

Supreme Court Ruling on Sleep-In Shifts

Purpose of report

For information.

Summary

On Friday 17 March, the Supreme Court [confirmed](#) that the National Minimum Wage does not apply to hours when social care workers are expected to sleep, including time when care workers are paid to sleep overnight in someone's home on a precautionary basis.

Recommendation

To note the update on the Supreme Court decision.

Action

Officers to keep Lead Members updated on how providers and councils are responding to the decision and the implications for LGA work on social care reform, funding, workforce and innovation.

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Background

1. LGA intervened on behalf of councils in an ongoing legal case which centred on the issue of whether social care sleep-in workers were only entitled to the minimum wage when they are awake for the purposes of working.
2. On Friday 17 March, the Supreme Court confirmed that care workers who have to sleep at their workplace are not entitled to the minimum wage for periods when they sleep.
3. In our [response](#) to the judgement, we said that this significant ruling is in line with councils' and social care providers' understanding of the law. Had the appeal been upheld, care providers and councils providing social care would have faced paying a significant backpay liability and higher ongoing costs, which would have increased the huge financial pressures they were already facing.
4. As we said in our submission to the Court, the LGA strongly supports care workers being paid a fair wage for their valued work. The decision does not remove the need for a sustainable funding settlement for adult and children's social care, which includes important decisions on the workforce such as pay, recruitment and career development. We also called on Government to bring forward its proposals on adult social care funding as soon as possible.
5. The LGA's workforce team provided a [commentary](#) on the case in their March Employer Bulletin, which emphasised the clarity the decision provided to the interpretation of the National Minimum Wage Regulations as it applies to sleep-in shifts.
6. On 10 May, DHSC and DfE Ministers wrote to Directors of Adult Social Care and Children's Services. The letter shared BEIS's updated national minimum wage [guidance](#) and encouraged commissioners to carefully consider the impacts on market and workforce stability in responses to the judgement.

Implications for Wales

7. Social care is a devolved policy responsibility. LGA Officers maintain contact with WLGA Officers on the sleep-ins issue.

Financial Implications

8. There are no direct financial implications for councils from the Supreme Court decision because it confirmed councils' and social care providers' understanding of the law.

Next steps

9. We continue to work with ADASS, providers and DHSC on the wider policy implications from the decision for work on provider sustainability and adult social care reform, including workforce, and developing personalised care in new and different ways. We will provide a further update to Lead Members over the Summer.

10. The Children and Young People's Board is leading on the implications of the decision for children's social care.