



Health and Social Care Committee

House of Commons London SW1A 0AA

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From Dr Sarah Wollaston MP, Chair

Rt Hon Jeremy Hunt
Secretary of State for Health and Social Care

Letter by email to healthsofs@dh.gsi.gov.uk

14 May 2018

Dear Jeremy

Financial liability for “sleep-ins”

I have received the attached correspondence from representatives of the “SolveSleepIns Alliance” following a meeting I had with them to discuss their very serious concerns. I am sure you will also be aware of the report of the results from the independent survey to assess the impact of the sleep-in pay crisis on the future of social care which the Alliance has just published, a copy of which I also attach.

Thank you for your reply to me at Health Questions this week and whilst I look forward to hearing the government’s formal response to the situation, I would be grateful for your urgent thoughts responding to the points raised in the letter. It is of particular concern that, although DHSC officials have been engaged with this issue for some time, my correspondents report that “we appear to be no closer to a solution than we were in summer 2017”. The issue is clearly now very urgent, and a solution needs to be found without any further delay.

I look forward to your response, which I hope will indicate that the Government is bringing forward a solution well within the timeframes noted in the correspondence as required by the sector. If it does not, I will need to invite my Committee to consider what further action it can take to ensure a timely resolution of the issue.

I am copying this letter to the Alliance representatives who have written to me.

Yours sincerely,

Dr Sarah Wollaston MP
Chair of the Committee

#SolveSleepIns Alliance



#StopSleepInCrisis

Joint letter from leaders of *Learning Disability Voices, VODG, ARC, Care England and LD England.*

Dr Sarah Wollaston MP,
Chair, Health and Social Care Select Committee
House of Commons,
London,
SW1A 0AA

2nd May 2018

Dear Dr Wollaston,

Social Care and 'Sleep-ins' in the learning disability sector

We wanted to take this opportunity to thank you for meeting our representatives, Adam Penwarden, Casey Calista and John Cooper, on 25th April.

We wish to take up your invitation to write to you with our collective concerns on 'sleep-ins', so that you can raise these on our behalf, in correspondence, with the Secretary of State for Health Jeremy Hunt MP.

Our broad alliance comprises charities, not-for-profit and independent sector companies who provide learning disability services in the UK - representing approximately half of the entire provision of care services to people with learning disabilities in the UK. There are over a million people who rely on our care services. These services are now threatened by the unexpected sleep-in back pay liability. As many providers are obligated to start planning future budgets in April, the sector will be unviable by the second quarter of the next financial year. Therefore, in order to prevent major disruptions to care services, we have until September.

Together, we are equally concerned by what is a very real and impending catastrophe presented by the 'sleep-ins' liability. This is the biggest single threat to social care that any of us has seen in over 30 years of collective experience within the sector. As Chair of the Health Select Committee, you are extremely well versed in the background of this matter, and we understand that you are acutely aware of the grave consequences for the viability of social care services on which the most vulnerable people in our society rely. At the heart of the matter is the £400 million bill for back-pay for 'sleep-ins', which impacts on us all equally, from personal budget holders to large national organisations.

We also know that you recognise the extreme urgency of this issue, and that for those providers who signed up (in good faith) to the Social Care Compliance Scheme (on the proviso that Government funds back-pay liability), time is swiftly running out for a solution to be found.

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As such, we and our colleagues are following up the submission our alliance submitted last month on the matter of 'sleep-ins' to the Health and Social Care Committee with Huw Yardley, Clerk of the Committee, with information from an independently commissioned survey to be published in coming weeks. We have been in touch with Mr Yardley to this end.

The impact of the "Sleep-In" crisis is already being felt;

Impact

- For personal budget holders, who receive funding from Local Authorities to pay care staff themselves, this crisis is already leading to difficulty paying their personal back-pay bill and having to reduce their level of support to cover costs.
- Events in recent weeks with Allied Healthcare and other failed providers demonstrate that services are already closing and contracts are being handed back to Local Authorities directly because of 'sleep-ins' liabilities.
- As providers continue to hand back contracts, or even cease trading altogether, people who depend on care services, often already marginalised within society, have less choice and control over who provides their care. These individuals will find it more difficult to get their care needs met as the market becomes unviable.
- Without a solution, it will become harder for disabled people to access the community and to live their lives independently. This is directly contradictory to Government policy, and undermines the *Transforming Care* agenda.
- For care workers, who are already undervalued, this could mean job loss and financial uncertainty, as providers face the very real prospect of having to make staff redundant.
- Local Authorities and NHS Trusts will be unable to cope if services close due to the funding gap caused by the sleep-in back pay crisis.
- Providing good quality, community based care so that vulnerable people have the independence to live within their own homes costs the exchequer much less than inappropriate care in Assessment and Treatment Units (ATUs). The evidence we have is that supporting the same individual in a community setting costs 37% less than in an institutional setting, not to mention associated health and wellbeing benefits to people we support.
- 69% of Local Authorities have reported service failure due to sleep-in back pay in the last six months, according the Association of Directors of Adult Social Services (ADASS).
- The sector is working with Local Authorities to find new ways of working together in the future that will ensure safe and cost-effective support at night for people with a learning disability. However, there will be a substantial group of people who will

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always need sleep-in support and the need for both a retrospective back pay and a long-term funding solution for 'sleep-ins' remains paramount.

We respectfully request that you raise the following specific concerns with the Health Secretary. We also set out our proposed solution, on which we would welcome the Secretary of State's opinion.

Our proposed solution

We believe that the most efficient way to solve this crisis is through an HMRC-run scheme paying workers back directly.

- This scheme ensures that low paid workers get their back-pay.
- Many social care providers are local or small organisations and charities - not equipped to efficiently locate their past employees from the last six years.
- Back pay coming directly from Government to the workers in this way, would bypass both Local Authorities and care providers, getting past any potential complications with State Aid rules.
- The sleep-in crisis requires resolution before the autumn. Providers are obliged to start planning future budgets in April and the many in the sector will thus be unviable by the 2nd quarter of the next financial year.

Specific requests to the Secretary of State

Support our solution to the 'sleep-ins' crisis - which is that Government should set up an independent scheme that workers can apply to for their back pay. Inherent in this, we would be grateful for specific support from the Secretary of State through the following actions:

- We would be grateful for the Health Secretary to make a clear public statement on the origins of the liability, and that ultimate responsibility for a solution rests with Government. The Government has accepted that this situation has arisen (albeit unintentionally) because of its own [mistaken guidance](#). Legislation is clear on Government responsibility to fund these crucial statutory services, and it is the case that it has not funded them at NMW/NLW rates. Neither cash-strapped Local Authorities nor care providers have received money to pay this bill for overnight shifts at the NMW rate, which providers now owe. 'Sleep-ins' were not enforced by HMRC or CQC at NMW rates, nor were providers paid at these rates by funders. Previous conversations with the then Minister responsible at BEIS made clear that this matter was not the fault of the sector.
- Solving the 'sleep-ins' back pay issue is urgent, and as such requires a swift and clear solution. As things stand, the viability of the learning disability sector is at risk within the current financial year. Some of those in the SCCS face huge bills by autumn 2018, well before the March 2019 date suggested by HMRC. Providers will need to have the 'sleep-ins' liability reviewed as part of the annual statutory audit of their accounts. It is likely that auditors will want HMRC to have signed off the calculations before they complete the audit. For providers with March year ends, the latest they can file accounts is the December following the March year end, i.e.

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December 2018 for F/Y 2017-18. This will mean HMRC approvals will be needed in November 2018, the SCCS requirement to pay within 3 months of HMRC clearing the employer's calculation leads to payments to staff being necessary in December 18/January 19. We would ask the Secretary of State to acknowledge that the problem requires a resolution this financial year.

- We would ask the Secretary of State for detailed information on what discussions the Government has had with the European Commission. We remain committed to co-operating with officials at DHSC, within our Working Group (which has been meeting since July 2017) to discuss challenges faced by the sector because of impending liabilities. We are disappointed that we appear to be no closer to a solution than we were in summer 2017. Officials seem to be sympathetic, and acutely aware of the gravity of the situation and the urgency of finding a solution. However, to date, they are unable to say whether Government will even countenance funding the £400m liability for the sector, nor what stage Government is at in discussions with the European Commission to be able to stay within State Aid rules should it decide to fund these retrospective statutory overnight care bills.
- We would ask the Secretary of State to publish the data and evidence which Government itself holds, to promote a shared understanding of the scale of the problem. This lack of clarity has already had a significant impact on confidence within the provider sector. Trustees, Boards and Chairs of all providers are facing very difficult financial decisions within the current year. Our independently commissioned sector survey puts the collective liability for the sector at c£400m. DHSC has conducted two separate surveys, in addition to the SCCS.

We look forward to hearing back from you, after you have raised our concerns in your capacity as Chair of the health and Social care Select Committee with the Secretary of State for Health.

We will also continue correspondence with Huw Yardley, Clerk of the Committee, to provide as much evidence as possible in our collective submission on the consequences of the 'sleep-ins' liability for social care.

We would also be very happy to send a representative to give evidence to the Committee as required, and at short notice.

Thank you again for your support on this crucial matter.

Yours sincerely,



Tim Cooper, Co-Chair LD Voices

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Matthew Flinton, Co-Chair LD Voices



Lisa Lenton
England Director, Association for Real Change (ARC)



Ann Mackay
Director of Policy, Care England



Dr Rhidian Hughes
Chief executive, VODG

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About the #SolveSleepIns Alliance

[The Association for Real Change](#) : Association for Real Change (ARC) is a leading umbrella body representing service providers in the learning disability sector – our purpose is to improve the quality of life for people who have a learning disability by supporting anyone who is involved in the planning or delivery of support and services. ARC is committed to promoting best practice within the learning disability sector and we work with others such as the Department of Health, Skills for Care, Big Lottery Fund and Comic Relief.

[Care England](#) is the largest representative body for independent community care providers in England. It speaks with a single unified voice on behalf of its members and the sector, and is seeking to create an environment in which providers can continue to deliver and develop the high quality care that communities deserve. Care England members provide a wide range of services for adults with care and support needs including services in care homes, homecare, housing and community-based support and they deliver specialist services such as rehabilitation, respite, palliative care and mental health services. We have a large LD provider group with both corporate and small providers in membership.

[Learning Disability England](#) is a membership organisation for people with learning disabilities, their families, and the individuals and organisations that support them. We have over 140 provider organisations of varying size amongst our membership, and a number of people with learning disabilities and their families who are in receipt of personal budgets. We are aware of the potential impact of the sleep-in issue on all these member groups which is why we have joined this campaign.

[Learning Disability Voices](#) comprises charities, not-for-profit and independent sector companies who provide learning disability services in the UK, representing 20% of the total sector provision. The learning disability sector cares for the UK's most vulnerable people, who often require 24-hour support delivered by one or more carers to ensure that their needs are met. With this in mind, LD Voices exists to champion the learning disability sector and push for crucial policy changes to ensure a sustainable future for quality learning disability care.

[Voluntary Organisations Disability Group](#) is a national charity that represents leading not-for-profit organisations who provide services to disabled people in ways that promote independence, choice and control. Our members work with around a million disabled people, employ more than 85,000 staff and have a combined annual turnover in excess of £2.5 billion. Though diverse in terms of their size, history and individual strategies, our members share common values. These are clearly discernible through work that promotes the rights of disabled people, approaches to citizenship, user choice and control and in successfully delivering person-centred services.



Department
of Health &
Social Care

From the Rt Hon Jeremy Hunt MP
Secretary of State for Health and Social Care

39 Victoria Street
London
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020 7210 4850

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Dr Sarah Wollaston MP
Chair, Health and Social Care Committee
House of Commons
London
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13 JUN 2018

De Sarah,

Thank you for your letter regarding contact between the #SolveSleepInsAlliance and the Health and Social Care Committee. I was interested to see the results of their investigation, and am thankful to them for their input.

The Government recognise the challenges that the National Living Wage and National Minimum Wage present in terms of sleep-in shifts and the financial position of many care providers. The issue of sleep-ins has been the subject of a number of court cases which have served to clarify the position over time, as is common with employment law. It is right that care workers are paid fairly, and in accordance with law. It is also crucially important that we ensure stability within the social care sector; not just for vulnerable service users, but also for the many thousands of low paid workers within the sector.

The Government believes that the scale of sleep-ins liabilities potentially poses a significant risk to the normal operation of the social care market. This could put vulnerable people at risk, and the Government is exploring options to minimise impact on the sector.

Any intervention would need to be proportionate and necessary. The European Commission have been made aware of the issue, and officials have met their representatives twice. These discussions have provided the Government with guidance on how any support which might be available could be legally granted within State aid rules.

The Government has worked with the sector, and commissioned market analysis to assess the impact on the sector nationally. This forms part of the evidence base that is being used to assess options and is subject to further analysis and refinement.

Government has committed to sharing a summary of the analysis at the appropriate time, when decisions have been reached.

Members of the Alliance have offered invaluable support to officials throughout work on this issue; especially in ensuring the market analysis commissioned by Government was of the best possible quality. I am pleased to see that they remain engaged and willing to continue to work with Government. Work on this issue remains a priority for Government, and the Minister for Care will be meeting with members of the Alliance later in June to discuss their continuing engagement and outstanding concerns.

I thank you for bringing the timeframes put forward by the Alliance to my attention. I would like to reiterate that Government is well aware of these pressures, and continue to work to explore options for support, should it be deemed necessary. I understand you have been invited to attend a meeting with the Minister for Care on this matter, I hope that you will be able to attend.

Yours ever

A handwritten signature in blue ink, appearing to read "Jery", with a long horizontal stroke extending to the right.

JEREMY HUNT