

Consultation on the National Minimum Wage Rates (including National Living Wage) to apply from April 2017: Scottish Social Services Council (SSSC) response

The SSSC is the regulator for the social service workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce. We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

We:

- publish the national codes of practice for people working in social services and their employers
- register people working in social services and make sure they adhere to our Codes of Practice
- promote and regulate the learning and development of the social service workforce
- are the national lead for workforce development and planning for social services in Scotland.

Our purpose is to raise standards and protect the public through regulation, innovation and continuous improvement in workforce planning and development for the social service workforce. Social service workers provide care and support for some of the most vulnerable people in Scottish society. The sector employs approximately 200,000 people¹ in Scotland (SSSC, 2015). These workers deal with complex care needs and make a real difference to peoples' lives.

Compliance and enforcement

It is recognised that there is a need to make sure that workers receive their entitlement to the National Minimum Wage (NMW). There is a particular need to address these issues in the social service sector.

'The evidence suggests that some groups are at greater risk than others of not receiving their entitlement to the NMW. Of particular concern is social care: HMRC's report on their recent investigations supported other evidence which had indicated that NMW non-compliance in this sector was higher than average.'

(Low Pay Commission, 2014)

¹ There are a number of groups of workers not captured by this data. These include childminding assistants and personal assistants employed by individuals in receipt of a direct payment.

'We remain concerned about workers in social care, where reports continue of non-payment of travel time and sleepovers and the introductory rate of the National Living Wage (NLW) presents significant affordability challenges.'

(Low Pay Commission, 2016).

There may be further issues around non-compliance following the ruling by the European Court of Justice that 'the journeys made by workers without fixed or habitual place of work between their homes and the first and last customer of the day constitute working time'.² This issue is particularly relevant in care at home services. The UK Government has indicated that it will review guidance on travel time and sleepover rates and explore whether they can be improved (Department for Business, Innovation and Skills, 2015). We welcome moves by the UK Government to develop stronger action on non-compliance with the NMW and NLW.

Impact of the NMW and NLW

The Scottish Government's vision and strategy for the social service workforce notes:

'Pressures on pay and conditions and workload impacts on morale, recruitment and on the quality of care and support provided. The economic contribution made by the sector is significant and it is a matter of concern that parts of it have developed a reputation as low-wage/low skill which impacts negatively on the workers and potentially on public confidence. Action to address low pay would enable a more positive narrative to emerge about the sector and encourage people to see it as a good career choice.'

(Scottish Government, 2015)

Social service employers have taken great strides to tackle the perceptions of a low pay sector. A significant number of accredited living wage employers in Scotland are in the social service sector.³ Addressing pay levels is a key challenge in the sector. A recent survey of adult social care workers highlights low wages as a key barrier to recruitment (Scottish Care, 2016). The need to address pay pressures is also prominent in studies of the early years and childcare workforce and the out of school care workforce (Siraj & Kingston, 2015). Employers express particular concerns about the implications for pay differentials and the scale of implementation in some organisations (Coalition of Care and Support Providers in Scotland, 2016; Scottish Care, 2016)

We have reservations about the term 'National Living Wage'. The NLW is effectively an enhancement of the NMW. We welcome the intention behind the NLW. A number of partners have critical roles to play in delivering the NLW. These include commissioners, tenderers and employers.

² Court of Justice of the European Union, Press Release, 10th September 2015: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-09/cp150099en.pdf>

³ Scottish Living Wage Accreditation: <http://scottishlivingwage.org/>

The current wage structure – incorporating different rates for older workers, younger workers and apprentices – is overly complicated and may lead to different ‘tiers’ within the workforce. This is becoming increasingly complex for employers. The increasing drive towards self-directed support and direct payments means a number of people (many disabled) are becoming employers. Some of these employers will have limited support and may find it particularly difficult to manage these complex arrangements.

We would like to see the UK Government go further to promote the delivery of a fair wage for all workers. In the longer term we would like to see all workers receive a living wage irrespective of sector, age or employer.

A living wage for younger workers

We note the concerns raised by the UK Government and Low Pay Commission around limiting the NLW to workers aged 25 years or over. We note that the UK Government has expressed concerns about the financial challenges for businesses.⁴ We’re aware of the view that increasing the rate for younger workers will have an impact on career opportunities.

‘It (the UK Government) argued that it wants to increase pay for workers, but for younger workers the priority is to secure work and gain experience, which is already reflected in the existing NMW rate structure. In order to maximise the opportunities for younger workers to gain that experience, the NLW will only apply to workers aged 25 and over.’

(Low Pay Commission, 2016)

We have concerns that this approach could potentially lead to a two tier workforce. An artificial barrier could have a greater impact on some parts of the workforce than others. For example, the median age of a worker in day care of children services is 36. The private sector day care of children workforce has a heavy concentration of young workers (SSSC, 2014). Many of these workers are under 25 years of age. The number of workers in this sector will increase as the Scottish Government expands the provision of free early learning and childcare.

At this stage there is no evidence of social service employers taking a different approach for younger workers. We have concerns about a system which allows this possibility. A failure to deliver the NLW for these younger workers may have an impact on their morale and recruitment. It may also be seen as devaluing their critical role.

⁴ UK Government, 14 March 2016, The Government accepts minimum wage recommendations: <https://www.gov.uk/government/news/the-government-accepts-minimum-wage-rate-recommendations--2>

Regulatory requirements do not draw distinctions between younger or older workers. Many social service workers are required to register with the SSSC or an equivalent regulatory body. For example, in Scotland all support workers in care home services for adults must be registered. These workers must demonstrate that they are fit to work in the sector. They must hold or be working towards appropriate qualifications. Similar requirements apply in other parts of the sector including care at home, housing support and day care of children services.⁵ Delivering a NLW for all workers would support efforts to promote the sector as a positive career choice.

Working in partnership to move beyond the NLW

Delivering the NLW will require commitment from a number of partners including commissioners and tenderers. The Scottish Government has reached a settlement with local authorities to move to a Scottish Living Wage rate (£8.25) for many social service workers. The settlement agreement is predicated on providers making a contribution to the overall cost of the living wage commitment. These arrangements take effect from October 2016.

The Scottish Government has developed guidance which outlines the process for delivering the living wage commitment. The guidance was informed and agreed by a number of partners and highlights a number of points including the scope of the commitment and a need to adjust pay differentials. We welcome the collaborative approach to developing guidance and implementing new pay levels.

The settlement agreement is a commitment to deliver a rate of £8.25 per hour for many adult social service workers. It is not (as yet) a commitment to use the Scottish Living Wage as the ongoing benchmark for wages. Similarly the Scottish Living Wage commitment does not cover all workers in social service sector. We welcome progress towards introducing a higher wage in this sector.

Mitigating the NLW

We're aware of reports of a number of employers 'mitigating' the NLW by altering other areas such as overtime or working hours. We are not aware of any examples of this practice in the Scottish social service sector. In recent years a number of employers in this sector have highlighted a need to make changes to their terms and conditions. They typically refer to drivers such as reductions in public expenditure and short-term procurement practices (CCPS, 2015; Scottish Care, 2016). We have concerns about any employers that choose to mitigate the impact of the NLW by altering terms and conditions. Reductions in the wider employment package are a short-term fix and undermine the policy intention of the NLW.

⁵ Further information on Registration is on the SSSC's website:
<http://www.sssc.uk.com/registration>

NLW and other minimum wage rates (April 2017)

We welcome forthcoming increases in the rates affecting workers aged under 25 and apprentices. We would like to see apprentice rates move closer to the adult rate. We share the Scottish Government view in relation to apprentice rates.

'The Scottish Government's response to last year's consultation included a proposition around decreasing the differential between the youth and apprentice rates and the adult rate – this remains our preferred approach. As part of our commitment to fair work the Scottish Government is of the view that payment of the living wage should be paid as widely as possible – including for apprentices and young workers.'

(Scottish Government, 2015).

People working in the care sector, whether with adults or with children, are caring for the most vulnerable people in our communities. In Scotland, they have to hold specific qualifications and meet other regulatory standards; a living wage is the least they should expect.

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