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To: Secretaries of Local Government Branches in England
Regional Heads of Local Government

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New guidance on sleep in shifts

Following on from the disappointing Court of Appeal ruling on sleep-in shifts the Government has issued new guidance on the issue.

UNISON branches are encouraged to monitor how councils are delivering and/or commissioning sleep-in contracts to ensure that care workers are paid for all the hours they are working.

As you will be aware, back in July 2018, the Court of Appeal recently overturned previous legal decisions and found that those workers engaged on 'sleep in' shifts are to be treated as being 'available for work' as opposed to working time. This letter is to update you regarding new guidance the government has issued.

At the time of the Court of Appeal judgment, we wrote to you to highlight the risk that commissioners will use this ruling as an opportunity to return to previous practice of paying care workers a nominal lump sum for sleep-in shifts. UNISON believes that doing this carries serious reputational risks for commissioners. We view this as an irresponsible attack on the incomes of already low paid care workers

This risk has now significantly increased, due to the new [National Minimum Wage](#) guidance issued by the government which states "If the employer provides suitable facilities for sleeping, minimum wage must be paid for time when the worker is required to be awake for the purpose of working, but not for time the worker is permitted to sleep."

An application to the Supreme Court for permission to appeal the decision in the sleep-in case has been made. Whilst we await a definitive legal decision we are asking UNISON branches to be vigilant of any changes in commissioning and employer practice in this

area. In particular, any moves to return to lump sum payments which do not take account of National Minimum Wage payment for sleep-in shifts should be resisted.

Maintaining pay levels is important, not least because of increasingly high levels of turnover in the care sector fuelled by a failure to pay and treat staff fairly. These turnover rates are having a significant impact on the quality of care that is being delivered.

UNISON is aware that many commissioners are experiencing significant financial difficulties which is why we are lobbying the Government for more money to be allocated to social care.

If you have any questions regarding this issue, please contact m.egan@unison.co.uk

With best wishes

A handwritten signature in black ink that reads "Jon Richards". The signature is written in a cursive style with a large, stylized 'J' and 'R'.

Jon Richards
National Secretary
Local Government, Police and Justice Section