scottish.ministers@gov.scot

5th October 2017

Dear Cabinet Secretary,

Sleepover shifts and the Living Wage for care staff

I am writing to you regarding the ongoing situation in social care where staff are still not being paid the living wage for sleepover shifts. A situation that appears to be dragging on and on with no sign of any conclusion.

I have been looking into these issues and am of the opinion that the commitment to pay social care staff the Living wage was accepted by care staff in good faith and must therefore be both fully honoured and crucially, funded.

To do this I suggest that in relation to sleepovers we accept the following:-

That the decision in the case of the Royal Mencap Society v Mrs C Tomlinson-Blake, Employment Appeal Tribunal, London, 21st April 2017A that a staff member who is out of their own home and at work during the night, who is on call, who is required to keep a "listening ear" during the night in case their support is required, and who cannot leave the premises is "at work", and that they should be remunerated for this work.

If this is accepted then irrespective of the activity, the person is deemed to be "at work" and as such must be paid the same hourly rate as they are for any other time they are "at work." This to me removes any ambiguity.

The current pay inequality, created by sector-wide pay arrangements for overnight support, disadvantages staff who provide essential support through the night. This, in turn, discouraging new learning disability specialists from joining the social care workforce, exacerbating the sector's recruitment crisis. Longer-term, the ability to recruit professionals to support the most vulnerable people in society is being further hampered.

It is essential that we get this situation resolved so it does not further damage an already very fragile service.

Neil Findlay MSP for the Lothians (Labour)
Local Office, 4 Northfield Court, West Calder, EH55 8DS
tel: 01506 873242 e-mail: neil.findlay.msp@parliament.scot
web: www.neilfindlaymsp.com

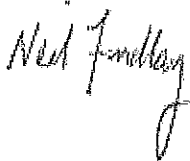
I recognise wider sectoral reform is required to meet the challenges of health and social care but this is a critical intermediary step to ensure we are taking practical steps to encourage the recruitment and retention of the frontline workforce. We know this will help but that systemic issues are much wider, however that should not stop us doing the right thing just now.

Finally, for providers of these essential services the Government must recognise the need to fully fund these very necessary changes. Financial sleight of hand will just not do.

Failure to bring about such change and honour the commitment to the Living wage would be a betrayal of announcement made.

I hope you are able to provide me with confirmation that this will be resolved with a timetable for doing so and that a sum of new money will be found to fund this year on year.

Yours sincerely

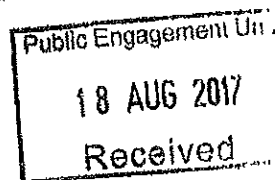


Neil Findlay
MSP for the Lothians (Labour)



The Scottish Parliament
Pàrlamaid na h-Alba

Ms Shona Robison MSP
Cabinet Secretary for Health and Sport
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG



14th August 2017

Dear Cabinet Secretary

The Scottish Government has publicly committed to ensuring that all social care workers are paid at least the Living Wage.

Current pay arrangements for overnight support, or 'sleepovers' can typically be described as follows:

- All day support hours are payable at the Scottish Living Wage of £8.25 per hour, rising to £8.45 per hour.
- Staff providing overnight support or 'sleepovers' are paid an overnight support/sleepover payment.
- These staff then receive a monthly top up to ensure they are paid at least the National Minimum Wage of £7.50 per hour across all hours worked.

This is in line with Scottish Government's current transitional position on overnight support, that: *as minimum sleepovers are compliant as per HMRC guidelines.*¹

The impact: for every overnight support shift a staff member works, the further their take home pay decreases away from the Scottish Living Wage and towards the National Minimum Wage.

A true delivery of the commitment, that all social care workers are paid at least the Living Wage, means all hours should be valued at that rate. The Scottish Government has confirmed that this is their ambition and in June 2017 you committed that "during this financial year, sleepover rates will be paid at the real living wage level"

In practice, currently, this would mean that:

1. Waking hours continue to be paid at the living wage rate
2. Overnight support or 'sleepover hours' continue to be paid at a flat rate – and are topped up to the value of £8.45.

Relevant Scottish Government commitments:

- **SNP Manifesto Commitment 2016:**
We will extend payment of the Living Wage – ensuring that all social care workers receive the Living Wage by October 2016.

¹ Letter from Scottish Government and COSLA to CCPS dated 15/12/2016

Neil Findlay MSP for the Lothians (Labour)
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tel: 01506 873242 e-mail: neil.findlay.msp@parliament.scot
web: www.neilfindlaymsp.com

All Scotland's NHS staff are already paid at least the Living Wage, and from October 2016 this will also apply to social care workers.²

- **The Scottish Government's Programme for Scotland 16/17:**
*We have invested to ensure that adult social care workers, like NHS staff, are paid at least the Living Wage from October 2016.*³
- **The transitional position on sleepovers was confirmed in a letter COSLA/Scottish Government letter to Unison, CCPS and Scottish Care on 15th December 2016 but again affirmed the ambition that all hours be paid at the rate of the Living Wage:**
*"Following our guidance in September regarding the payment of sleepover hours it is expected that, as minimum sleepovers are compliant as per HMRC guidelines. As stated before, this is for a transitional period with the ambition being that all hours be paid at the rate of the Living Wage. In this, we are listening to our stakeholders and recognise that stability whilst reform takes places is crucial. We will continue to support partnerships and providers in reforming sleepovers and looking to sustainable models of care based on improving outcomes for individuals. As part of the resource for Living Wage £10m was identified for sleepovers. Following learning from this process in regards to sleepovers this year it has been agreed that this may be revisited in-year to focus on the cost of implementing and whether this resource has been adequate."*⁴
- **This stated commitment to review the £10m allocated for sleepovers was affirmed in the Scottish Budget: Draft Budget 2017-18:**
The £10 million included for sleepovers will be reviewed in year to consider its adequacy with a commitment to discuss and agree how any shortfall should be addressed.
- **You again confirmed the commitment and to the review at the Health and Sport Committee on Tuesday 13th June 2017:**
"We have given a commitment that, during this financial year, sleepover rates will be paid at the real living wage level"
*"The £10 million was a starting point based on certain assumptions, but as Geoff has said, the complexity that has arisen as more work has been carried out on the issue will guide us as to whether those assumptions were or were not accurate. However, the door has been left open for additional resources to be provided, should they be required."*⁵

Financial position

The current estimated total (additional) cost per annum of increasing, 'sleepover pay' to the rate of £8.45 are £14,673,316 across 24 current providers.

Workforce Impact

²

[https://d3n8a8pro7vhm.cloudfront.net/thesnp/pages/5540/attachments/original/1485880018/SNP_Manifesto2016-web_\(1\).pdf?1485880018](https://d3n8a8pro7vhm.cloudfront.net/thesnp/pages/5540/attachments/original/1485880018/SNP_Manifesto2016-web_(1).pdf?1485880018)

³ <http://www.gov.scot/Resource/0050/00505210.pdf>

⁴ https://gallery.mailchimp.com/94f82a32a9feae0dd25f2d5d1/files/Spending_Review_commitment_to_the_Living_Wage_December_2016.pdf

⁵ Health and Sport Committee, 16th Meeting, Tuesday 13th June 2017

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11004&mode=pdf>

Neil Findlay MSP for the Lothians (Labour)

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tel: 01506 873242 e-mail: neil.findlay.msp@parliament.scot

web: www.neilfindlaymsp.com

2

The current pay inequality, created by current pay arrangements for overnight support, disadvantages staff who provide essential support through the night.

Anonymised Example:

Annie support Ben who requires overnight support. A typical week for Annie is as follows:

- Day 1/2 - 10am-11pm (11pm-7am sleepover) 7am-10am (16hrs plus sleepover)
- Day 3/4 - 10am-11pm (11pm-7am sleepover) 7am-10am (16hrs plus sleepover)
- Day 5-7 - off

Annie's typical weekly gross income is £270.40 plus £33.68 for overnight support shifts plus a £33.92 top up⁶. **Total: £360.00**

If all Annie's hours were valued at the Scottish Living Wage rate, her typical weekly gross income is £270.40 plus £135.20 for overnight support. **Total: £405.60**


Sample salary differentials between current overnight support pay arrangements and valuing every hour worked at the Scottish Living Wage	
Based on an employee working 20 hours day support and 20 hours overnight support per week	£1,981.32 per annum
Based on an employee working 30 hours day support and 20 hours overnight support per week	£2,476.65 per annum

Social care Sector Statistics

- Total spend on social care in Scotland is £3.1 billion⁷.
- Total spend on commissioned social care services from private and third sectors - £1.6 billion⁸.

So in conclusion I only want to ask one simple question - can you advise me when will all social care staff will receive the Living wage hourly rate as a right for all sleepover hours?

Yours sincerely



Neil Findlay
MSP for the Lothians (Labour)

⁶ For staff providing overnight support, in line with HMRC guidelines, current practise is to top up the overnight support payment to ensure that these staff are paid a at least the National Minimum Wage of £7.50 per hour across all hours worked.

⁷ Audit Scotland Report:

http://www.audit-scotland.gov.uk/uploads/docs/report/2016/nr_160922_social_work.pdf

⁸ Audit Scotland Report:

http://www.audit-scotland.gov.uk/uploads/docs/report/2016/nr_160922_social_work.pdf

Neil Findlay MSP for the Lothians (Labour)

Local Office, 4 Northfield Court, West Calder, EH55 8DS

tel: 01506 873242 e-mail: neil.findlay.msp@parliament.scot

web: www.neilfindlaymsp.com

From: Robison S (Shona), MSP <Shona.Robison.msp@parliament.scot>
Sent: 11 October 2017 17:20
To: Cabinet Secretary for Health and Sport
Subject: Fwd: Sleepover payments

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From: [Redacted]
Sent: Wednesday, October 11, 2017 3:46:16 PM
To: Robison S (Shona), MSP
Subject: Sleepover payments

Hi Shona I am hoping you can give me an answer in regards to sleepover payments when will the national minimum wage be paid to support workers who do sleepovers and also what is happening with the back pay owed to workers for doing sleepovers for years

Thanking you

[Redacted]
Sent from my iPad

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CC

From: [REDACTED]
Sent: 05 October 2017 13:02:46
To: scottish.ministers@gov.scot
Subject: Letter from Neil Findlay MSP

Attachments: NF Scot Govt Letter re sleepvoer rates Oct 17.pdf

Hi,

Please find attached an electronic copy of a letter from Neil Findlay MSP.

I would be grateful if you could bring this to the attention of the Cabinet Secretary for Health and Sport and ask her to respond to the issues raised.

Many thanks,

[REDACTED]
[REDACTED]
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The Scottish Parliament
Pàrlamaid na h-Alba

Shona Robison MSP
Cabinet Secretary for Health and Sport
The Scottish Government
By email: scottish.ministers@gov.scot

5th October 2017

Dear Cabinet Secretary,

Sleepover shifts and the Living Wage for care staff

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Neil Findlay MSP for the Lothians (Labour)
Local Office, 4 Northfield Court, West Calder, EH55 8DS
tel: 01506 873242 e-mail: neil.findlay.msp@parliament.scot
web: www.neilfindlaymsp.com

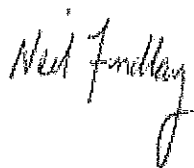
I recognise wider sectoral reform is required to meet the challenges of health and social care but this is a critical intermediary step to ensure we are taking practical steps to encourage the recruitment and retention of the frontline workforce. We know this will help but that systemic issues are much wider, however that should not stop us doing the right thing just now.

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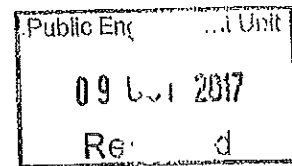
Yours sincerely



Neil Findlay
MSP for the Lothians (Labour)



The Scottish Parliament
Pàrlamaid na h-Alba



The Scottish Government
St Andrews House
Regent Road
Edinburgh
EH1 3DG

03/10/2017

Dear Minister,

I write to you on behalf of my friends at ENABLE Scotland to strongly urge that, in line with your earlier commitment on this issue, a minimum of the Scottish Living Wage rate is awarded to social care sector workers in Scotland for all hours worked, including sleepover shifts.

As you will be aware, social care employees have a vital role in supporting the most vulnerable people in Scotland. For many of these individuals, including people who have complex learning disabilities and who previously would have been supported in institutional settings, the provision of overnight support and sleepover shifts, are an essential part of independent living.

In an era where the social care sector is finding it challenging to recruit and retain staff, it is imperative that social care staff – no matter the time of day worked – are rewarded equitably and fairly for their efforts.

I trust that you will consider my support on this matter and explore this further.

Yours sincerely

Neil Findlay
MSP for the Lothians (Labour)

Neil Findlay MSP for the Lothians (Labour)
Local Office, 4 Northfield Court, West Calder, EH55 8DS
tel: 01506 873242 e-mail: neil.findlay.msp@parliament.scot
web: www.neilfindlaymsp.com

8

From: [REDACTED]
Sent: 15 September 2017 17:53:19
To: Scottish Ministers
Subject: Correspondence for Shona Robison MSP

Attachments: CCPS to Shona Robison MSP Cab Sec September 2017.pdf

Please find attached correspondence for Shona Robison MSP, Cabinet Secretary for Health and Sport.

Kind regards

[REDACTED]
Coalition of Care and Support Providers in Scotland
Norton Park
57 Albion Road
Edinburgh EH7 5QY
[REDACTED]

E:

www.ccpscotland.org<<http://www.ccpscotland.org>>

CCPS is the the Coalition of Care and Support Providers in Scotland. CCPS is a company limited by guarantee registered in Scotland No. 279913, registered with the Office of the Scottish Charity Regulator as Charity No.SCO29199. The company's registered office is at Norton Park, 57 Albion Road, Edinburgh. EH7 5QY.

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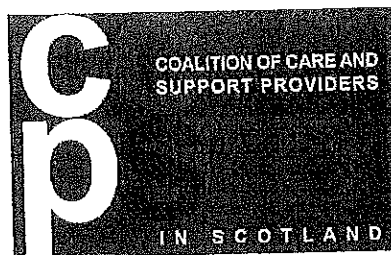
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AGL/CS/612

15 September 2017

Shona Robison MSP
Cabinet Secretary for Health and Sport
The Scottish Government
St Andrews House
Regent Road
Edinburgh EH1 3DG



Dear Cabinet Secretary,

As you know, CCPS and its members warmly welcomed the introduction in 2016 of the Living Wage in adult social care, and have given the policy their full support. We have worked very hard with our partners to ensure that the substantial resources you made available have reached front line care and support workers.

As I'm sure you will also know, this has not been without its challenges; however we believe that this policy has been absolutely critical in ensuring both that our staff are properly rewarded for the work they do, and that the acute problems of recruitment and retention in our sector are addressed.

I am writing to you now about the proposed extension of the Living Wage commitment to sleepover shifts. We have discussed the potential impact with your officials at some length, and I would want to commend the approach they have taken in conducting a thorough risk analysis. This process has clarified our thinking considerably, and we would now like to share with you the areas of risk that continue to cause us significant concern.

Chief amongst these is the way in which commissioning authorities will respond to the proposal. A number of authorities have given providers strong indications that if the commitment is extended to sleepovers, this will drive a process of radical redesign of overnight support focusing on the removal of sleepover shifts wherever possible, or their replacement with alternative arrangements (primarily waking nights). This relates in large part to the very substantial cost of implementing the commitment, although this is not the only driver. Indeed in anticipation of the commitment being confirmed following the current transitional period, a number of authorities are already taking these steps.

This is a matter of very serious concern for three key reasons.

- First and foremost, it may mean that radical changes are made to people's support arrangements that are driven primarily by cost, rather than by need, and over which they may have little choice or control;
- second.../

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info@ccpscotland.org

- second, the substantial operational challenges for providers of making these changes will swallow up months (perhaps even years) of management resource, time and effort, which could be better spent on improvement, development and innovation; and
- third, the objective of the policy itself may be at serious risk of being undermined. We will fail to deliver the intended pay increase for staff working sleepover shifts, if those shifts are removed as a direct consequence of the challenges of implementation. Instead, staff may face the prospect of radical changes to their working patterns, including the requirement to work waking nights instead of sleepovers. We have presented evidence to your officials to show that in these circumstances, staff may end up with no more in their pay packets than before (depending on their shift patterns, they may even receive less); and providers will be faced with huge gaps in their staffing complement, placing care arrangements at risk for many people.

There are some further considerations of risk that are associated with the impact on the workforce of the equalisation of pay for waking shifts (day or night) and sleepovers, and related perceptions of fairness; these will certainly present additional operational challenges for providers, although they are (in our view) a secondary matter to the central issue we have set out above.

We would therefore urge you, in considering the matter of extending the Living Wage to sleepovers, to ensure that appropriate mitigations are put in place to reduce the risks we have identified. It is particularly important that sufficient time is allowed for providers to scope out in more detail both the operational challenges they have identified, and ways in which these might be overcome; and that steps are taken to ensure that where overnight support is subject to redesign as a result of this policy, commissioning authorities approach this in partnership with providers – and, crucially, with supported people and their families – rather than (as is all too common in our experience) transferring risk to providers by imposing requirements for redesign without appropriate discussion or negotiation.

Whilst our discussions with your officials have focused on the specific proposal to extend the Living Wage to sleepovers, we have also advised that there may be scope to implement an interim arrangement within a shorter timescale, that is, to increase pay for sleepovers to National Living (Minimum) Wage per hour for these shifts. This, we believe, would offer much-needed clarity to staff, employers and commissioners; it would be much fairer in its application than the present 'top-up' NLW compliance requirements; and it would represent a tangible pay increase for almost all staff working sleepover shifts. If properly funded, this arrangement could be implemented far more speedily than the equalisation of pay over all hours worked, and would in our view carry far less risk in the shorter term.

In closing, I should say we recognise that in raising issues relating to the implementation of what is undoubtedly an enormously positive policy overall, we are placing ourselves in an uncomfortable position; however we very much hope that you will in turn appreciate that providers' overriding concern here relates to the impact of implementation on the wellbeing of their staff and the people they support.

We look forward.../

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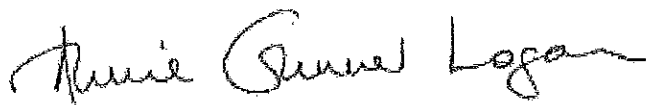
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We look forward to continuing our discussions on these matters with your officials, who have been extremely helpful throughout this initiative. In the meantime we thank you once again for your support for this policy overall, and for your willingness to consider the points we raise.

With best wishes,

Yours sincerely



ANNIE GUNNER LOGAN

Director

ccps

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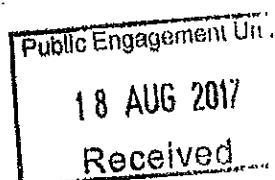
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The Scottish Parliament
Pàrlamaid na h-Alba

Ms Shona Robison MSP
Cabinet Secretary for Health and Sport
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG



14th August 2017

Dear Cabinet Secretary

The Scottish Government has publicly committed to ensuring that all social care workers are paid at least the Living Wage.

Current pay arrangements for overnight support, or 'sleepovers' can typically be described as follows:

- All day support hours are payable at the Scottish Living Wage of £8.25 per hour, rising to £8.45 per hour.
- Staff providing overnight support or 'sleepovers' are paid an overnight support/sleepover payment.
- These staff then receive a monthly top up to ensure they are paid at least the National Minimum Wage of £7.50 per hour across all hours worked.

This is in line Scottish Government's current transitional position on overnight support, that: *as minimum sleepovers are compliant as per HMRC guidelines.*¹

The impact: for every overnight support shift a staff member works, the further their take home pay decreases away from the Scottish Living Wage and towards the National Minimum Wage.

A true delivery of the commitment, that all social care workers are paid at least the Living Wage, means all hours should be valued at that rate. The Scottish Government has confirmed that this is their ambition and in June 2017 you committed that "*during this financial year, sleepover rates will be paid at the real living wage level*"

In practice, currently, this would mean that:

1. Waking hours continue to be paid at the living wage rate
2. Overnight support or 'sleepover hours' continue to be paid at a flat rate – and are topped up to the value of £8.45.

Relevant Scottish Government commitments:

• **SNP Manifesto Commitment 2016:**

We will extend payment of the Living Wage – ensuring that all social care workers receive the Living Wage by October 2016.

¹ Letter from Scottish Government and COSLA to CCPS dated 15/12/2016

Neil Findlay MSP for the Lothians (Labour)
Local Office, 4 Northfield Court, West Calder, EH55 8DS
tel: 01506 873242, e-mail: neil.findlay.msp@parliament.scot
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All Scotland's NHS staff are already paid at least the Living Wage, and from October 2016 this will also apply to social care workers.²

- **The Scottish Government's Programme for Scotland 16/17:**
*We have invested to ensure that adult social care workers, like NHS staff, are paid at least the Living Wage from October 2016.*³
- **The transitional position on sleepovers was confirmed in a letter COSLA/Scottish Government letter to Unison, CCPS and Scottish Care on 15th December 2016 but again affirmed the ambition that all hours be paid at the rate of the Living Wage:**
*"Following our guidance in September regarding the payment of sleepover hours it is expected that, as minimum sleepovers are compliant as per HMRC guidelines. As stated before, this is for a transitional period with the ambition being that all hours be paid at the rate of the Living Wage. In this, we are listening to our stakeholders and recognise that stability whilst reform takes places is crucial. We will continue to support partnerships and providers in reforming sleepovers and looking to sustainable models of care based on improving outcomes for individuals. As part of the resource for Living Wage £10m was identified for sleepovers. Following learning from this process in regards to sleepovers this year it has been agreed that this may be revisited in-year to focus on the cost of implementing and whether this resource has been adequate."*⁴
- **This stated commitment to review the £10m allocated for sleepovers was affirmed in the Scottish Budget: Draft Budget 2017-18:**
The £10 million included for sleepovers will be reviewed in year to consider its adequacy with a commitment to discuss and agree how any shortfall should be addressed.
- **You again confirmed the commitment and to the review at the Health and Sport Committee on Tuesday 13th June 2017:**
"We have given a commitment that, during this financial year, sleepover rates will be paid at the real living wage level"
*"The £10 million was a starting point based on certain assumptions, but as Geoff has said, the complexity that has arisen as more work has been carried out on the issue will guide us as to whether those assumptions were or were not accurate. However, the door has been left open for additional resources to be provided, should they be required."*⁵

Financial position

The current estimated total (additional) cost per annum of increasing, 'sleepover pay' to the rate of £8.45 are £14,673,316 across 24 current providers.

Workforce Impact

²

[https://d3n8a8pro7vhm.cloudfront.net/thesnp/pages/5540/attachments/original/1485880018/SNP_Manifesto2016-web_\(1\).pdf?1485880018](https://d3n8a8pro7vhm.cloudfront.net/thesnp/pages/5540/attachments/original/1485880018/SNP_Manifesto2016-web_(1).pdf?1485880018)

³ <http://www.gov.scot/Resource/0050/00505210.pdf>

⁴

https://gallery.mailchimp.com/94f82a32a9feae0dd25f2d5d1/files/Spending_Review_commitment_to_the_Living_Wage_December_2016.pdf

⁵ Health and Sport Committee, 16th Meeting, Tuesday 13th June 2017

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11004&mode=pdf>

Neil Findlay MSP for the Lothians (Labour)

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tel: 01506 873242 e-mail: neil.findlay.msp@parliament.scot

web: www.neilfindlaymsp.com

The current pay inequality, created by current pay arrangements for overnight support, disadvantages staff who provide essential support through the night.

Anonymised Example:

Annie support Ben who requires overnight support. A typical week for Annie is as follows:

- Day 1/2 - 10am-11pm (11pm-7am sleepover) 7am-10am (16hrs plus sleepover)
- Day 3/4 - 10am-11pm (11pm-7am sleepover) 7am-10am (16hrs plus sleepover)
- Day 5-7 - off

Annie's typical weekly gross income is £270.40 plus £33.68 for overnight support shifts plus a £33.92 top up⁶. **Total: £360.00**

If all Annie's hours were valued at the Scottish Living Wage rate, her typical weekly gross income is £270.40 plus £135.20 for overnight support. **Total: £405.60**

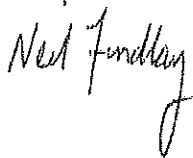
Sample salary differentials between current overnight support pay arrangements and valuing every hour worked at the Scottish Living Wage	
Based on an employee working 20 hours day support and 20 hours overnight support per week	£1,981.32 per annum
Based on an employee working 30 hours day support and 20 hours overnight support per week	£2,476.65 per annum

Social care Sector Statistics

- Total spend on social care in Scotland is £3.1 billion⁷.
- Total spend on commissioned social care services from private and third sectors - £1.6 billion⁸.

So in conclusion I only want to ask one simple question - can you advise me when will all social care staff will receive the Living wage hourly rate as a right for all sleepover hours?

Yours sincerely



Neil Findlay
MSP for the Lothians (Labour)

⁶ For staff providing overnight support, in line with HMRC guidelines, current practise is to top up the overnight support payment to ensure that these staff are paid a at least the National Minimum Wage of £7.50 per hour across all hours worked.

⁷ Audit Scotland Report:

http://www.audit-scotland.gov.uk/uploads/docs/report/2016/nr_160922_social_work.pdf

⁸ Audit Scotland Report:

http://www.audit-scotland.gov.uk/uploads/docs/report/2016/nr_160922_social_work.pdf

Neil Findlay MSP for the Lothians (Labour)

Local Office, 4 Northfield Court, West Calder, EH55 8DS

tel: 01506 873242 e-mail: neil.findlay.msp@parliament.scot

web: www.neilfindlaymsp.com

From: [REDACTED]
Sent: 14 August 2017 11:42:16
To: 'scottish.ministers@gov.scot'
Subject: Letter to Cabinet Secretary for Health and Sport from Theresa Shearer re Overnight Support

Attachments: Letter to Cabinet Secretary for Health and Sport from Theresa Shearer re Overnight Support.pdf, Enclosed - ENABLE Scotland Overnight Support Position Paper.pdf

Please find attached a letter FAO the Cabinet Secretary for Health and Sport, from Theresa Shearer, CEO ENABLE Scotland.

Kind regards,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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11 August 2017

Shona Robison MSP
Cabinet Secretary for Health and Sport
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

Dear Cabinet Secretary

Scottish Living Wage – Sleepovers

As we move in to the final stage of negotiations with social care providers on the Scottish Living Wage 2017/18 settlement, I wanted to take the opportunity to write to you directly outlining the firm support of ENABLE Scotland for your stated ambition for traditional 'sleepover' hours.

We were delighted when you announced your intention that this year's approach to paying the Scottish Living Wage for all frontline social care staff supporting adults across the country would specifically include traditional 'sleepover' hours, and were further reassured by your comments at the Health and Sport Committee on Tuesday 13th June 2017:

"We have given a commitment that, during this financial year, sleepover rates will be paid at the real living wage level"

ENABLE Scotland believes that excellent social care is a critical part of breaking down barriers to an equal society for every person who has a learning disability. We believe that good quality personalised social care services can transform lives and communities, and support people to live the life they choose, and crucially, that excellent social care staff are central to the delivery of this.

Social care staff in Scotland are trusted to care for some of our most vulnerable citizens, 24 hours a day if that is needed, and when it is, as employers we require our staff to provide sleepover presence. We agree wholeheartedly with the Scottish Government that every hour spent at work should be valued at the the same rate in order to truly deliver the Scottish Living Wage for all social care staff.

However, as you will be aware, there are differing opinions amongst providers about the impact of this, with concerns about equalising the value status of waking hours and sleeping hours, and potential impact on Working Time Directive if traditional 'sleepover' hours are paid at the same hourly rate. ENABLE Scotland believes that these concerns are unfounded, and detract from the core premise that frontline staff should have all hours valued at the same *minimum* rate – the Scottish Living Wage.

I understand that the Scottish Government has sensibly taken a planned and careful approach to delivering the living wage for traditional sleepovers, and is in the final stages of evidence gathering. I would urge however that the transitional position on sleepover hours in 2017/18 is not extended to continue for another year, and that you provide clear guidance to local authorities that traditional 'sleepover' hours are topped up to the Scottish Living Wage rate.

An equal society for every person who has a learning disability

www.enable.org.uk



I wanted to share with you ENABLE Scotland's clear position on this:

- ENABLE Scotland agrees wholeheartedly with the Scottish Government's stated ambition, and is calling on all parties to support this.
- Delay on this would only mean that frontline staff delivering traditional 'sleepover' support will lose out and not be rewarded at the Scottish Living Wage rate for all hours spent at work.
- Any immediate concerns about impact on the Working Time Directive are unfounded, as traditional sleepover hours remain non contractual. It is our understanding that the Scottish Government is not suggesting that sleepover hours should be treated as part of a standard working pattern. ENABLE Scotland is clear that the Scottish Government's intention is that all hours spent at work should be valued at the same rate – the Scottish Living Wage rate.
- In practice, currently, this would mean that 1) waking hours continue to be paid at £8.45 2) traditional 'sleepover' hours continue to be paid at a flat rate – and topped up to the value of £8.45. This would have no impact on WTR as it simply offers an enhanced payment within the existing structures.
- We all acknowledge that within the context of providing overnight support, traditional sleepover support needs to be reviewed and alternative delivery models explored, including digital options. Indeed we have been working with several Health and Social Care Partnerships to progress this. But we believe that staff delivering this support in the meantime should not lose out whilst we as a sector work on this.
- We are aware that some providers would wish to maintain salary differentials for waking hours and traditional sleepover hours. Whilst ENABLE Scotland would not advocate this position, we believe that this would still be an option for providers to consider if they so wish moving forward – but that the Scottish Living Wage should be the baseline *minimum* rate from which to consider differentials, if required.

I enclose ENABLE Scotland's position paper for further operational detail on this.

Again, I welcome the Scottish Government's confirmation that your ambition is that all hours be paid at the rate of the Scottish Living Wage, including overnight support. I hope I have conveyed our full support to see this ambition delivered.

I am also pleased to advise that the Poverty Alliance, as the hosts of the Living Wage Campaign, are also extremely supportive of your stated position, and are aware of this correspondence to you.

Beyond the delivery of the Scottish Living Wage rate for all hours spent at work, I would welcome the opportunity to discuss this issue with you and further explore the challenges, and importantly, the solutions, in the delivery of excellent quality social care in Scotland.

If that would be agreeable to you I would be grateful if your officials could liaise with Kayleigh Thorpe, our Head of Policy, Campaigns and Activism, to arrange: kayleigh.thorpe@enable.org.uk

Yours sincerely

A handwritten signature in black ink, appearing to read "Theresa Shearer". The signature is fluid and cursive, written over a horizontal line.

Theresa Shearer
CEO

An equal society for every person who has a learning disability

www.enable.org.uk



Position Paper: Overnight Support

19th June 2017

Our position: ENABLE Scotland aspires to be a Living Wage employer, and believes that **that all hours worked should be valued at the Scottish Living Wage rate**. However, due to sector-wide pay arrangements for overnight support, for every overnight support shift a staff member works, the further their hourly rate decreases away from the Scottish Living Wage and towards the National Minimum Wage. ENABLE Scotland currently has circa 678 social care staff who are not receiving the Scottish Living Wage for the second year running.

Total number of contracted staff employed by ENABLE Scotland ¹	1685
Number of staff paid at least the Scottish Living Wage	1007
Number of Staff not receiving the Scottish Living Wage, due to overnight support pay arrangements	678
Sample salary differentials between current overnight support pay arrangements and paying the Scottish Living Wage for every hour worked	£1,981.32 per annum ² £2,476.65 per annum ³
Gender Breakdown	73% of our workforce identify as women 27% of our workforce identify as men

Context:

This issue centres on the historic practice of providing a payment of circa £30 per night of overnight support provided. ENABLE Scotland, in agreement with union partners and in line with best practice guidelines issued by HM Revenue & Customs, moved to a model of topping staff up to an average of NMW per hour work in 2015, which is the practice that continues to be implemented.

This practice was only recently confirmed as the definitive legal position in the highly persuasive decision in *Royal Mencap Society v Mrs C Tomlinson-Blake*, Employment Appeal Tribunal, London, 21st April 2017.

This case is of particular significance as it clarified the definition of work in the context of overnight support, which is as follows:-

A staff member who is out of their own home and at work during the night, who is on call, who is required to keep a "listening ear" during the night in case their support is required, and who cannot leave the premises is "at work", and that they should be remunerated for this work.

ENABLE Scotland's view, supported by the Employment Appeal Tribunal is that an hour at work is an hour at work, and should be valued appropriately.

¹ As at 08/06/2017

² Based on an employee working 20 hours day support and 20 hours overnight support per week

³ Based on an employee working 30 hours day support and 20 hours overnight support per week

Staff who Provide Overnight Support – Current Position

ENABLE Scotland provides overnight support to 162 people across 15 local authority areas. This equates to 49,972 overnight supports per annum, totalling 422,799 hours, collectively delivered between 678 members of staff.

As a social care provider, we can only pay our frontline social care staff using the funding we receive from local authorities. Any fundraised income we generate as a charity is used to support vital community projects which typically don't receive statutory funding, and would otherwise not exist.

On average (across all authorities) ENABLE Scotland receives £6.35 per hour for overnight support hours.⁴

For staff providing overnight support, in line with HMRC guidelines, we currently top up this overnight support payment to ensure that these staff are paid at least the National Minimum Wage of £7.50 per hour across all hours worked.

This is in line with the Scottish Government's current transitional position on overnight support, that: *as minimum sleepovers [overnight support] are compliant as per HMRC guidelines.*⁵

The impact: for every overnight support shift a staff member works, the further their hourly rate decreases away from the Scottish Living Wage and towards the National Minimum Wage.

The current pay inequality, created by **sector-wide pay arrangements for overnight support**, undoubtedly disadvantages staff who provide absolutely essential support through the night. This, in turn, discourages new learning disability specialists from joining the social care workforce and further exacerbates the sector's growing recruitment crisis. Longer-term, the combined impact could be catastrophic on providers' ability to recruit professionals to support the most vulnerable people in society – potentially triggering a regression to institutionalised care that we simply cannot allow.

Staff who Provide Overnight Support – Our Ambition

It is our position that the specialist staff who provide vital overnight support when required should be equally valued and that all hours worked should be valued at the Scottish Living Wage rate. It is our organisational ambition to achieve this.

In practice, currently, this would mean that 1) waking hours continue to be paid at the living wage rate 2) non-contractual overnight support shifts continue to be paid at a flat rate – and are topped up to the value of £8.45.

The scale of the salary bill required to truly address the current inequality and pay the Scottish Living Wage for overnight support is significant. For ENABLE Scotland alone, the cost would be an **additional £1.87m** per year. The Scottish Government has allocated £10m in 2017/18 towards supporting payment of the living wage for overnight support, but has committed to reviewing this in year. ENABLE Scotland believes that the Scottish Government, local commissioners, and providers themselves have to collaborate and work differently around overnight support in order to tackle this inequality for specialist staff supporting people who have complex learning disabilities to live independently.

⁴ based on 16/17 agreed rates

⁵ Letter from Scottish Government and COSLA to CCPS dated 15/12/2016

Our work to achieve this therefore focuses on four key areas:

- **Review of Legacy:** We acknowledge that overnight support is sometimes a legacy from previous support arrangements. It is important to assess the continued requirement for this based on the needs and outcomes of each individual to ensure that human rights are not infringed or breached by having staff unnecessarily present throughout the night.
- **Explore Digital:** We actively support the use of digital technology to remove intrusive or unnecessary forms of overnight support, and we are already working with our commissioning local authorities and individual customers to implement alternative digital solutions wherever appropriate.
- **Deliver Quality Overnight Support:** For a small number of people - particularly those who have complex needs - the provision of overnight support continues to be a central element of the support package that enables their hard-fought for right to live independently in their own home and community. The staff who deliver this support should have their take home pay topped up to the Scottish Living Wage.
- **Influencing:** We are implementing an influencing plan which highlights the scale of the problem, and secures support across providers, commissioners and the Scottish Government to work to a solution in 2017/18 which supports the achievement of the Scottish Living Wage Rate for all hours worked, including overnight support.

From: Macintosh K (Ken), MSP
Sent: 30 January 2017 10:24:51
To: Ministerial Inbox
Subject: ILF and Self-Directed Support for Night Care Services

TO: Shona Robison MSP
Cabinet Secretary for Health, Wellbeing and Sport
Our Ref: MD/KM5194

Dear Shona

ILF and Self-Directed Support for Night Care Services

I recently met with members of the ILF Group in East Renfrewshire, who raised a number of concerns including many related to Self-Directed Support and funding for overnight care.

Among the concerns raised by the Group was that, following the national commitment to support the Living Wage, the cost of overnight care has increased but the funding individuals receive through ILF and SDS has not always done so, leaving many families struggling to cover the costs. It is the Group's understanding that funding has been made available to assist in the implementation of the Scottish Living Wage but can I ask whether the Scottish Government placed any conditions on the use of this funding by local Health and Social Care Partnerships? For example, is there any obligation on the local authority to increase the amount it provides families through SDS to adjust for any increase in wages to the carers they employ?

If I may give a specific example, one family in receipt of SDS mentioned that the budget for their child's care was based on the number of hours of required care multiplied by the hourly rate, and that they had a copy of that very calculation. So far, however, their SDS budget has not been increased despite an increase to the hourly rate.

I should note that I am also writing directly to the East Renfrewshire HSCP and ILF Scotland in similar terms, but I would welcome any guidance or information you can give me that would assist families and that might clarify their 'rights' in this matter.

Thank you for help and I look forward to any information you are able to provide.

Yours sincerely
Ken

Rt Hon Ken Macintosh MSP
Presiding Officer

Member of the Scottish Parliament for the West of Scotland
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