



Decision Ref. No.

B121/17

DECISION RECORD ¹

Officer Key Decisions are subject to the Council's Call-In Procedure (Annex 9 of the Council's Constitution <https://www.hertfordshire.gov.uk/about-the-council/freedom-of-information-and-council-data/open-data-statistics-about-hertfordshire/who-we-are-and-what-we-do/who-we-are-and-what-we-do.aspx>)

Subject: Review of sleep in payments for Adult Care Services commissioned providers

Staff Contact: Nadine Raenke

Executive Member: Colette Wyatt-Lowe

Tel: 01438 844668

Portfolio: Adult Care Services

1. Decision

To pay NMW rate plus NI and pension contribution per sleep-in hour provided to services delivered in Hertfordshire and for people purchasing sleep-in support via Direct payments. To backdate this payment to 26.07.2017.
These funds would be applied to providers who approach HCC regarding funding difficulties related to night support.

For the financial year we are expecting an additional pressure of £1.6m resulting from this decision.

2. Reasons for the decision

Employment Appeals Tribunal in April 2017 confirmed that National Minimum Wage requirements apply for sleep-in support.

The Care Act 2014 tasks Local Authorities to "promote the efficient and effective operation of a market in care and support services". Its statutory guidance states that local authorities should seek evidence that "service providers deliver services through staff remunerated so as to retain an effective workforce" and that "remuneration must be at least sufficient to comply with the national minimum wage legislation for hourly pay of equivalent salary".

HCC originally applied an approach of an averaged NMW. In consultation with legal it was confirmed that although the approach was acceptable under NMW guidance, it poses a risk under the Care Act of providers deciding to legally challenge HCC's position not to meet their costs in full to ensure effective delivery of service.

In consultation with providers a number of practical issues were noted:

- Averaged methodology does not fit all business models (e.g. split day and night workforce).
- Day rates would have to be reduced to allow increases to night rates.
- Averaged methodology is per service not per staff member.
- Consistent approach of averaged rates requires very high administrative effort which may impact overhead costs.
- Averaged rate undermines HCC's efforts to support the market around recruitment difficulties as providers that pay higher day rates to attract skilled staff and prevent staff fluctuation are penalised by this methodology.
- Some providers currently cover shortfalls with profit in other areas or are using reserves.
- Neighbouring counties take a different approach to sleep-in rates, which are favourable to providers. This makes it less attractive for providers to work with HCC.

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- HCC also faced increased pressures as some providers had stated that they would not offer further sleep-in arrangements for the funds offered by HCC.

3. **Alternative options considered and rejected**²

- a) Do nothing: rejected as this would post a significant risk of being challenged under NMW guidance and Care Act. Also risk of destabilising the market and inability to offer safe night support.
- b) Continue with current methodology and apply an averaged rate: Rejected because of reasons described above.
- c) Offer funds to organisation to cover their contracted hourly rates during sleep-in shifts: Rejected as the financial impact would be significantly higher than paying NMW plus NI and pension contribution. Would also undermine work with market to consider financially sustainable business models.

4. **Consultation**

- (a) **Comments of Executive Member**^{3 4}:

Discussed at EMB 05.12.2017

- Care Providers - being passive, waiting for them to approach us.
- DPs - being proactive and writing to them to settle.

- (b) **Comments of other consultees**⁵

5. **Following consultation with, and the concurrence of the Executive Member, I am proceeding with the proposed decision.**

Signed: 

Title: Assistant Director Adult Care Commissioning

Date: 17 January 2018.

6. **Copies of agreed document to:**

- All consultees
- Chairman, and Vice-Chairmen of the Overview and Scrutiny Committee
- hard & electronic copy (for public inspection both at County Hall and on Hertsdirect) Democratic Services Manager - Room 213 County Hall.

¹ for guidance see Chief Legal Officer's note "Taking Decisions"

² details of any alternative options considered and rejected by the officer at the time the decision was made

³ record any conflict of interest declared by any Executive Member consulted. If an Executive Member declares a conflict of interest DO NOT PROCEED without seeking advice from the Chief Legal Officer

⁴ If the matter has general significance for the Council and/or is, or is likely to be, controversial, then the officer shall consult the appropriate Executive Member before proceeding. In some cases it will be necessary to consult more than one Executive Member, and in some cases the Leader of the Council will need to be consulted

⁵ If the matter has local significance, but no general significance for the Council and no controversial aspects, the officer shall consult or inform the local member in writing (or by e mail) and proceed. It is essential that all officers responsible for delivering services ensure that local members are kept well briefed on issues affecting their areas.