

## Direct Payments - Sleep-in rates for Personal Assistants

### Purpose:

This briefing provides an overview of a new sleep-in rate of pay for Individual Employers to pay their Personal Assistants (PAs). This proposal follows a change in case law around paying hourly rates for sleep-ins and moves us in line with our Adult Future Options Framework. It relates to both Adult and Children Direct Payments. The change does not affect those who require waking night-time support.

### The rate proposed is: £77.95 sleep-in for an 8-hour shift.

N.B. Original rate proposal was £71.00 during year 2023/24 however Direct Payment for employing personal assistants increased by 9.79% in April 2024. The new rate of £77.95 reflects this increase.

### Introduction:

This briefing explains the latest developments regarding payment for sleep-in in social care and how these impact on people in receipt of Direct Payments. It sets out why the change is proposed and how the new rate has been determined.

The aims of the change include:

- Provide consistency in Direct Payments calculations for sleep-ins.
- Design a model that is in line with Government employment guidance.
- Ensure pay rates across the care sector are comparable in Sheffield, stabilising the care workforce.

Sleep-in shifts are those where workers are required to sleep at the residence overnight with the possibility of waking to provide care up to three times a night or up to an hour's worth of support.

### Background:

Before 2017, care workers on sleep-ins shifts were paid a flat rate, receiving an hourly rate only for the hours they were awake for the purposes of working. In 2017, following an employment tribunal this changed and law directed care workers should be paid at the National Minimum Wage for all hours they were at work, regardless of whether they were asleep or awake.

Since the original court ruling in 2017, PAs have been paid at an hourly rate rather than a flat rate.

In March 2021 the Supreme Court reversed this decision and ruled that sleep-in care workers are only entitled to be paid the National Minimum Wage when they are awake on shift for the purposes of working, not when they are permitted to sleep.

The Supreme Court has determined that if a worker is called on to respond to someone's care needs (or any other duties) when on a shift, then that time will count as 'work time' and be subject to an hourly rate of pay i.e., only the time that they are actually awake and working, rather than when sleeping on shift. Details of night working hours and limits can be found on the Gov.UK website: <https://www.gov.uk/night-working-hours>.

Following the Governments update some providers have changed their rates of pay to set sleep-in shift rates, but this has not been without issue due to drops in worker wages and sustainability of workforce. This has resulted in other providers continuing to pay staff at an hourly rate.

The varied range and inconsistencies in rates for sleep-in shifts impacts on Direct Payments recipients in knowing what they can pay their PAs, and on our social care staff trying to calculate fair and accurate Direct Payments support.

### Proposal

#### A rate of pay of £77.95 sleep-in shifts for 8-hours.

This has been calculated on the mean of the data received and includes the % increase of 9.79% provided to Direct Payments for employing PAs. This seemed the most appropriate way because

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although there was a broad spectrum of provider types, i.e. in-house, private and Framework providers, the data does not include all providers.

The shift length of time of 8 hours has been determined by using the mid-point of current shift lengths and reviewing HMRC and ACAS (employment advisory service) guidance.

Note that there is a difference between when hourly rates are paid for a waking night and when a sleep-in night shift rate is paid.

A waking night is where the PA is expected to remain awake, alert and likely active during the night. This will continue to be costed using the PA Rates Decision Making Tool as PAs are expected to be to be awake overnight for the purpose of working, as they would during the day.

For a sleep-in night shift a carer is expected to sleep at the workplace up to 8 hours but might be required to be awake for the purpose of work no more than an hour in total, i.e. 20 minutes x 3, during the 8 hours night shift.

### Benefits:

As well as compliance with the court judgement and employment guidance, these changes will standardise practice, provide consistency in Direct Payments calculations and provide clarity for workers / Direct Payments recipients / PAs.

There also provides cost benefits for the Local Authority as the mean value calculated is less than the current practice of calculating at an hourly rate (at least the National Living wage).

### Risks:

Risk	Probability	Mitigation
Existing employers will see a small reduction in their PA rates resulting in potential loss of PAs.	high	<ul style="list-style-type: none"><li>For existing employers, changes will be implemented in phased ways ensuring employment obligations are met.</li><li>Decision to change rate to be based on risk of support breakdown.</li><li>Support from the Direct Payment Support Service and ELI companies will be put in place.</li></ul>
Inconsistent practice will continue.	high	<ul style="list-style-type: none"><li>Guidance for staff will be created and communicated through staff briefings, ebulletins, team meetings.</li></ul>
Complaints due to the new service contract Care and Wellbeing Service costs are based an hourly rate.	low	<ul style="list-style-type: none"><li>Discussions within Commissioning to look introduce a contract variation to bring in line with other SCC Frameworks.</li></ul>
Reputational risk as many other Local Authorities continue to pay at an hourly rate.	low	<ul style="list-style-type: none"><li>Direct Payment leads share practice across the country.</li><li>Changes meet all statutory duties.</li></ul>

### Other options considered:

Making no change is an option. This was discounted as the only benefit would be that it maintains the status quo.

### Recommendation:

Recommendation is **Option 1**: fixed sleep-in rate for 8 hours at £77.95. This will make calculating a Direct Payments sleep-in shifts much simpler and consistent practice for workers, provide best value, as well as giving Individual Employers a competitive rate of pay to pay their staff.

### Next step if approved:

- Produce guidance for sleep-in rates on Direct Payments and approval.

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- Adapt the Direct Payment calculator and guidance to address the changes.
- Review any potential implications for Liquid Logic.
- Ensure that rates are included in the annual increases.
- Implementing changes

### Appendix 1: Night Working Guidance

<https://www.gov.uk/night-working-hours>

### Appendix 2: Research findings

The findings are as follows:

Providers range during 2023/4:

Provider – deleted for data security	Rate of Pay	Value (using 8hrs shift time)
	£10.75 per hour	£86.00
	£11 per hour	£88.00
	£35 a night	£35.00
	£105 per night	£105.00
	£50 per night	£50.00
	£117.00 per night	£117.00
	£39.24	£39.24
	£78.00	£78.00
	£10.42 per hour	£93.78

Supported Living range (2022):

Provider - deleted for data security	Rate of Pay	Value (using 8hrs shift time)	Shift Length
	£45	£45	8-9 hours
	£7.50 PH	£60.00	NA
	£60	£70	8-9 hours
	£65	£75	8-9 hours
	£6 PH	£48.00	NA

Calculation of PA Rate Sleep-in Rate:

Nightly Rates														Mean Average (Total/14)	Median Average (Midpoint)
35.00	39.24	45.00	48.00	50.00	60.00	70.00	75.00	78.00	86.00	88.00	93.78	105.00	117.00	<b>£70.72</b>	<b>£72.50</b>

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