03 December 2018

FREEDOM OF INFORMATION REQUEST – 1467/18

Dear Sir/Madam

Your request for information has now been considered and the information requested is provided below.

Request & Response:

We are writing to request information under the Freedom of Information Act 2000. The information we require relates to the authority’s policy and practice on the payment of independent health and social care providers for the provision of sleep-in shifts to local authority adult social care clients.

The Court of Appeal judgement on 13th July 2018 in the case of Royal Mencap Society v Tomlinson-Blake, allowed Mencap’s appeal against the judgment of the Employment Appeal Tribunal, and held that a care worker was not entitled to be paid the National Minimum Wage (NMW) for all the time that she was on a ‘sleep-in’ shift.

Following this judgement Unison are seeking leave to appeal to the Supreme Court.

We have three questions:

1) What is the policy and practice of your authority for the payment of independent health and social care providers for the provision of a sleep-in shift as part of a contract to provide care and support for a local authority adult social services client? For example do you pay a level sufficient for the care provider to top up the worker’s salary to NMW level over all, or do you pay NMW levels for all hours of sleep in shift or are you paying a fixed sum for a sleep-in which no longer aligns with NMW levels or are you doing something different from these approaches?

Answer:
The Domiciliary Care contract set out that the Services shall be available seven days per week, 52 weeks per year, between the hours of 07.00 and 22.00.
Providers must be flexible to Service Users’ requests for Homecare outside of these hours, including requests for the service between 06.00 and 07.00 and between 22.00 and 24.00.
Services for Night Sleeping and Night Sitting shall be provided between the hours of 22.00 and 07.00.

Our contract states that the provider must comply with the provisions of the National Minimum Wage Act 1998 (as amended therefore NLW) in relation to the payment of its staff and we may request information to ensure compliance with this.

None of our current homecare providers carry out sleep ins at present
2) Have you undertaken consultation with independent health and social care providers over the payment for sleep-in shift since the appeal court judgement on 13th July 2018?

Answer:
Rutland County Council has not undertaken consultation with independent health and social care providers over the payment for sleep-in shift since the appeal court judgement on 13th July 2018

3) If you have undertaken consultation with independent health and social care providers what form did this take?

Answer:
N/A

If you are dissatisfied with the handling of your request please contact the Data Protection Officer, Rutland County Council, Catmose, Oakham, Rutland LE15 6HP
You can also complain to the Information Commissioner at:

The Information Commissioner's Office
Wycliffe House, Water lane
Wilmslow, Cheshire
SK9 5AF
Tel: 01625 545700

Yours faithfully

FOI Administrator
Business Support Team
Rutland County Council