

Learning Disability Care Providers – financial pressures

BY THE LANCASHIRE LEARNING DISABILITY CONSORTIUM



Introduction



- ▶ The Lancashire Learning Disability Consortium (LLDC) is a group of Voluntary (not for profit) provider organisations in Lancashire.
- ▶ We exist to bring together provider organisations and citizens with an interest in services for people with learning disabilities in Lancashire so that, acting together, they may be a positive informed influence on the development, commissioning and delivery of services.
- ▶ We recognise the acute financial pressures that the Council are under however there are clear and direct costs caused by national pressures that affect support providers viability. The Council needs to act on these.

Financial pressure - background



- ▶ During 2015 a procurement framework for LD services at a flat rate of £13.00 per hour and sleep-in rate of £37.19 was abandoned after arithmetical errors were discovered which would have corrected the day rate to £13.48.
- ▶ The Council have offered no further uplifts pending a report that the LLDC have commissioned from LaingBuisson. Unfortunately it appears unlikely that the LLDC's report from LaingBuisson will be available to inform the fee setting exercise in time.
- ▶ The main areas causing pressure are night rates, holidays, national living wage, and Lancashire's lack of tangible action to support those supporting people with a learning disability.

1. Night rates



- ▶ Total pay divided by total hours worked (day and night) must comply with the National Minimum Wage (NMW) which is currently £6.70 per hour.
- ▶ Some providers are paying this and some are not, some that are not paying the proper rate in Lancashire are currently being taken to court.
- ▶ The situation worsens significantly with the introduction of the National Living wage (NLW) of £7.20 per hour in April 2016.
- ▶ Blackpool Council have announced a night payment rate of £8 per hour for 2016-17, accepting that the principle of sleep-in time as working time is now established and enabling providers to make the legally required payments to staff whilst protecting their viability.

Night rates – an example



- ▶ For a 10 hour sleep, which LCC purchases for £37.19, the effective cost to the provider who makes Whittlestone adjustments to comply with the law will be £72 plus on costs and reliefs (say 8% holiday and 6% NIC) so £82.43
- ▶ This equates to an annual loss, for one sleep-in, of £16,524.
- ▶ Some of our members provide dozens of sleep-ins every night.
- ▶ The fine for failure to pay the NLW for every working hour is £20,000 per employee who suffers such an illegal deduction. Some of our members employ hundreds of direct support staff.

2. Holidays



- ▶ There is now a raft of employment law cases which have effectively established that the first 20 days of Annual Leave must be paid on the basis of total pay.
- ▶ The *Fulton v BEAR* (Scotland,) *Locke v British Gas*, and *Patterson v Castlereagh BC* judgements when considered together establish the principle (which is, for the time being, restricted to the EU Working Time Directive 20 days paid leave) that a worker must not be discouraged by the prospect of financial loss from taking leave.
- ▶ In our members' context this means that sleep-in payments, overtime payments, enhancements, on-call payments and any other elements of an employee's normal total pay must now be considered as "holidayable"

3. National Living Wage



- ▶ The impact of the NLW is not limited to its effect on required payments to sleep-in staff.
- ▶ Many of our members currently have starting rates of pay for staff which would become unlawful on 1st April 2016 and so will have to be increased.
- ▶ This bottom end wage inflation will, inevitably, produce pressures on the difference we pay to more senior staff as well.
- ▶ In a recruitment environment in which supermarkets are recruiting staff on £9 per hour starting pay these pressures cannot be ignored for long.

4. Lancashire's response to date and impacts on providers



- ▶ Older person's service have received an uplift but Lancashire have not yet announced any increase for LD providers to help. This is despite the fact that since April 2014 no uplift in rates has been made to LD providers who have had to absorb cost increases for pensions auto-enrolment, inspection fees, wage costs etc. on the benchmark rate of £13.38 or less whilst increasingly subsidising sleep-in provision.
- ▶ Lancashire continues to pay its own staff a significantly higher starting rate than can be offered by our members.
- ▶ LD providers in Lancashire are being compelled to choose between breaking the law on the one hand, or risking insolvency on the other.

Lancashire's response to date and impacts on provider



- ▶ Under the Care Act 2014 (s5) Authorities need to take into account the true costs of care and seek to not destabilise the provider market. We believe that should Lancashire fail to enable our members to pay their staff in accordance with the law as it now exists, they will be in breach of each of these duties.