



Call for written submissions: Visit by the United Nations Special Rapporteur on extreme poverty and human rights to the United Kingdom of Great Britain and Northern Ireland from 5 to 16 November 2018 – Hft Response

Compiled by Billy Davis- Public Affairs & Policy Manager – September 2018

About Hft

Hft is a national charity that provides specialist care and support to over 2,500 adults with learning disabilities in order to live with as much independence, choice and control as possible.

We were founded in 1962 by a group of families who believed that, with the right support, their relatives were capable of more than society expected of them. Today, we still share that same vision. We support people to live independently in their homes through our Supported Living services, alongside Residential Care, and Short Break services. We empower people to make their own choices, including finding a job, building friendships and relationships and taking part in activities.

We operate in sites across England – from Newcastle to Newquay.

About the Fusion Model of Support

Hft's Fusion Model of Support is a different way of supporting someone with a learning disability. The model puts the emphasis on **how** we provide support, not what support we provide. It contains all of our strengths and all of the elements that we believe are essential to providing high quality, person-centered services. When all of these elements come together, a 'fusion' is created – this is when Hft is working at its best.

At the centre of our model, and because they are at the centre of everything we do, are the people we support. Surrounding them are eight segments that reflect all of the specialist skills that we believe are necessary to provide excellent support. These segments also include



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some of the ethical and moral considerations we take into account when providing services.

Surrounding these segments are three supporting themes: 'care about' runs through everything we do, ensuring we provide 'quality' services that are 'continually improving'.

i) Person-Centred Active Support (PCAS)

PCAS is a way of supporting people so that they are engaged in meaningful activity and relationships as active participants, exercising more control over their lives and experiencing greater levels of inclusion, independence and choice.



ii) Specialist Skills



Specialist Skills means using proven expert knowledge and best practice to support people.

This includes providing support with physical, mental, emotional and social needs and also meeting syndrome and time of life specific needs.

iii) Creative Solutions

Creative Solutions means thinking openly and using imaginative and original ideas to find practical solutions to enhance the lives of the people we support.



iv) Families and Other Partnerships



This means helping the people we support to develop and maintain positive relationships with families, friends and other partners involved in their lives.

It means having the skills and understanding of how important it is to work in partnership with the people we support and those involved in their lives. This includes welcoming and valuing what families contribute to giving the best support.

v) Choice

Choice means enabling the people we support to have a greater awareness of the range of options available to them, so they can make the choice or decision that is uniquely right for them. This



means people are more empowered to make informed decisions, even if these decisions may be considered 'unwise' by others.



vi) Total Communication

Total Communication means that all forms of verbal and non-verbal communication are thoroughly explored and embraced for each individual. This includes all body language, facial expressions, gestures, signing, verbalisation, intonation, photographs, drawings and symbols, written words, objects of reference and access to appropriate technology.

vii) Personalised Technology

Personalised technology means any technology which enhances the lives of the people we support. This includes specialist technology such as telecare, environmental controls and prompting devices, as well as mainstream technology such as quick cooling hobs and mobile phone technology.



viii) Healthy, Safe and Well



Healthy, Safe and Well involves all aspects of a person's life including their physical, mental, emotional, social, cultural and spiritual needs. It is a positive concept and means we will proactively work with each individual to find out what this means for them so we can help them to live more fulfilled lives.

This also means that, when necessary, we will support them to take risks to get the lifestyle they want, while also safeguarding them from harm.

ix) Personal Growth

Personal growth means the people we support will be helped to take control of their lives so they can continue to develop as individuals. This includes embracing new skills and knowledge, widening interests and having new experiences. Everyone we support will have the confidence to express their thoughts and ideas, increasing their self-esteem.



Written Submission

1. Hft welcomes the investigation by the Special Rapporteur on Extreme Poverty and Human Rights (hereinafter referred to as “the Special Rapporteur”) into extreme poverty and human rights. Hft’s submission will focus on the impact that austerity has had on local authorities and the social care sector in England, specifically, support for adults with learning disabilities.

[Q7] Which individuals and organizations should the Special Rapporteur meet with during his country visit to the United Kingdom?

2. Hft is one of the longest-established learning disability charities in England¹. Since February 2016, through our *It Doesn’t Add Up* campaign, Hft has been at the forefront of campaigning on the impact of unfunded financial pressures in the learning disability sector. Hft was also one of the first learning disability providers to be investigated for payments of “Sleep-Ins” under new HMRC investigations. As such, we have built up a wide bank of knowledge of these issues. We would therefore like to invite the Special Rapporteur to discuss our submission in greater detail with members of our staff and the people we support. Our head offices are located in Bristol.

3. Hft has a proven track record in providing authoritative briefings and guidance on issues of social care funding. Our previous activities include: commissioning independent research², participating in numerous government consultations³ and, at the UN level, submitting evidence on the impact of austerity to the Special Rapporteur on the Rights of Persons with Disabilities⁴ and later enabling two individuals we support to give oral evidence to the Committee on the Rights of Persons With Disabilities (CRPD) in Geneva^{5,6}.

[Q12] How have local governments been affected by austerity measures in the last decades? If possible, please specify the impact on public

¹ Bill Peck (2008), *A History of the Home Farm Trust 1962-2008*, Bristol: The Home Farm Trust, pp. 18-23

² “Charity warns that increasing numbers of organisations are operating at a loss in newly published report”, *Charity Today*, 19 February 2018, URL: <https://www.charitytoday.co.uk/charity-warns-increasing-numbers-organisations-operating-loss-newly-published-report/>

³ “Hft warns Low Pay Commission that unfunded increases in the National Living Wage are pushing the learning disability sector to the brink”, *PoliticsHome*, 1 June 2018, URL: <https://www.politicshome.com/news/uk/health-and-care/social-care/press-release/hft/95619/hft-warns-low-pay-commission-unfunded>

⁴ “Hft adds voice to study about service provision for people with disabilities”, *U2Can Magazine*, 25 October 2016, URL: <https://mail.ucan2magazine.co.uk/content/hft-adds-voice-study-about-service-provision-people-disabilities>

⁵ Matt Bass, “Woman with learning disabilities speaks at UN committee meeting”, *Stroud News & Journal*, Wednesday 30 August 2017, p.17

⁶ Lewis Clarke, “Henry speaks out on austerity at UN”, *Tiverton Post*, Tuesday 29 August 2017, p.9

services such as police and fire departments, public libraries, and the administration of the welfare system by local authorities.

4. Local authorities have been at the forefront of government austerity reforms and spending cuts. The intent of government reforms were to not only shrink the state at the local level, but also to make it “more local and open”⁷ by requiring councils to raise more funds locally, enabling local authorities to have more control over how much money was raised locally, and where the money was spent. However, reduced central government grants to local authorities – with the ultimate policy goal of abolishing central government funding by 2020 – has led to a reduction in the real terms spending power of local authorities of 49.3% from 2010-11 to 2017-18⁸.

5. In England, social care is often described as “the classic definition of a monopsony – a market with one buyer and many sellers”⁹, with local authorities being the predominant commissioner of care packages within a locality. The Care Act 2014 gives local authorities powers to “encourage quality, choice and sufficiency of provision”¹⁰ within the social care marketplace.

6. Between 1997-98 and 2017-18, there has been 5514 individual council tax rises, compared to 1379 freezes and 366 cuts¹¹. The financial year 2018-19 will see the highest council tax rises for 14 years¹². Despite these tax rises social care still faces a funding gap of £5bn by 2020.

7. Learning disabilities accounts for approximately one-third of adult social care spend in England¹³. It is the fastest-growing sector in councils’ adult social care spend, with only six of the 151 local authorities in England spending more on care for working-age adults than they did on care for the elderly in 2005, compared to 57 in 2017¹⁴. Support for adults with learning disabilities is also more costly, with CQC noting that in 2014/15 the average cost for nursing care was £552 per week for adults aged 65 and over with physical support needs, compared to £1,119 per week to support adults aged 18 to 64 with a learning disability¹⁵.

⁷ Janan Ganesh (2014), *George Osborne: The Austerity Chancellor*, London: Biteback Media Publishing, p.258

⁸ “Financial Stability of local authorities 2018”, National Audit Office, 8 March 2018, p. 15

⁹ Ingrid Koehler, *Paying For It: The human cost of cut-price care*, LGiU, March 2017, p.4

¹⁰ The Care Act 2014, Chapter 4 “Providing Information and Advice” and Chapter 5 “Promoting diversity and quality in provision of service”

¹¹ Jan Zeber, “Twenty Years of Council Tax”, *Taxpayers Alliance*, January 2018, p.3

¹² Emily Twinch, “Council tax set for biggest increase in 14 years, CIPFA survey finds”, *Public Finance*, 1 March 2018, URL: <http://www.publicfinance.co.uk/news/2018/03/council-tax-set-biggest-increase-14-years-cipfa-survey-finds>

¹³ “Community Care Statistics, Social Services Activity, England 2015-16” *NHS Digital*, October 2016, p.7

¹⁴ “The Other Social Care Crisis”, *The Economist*, 1 March 2018, URL: <https://www.economist.com/news/britain/21737542-while-most-people-worry-about-ageing-population-bill-younger-clients-rising>

¹⁵ “The state of health and care in England 2015-16”, CQC”, October 2016, p.60

8. It is therefore perhaps unsurprising to read that the learning disability sector is operating within a challenging financial climate. According to analysis of a survey conducted by Hft, the number of organisations in the learning disability sector reporting that they are operating at a deficit has more than trebled since 2016-17, rising from 11% to 34%¹⁶. In order to alleviate these cost pressures, 54% have curbed investment in the future of their services (up from 48% in 2016)¹⁷ and 74% will need to do so “in the near future” (up from 50% in 2016)¹⁸. With providers stemming losses today by not investing in tomorrow, there are grave concerns of the sector being “at full stretch”¹⁹.

10. Social care has traditionally been a low-paid sector. 91% of the workforce in the social care sector are working on the National Living Wage (NLW), compared to a national average of 87%²⁰. As of April 2018, the NLW is set at £7.83ph for over-25s and it is projected to rise to around £9ph by April 2020. With learning disabilities, this has resulted in a sector where staff are supporting individuals that have increasingly complex needs and behaviours that challenge, while working in a sector that is commissioned to be paid at the NLW. As a result, recruitment remains a challenge, with the vacancy rate in 2016-17 for jobs across social care was 6.6%, well above the national average of 2.5%-2.7%²¹. Along with the issue of low pay, austerity has further exacerbated the recruitment crisis due cuts to police budgets. As a result, the amount of time that a Disclosure and Barring Service (DBS) check takes to complete has increased to seventy-seven days. As staff cannot work without a DBS check is finalised, many potential employees are deterred from applying, due to not being able to financially manage without being paid for over two months²².

11. Social care policy, including rates of pay, are jointly decided by the Department of Health & Social Care (DoH&SC) and the Ministry for Housing, Communities and Local Government (MHCLG). It is worth noting that, despite legislating for a NLW rate of pay on the social care sector, both Departments pay their lowest paid staff significantly higher than the NLW²³.

¹⁶ “Sector Pulse Check 2017: The impact of changes to the social care sector in 2017”, Hft, December 2017, p. 6

¹⁷ *Ibid.*, p. 8

¹⁸ *Ibid.*, p.10

¹⁹ “*The State of Health Care and Adult Social Care in England 2016-17*”, CQC, pp. 15-27

²⁰ “It Doesn’t Add Up: The Financial Crisis Crippling The Social Care Sector”, Hft, December 2016, pp.12-13

²¹ Andy Whittingham, “Government must act to halt crisis in social care recruitment”, *The Guardian*, 8 February 2018, URL: <https://www.theguardian.com/social-care-network/2018/feb/08/government-must-act-crisis-social-care-recruitment>

²² James Bloodworth (2018), “*Hired: Six months underground in Low-Wage Britain*”, London: Atlantic Books, p88-89

²³ Information uncovered by Parliamentary Written Questions submitted on behalf of Hft by Wera Hobhouse MP to the Ministry for Housing, Communities and Local Government [[162604](#)] and the Department for Health & Social Care [[162604](#)], [[171489](#)].

12. Local Authorities are also inconsistent in funding rises in the NLW, with many commissioning at the lower National Minimum Wage rate. It has also been calculated that, despite the social care precept set to raise £548m in 2018-19, this will be “wiped out” by the increased costs of paying a rising National Living Wage rate²⁴. Staff wages are the largest financial demand on social care providers²⁵. At Hft, wages are already 80% of our total expenditure. Paying the new National Living Wage added 7.5% to our wage bill in April 2016. By April 2020, that bill will have risen by a further 25%, adding a third to our wage bill in just four years. If this increase remains unfunded, many providers in the sector will begin to become financially unviable.

13. Issues relating to unfunded pay crystallised around issues relating to “Sleep-Ins” shifts. Sleep-Ins, where a staff member slept overnight in a supported individual’s residence, were traditionally paid at a flat fee. However, “potentially misleading” government guidance²⁶ on whether Sleep-Ins should be subject to the NLW led the possibility of a £400-600million back pay liability, with no government monies available to fund this.

14. The use of sleep-in care is particularly prevalent in adult learning disability care, and so the financial burden of the crisis was being felt acutely by providers in this sector. There were also individuals with learning disabilities who found themselves affected, with workers who had been employed directly as personal assistants by some of the 65,000 disabled people in England who have personal budgets now seeking back pay from those disabled individuals²⁷. The most recent Court of Appeal decision stated Sleep-Ins were not eligible for NLW, but this is now subject to a Supreme Court Appeal. While the government is asking providers to “take the result of the Appeal case into consideration”, there is still lack of certainty for providers, low-paid staff and disabled people on this issue.

15. The NLW was seen both as the result of “one of the most successful civil society-led initiatives to reduce poverty and inequality in the UK in recent decades”²⁸ and a personal “high point”^{29,30} in the career of the Chancellor George Osborne. To be clear, Hft is not advocating for the abolition of the NLW. Our hardworking staff are the cornerstone of the high quality, person-centred support

²⁴ William Eichler, “Council tax increases not enough to stop cuts to services, warn town all chiefs”, *LocalGov.co.uk*, 26 February 2018, URL: <https://www.localgov.co.uk/Council-tax-increases-not-enough-to-stop-cuts-to-services-warn-town-hall-chiefs/44801>

²⁵ “Sector Pulse Check 2017”, Hft, p.4

²⁶ Please see **Appendix A** for a full list of the legislation, Statutory Instruments and case law history on Sleep-Ins

²⁷ David Brindle, “Disabled people may be liable for back pay of sleep-in care workers”. *The Guardian*, 10 August 2017, URL: <https://www.theguardian.com/social-care-network/2017/aug/10/disabled-people-back-pay-sleep-in-carers-mencap>

²⁸ Paul Bunyan, “The role of civil society in reducing poverty and inequality: A case study of the living wage campaign in the UK”, *Local Economy*, 2016, Vol. 31(4), p. 500

²⁹ Anthony Seldon & Peter Snowdon (2016), *Cameron at 10: The Verdict*, London: WilliamCollins, p. 541

³⁰ David Laws (2017), *Coalition: The Inside Story of the Conservative-Liberal Democrat Coalition Government*, London: Biteback Media Publishing, pp. 494-495

that Hft aims to deliver to the people we support, and Hft fully endorse the principles of Article 23:3 of the Universal Declaration of Human Rights on the right to a wage that promotes human dignity³¹. However, these increases in the NLW rate are not being factored into fees commissioned by local authorities, which is undermining the financial viability of the sector. We have argued this also undermines providers' abilities to fully meet their obligations under Article 19 of the CRPD to enable supported individuals to live with as much dignity, choice and autonomy as possible³².

16. As previously mentioned, Hft participated into the inquiry into the UK Government's implementation on the CRPD. In their concluding remarks, the CRPD Committee compelled the UK Government to "provide adequate and sufficient and earmarked funding to local authorities [...] to be able to continuously allocate adequate resources allowing persons with disabilities to live independently and be included in the community and to exercise their right to choose their place of residence and where, and with whom to live"³³. Hft recently submitted evidence to the CRPD Committee stating that we do not believe that the UK Government has yet secured a sustainable funding solution for the social care sector.

17. We hope that these issues will be addressed in the Government's forthcoming green paper on the future of adult social care. It should be noted that this green paper has been plagued by several delays to the publication date, moving from "Summer 2017" to "a commitment to publish by Autumn 2018"³⁴. While it is a welcome move that working age adults – including adults with learning disabilities – has seemingly been moved from a proposed "parallel programme of work" to now be included in the Green Paper³⁵, it is regrettable that the government has continued to push back the publication date, given the worsening financial crisis in the sector.


³¹ "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection", Universal Declaration of Human Rights, Article 23:3

³² "States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that[...]Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community", Convention on the Rights of Persons with Disabilities, Article 19 (b)

³³ Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland*, paragraph 45(c)

³⁴ Tim Jarrett, "Social Care: forthcoming Green Paper on older people and parallel programme (England)", *House of Commons Library*, Briefing Paper Number 8002, 14 August 2018, p.3

³⁵ Jon Bunn, "Hancock confirms social care green paper to cover younger adults", *Local Government Chronicle*, 25 July 2018, URL: <https://www.lgcplus.com/services/health-and-care/hancock-confirms-social-care-green-paper-will-cover-younger-adults/7025401.article>



18. The Special Rapporteur's visit will be very timely in this regard, as his visit should hopefully coincide with the publication of the green paper, and the commencement of a long-overdue conversation on the future funding of a beleaguered sector.

APPENDIX A: Summary of statutory instruments and BIS guidance

Compiled by Jacqui Roynon- Executive Director of People and Communications – September 2018

Statutory Instrument – The National Minimum Wage Regulations 1999

Section 16-1:

“Time when a worker is available at or near a place of work, other than his home, for the purposes of doing salaried work and is required to be available for such work shall be treated as being working hours for ... except that, in relation to a worker who by arrangement sleeps at or near a place of work, time during the hours he is permitted to sleep shall only be treated as being working hours when the worker is awake for the purpose of working”

Statutory Instrument – The National Minimum Wage Regulations April 2015

The reference to the treatment of sleeping time is outlined fully in relation to “time work”, but similar references are found regarding “salaried work”.

Section 32:

Time work: “Time work includes hours when a worker is available, and required to be available, at or near a place of work for the purposes of work unless the worker is at home ... hours when a worker is “available” only includes hours when the worker is awake for the purposes of working, even if a worker is required to sleep at or near a place of work and the employer provides suitable facilities for sleeping”

BIS guidance – Calculating the Minimum Wage April 2014

“You may allow workers who are performing time work to sleep at or near their place of work and provide them with sleeping facilities. They are not entitled to the minimum wage while they are on standby or on call and are asleep or entitled to sleep. However you must pay them the minimum wage for any time which they are awake for working.

Time when a worker can sleep and is not working is not time for which you have to pay them the minimum wage.”

BEIS latest Guidance: Calculating the Minimum Wage Oct 2016

“Employers must ascertain whether a worker is still subject to certain work-related responsibilities whilst asleep, to the extent that they could be deemed to be ‘working’.

A worker, who is found to be working, even though they are asleep, is entitled to the national minimum or national living wage for the entire time they are at work. Workers may be found to be ‘working’ whilst asleep if, for example, there is a statutory requirement for them to be present or they would face disciplinary action if they left the workplace. They would then be entitled to the national minimum or national living wage rate.

There can be situations, however, where a worker is only available for work and is permitted to sleep and suitable sleeping facilities are provided at the workplace. In those cases, the individual will not be ‘working’ and the minimum wage will not be payable. However, the individual must be paid the national minimum or national living wage for any time they are awake for the purpose of working.

Under these situations it will depend on the nature of the work-related obligations to which the worker is subject while they are asleep.

*Example 1 – where the minimum wage is **likely**^{*36} to apply*

A person works in a care home and is required to work overnight shifts where they sleep on the premises. The person’s employer is required by statute to have someone on premises for health and safety purposes. The person would be disciplined if they left the premises at any stage during the night.

It is likely that the person would be considered to be ‘working’ for the whole of the overnight shift even when they are sleeping.”

Statutory Instruments: Equality Act 2010 (Gender Pay Gap Information) Regulations 2017: Employee’s working hours in a week

The regulation, **which came into force on 6th April 2017** sets out when working hours should be eligible for NMW payment under Chapter 4 of Part 5 of the National Minimum Wage Regulations 2015:

“(8) In this regulation, “working hours” -

- (a) includes hours when an employee is available, and required to be available, at or near place of work for purposes of working unless the employee is at home
- (b) excludes any hour for which an employee is entitled to overtime pay

(9) In paragraph 8, hours when a worker is “available” **only include hours when the worker is awake for the purposes of working**^{*37}, even if a worker by arrangement sleeps at or near a place of work and the employer provides suitable facilities for sleeping.”

³⁶ * Author’s highlight.

³⁷ * Author’s highlight.

July 2017: Government freezes HMRC investigation into Sleep-In NLW/NMW payments

On 26th July, BEIS announced that the Government would temporarily suspend HMRC investigations into sleep-in backpayments until 2nd October 2017. HMRC would also waive financial penalties faced by providers who had been found to have inadvertently underpaid their workers for sleep-in shifts.

In the press release, the Government acknowledged that the guidance issued before February 2015 was “potentially misleading”.

November 2017: Government launches the Social Care Compliance Scheme (SCCS)

On 1st November 2017, the Government announced that social care employers would be able to opt into the new SCCS compliance scheme, which would give them up to a year to identify what they owe to workers, supported by advice from HMRC. Employers who identify arrears at the end of the self-review period will have up to three months to pay workers. Whilst the scheme was voluntary, the government advised that employers that chose not to opt into the scheme would be subject to HMRC’s normal enforcement approach.

August 2018: Updated HMRC guidance on the SCCS

HMRC issued guidance stated “HMRC have decided that it is appropriate to continue to operate the SCCS allowing participating employers to complete a self-review, **taking the judgement into consideration**^{*38}, and make a declaration to HMRC. All original timeframes and requirements remain in place. BEIS are currently reviewing their guidance in *Calculating the Minimum Wage* and this will be published in due course. Employers will be issued with an updated SCCS Employer guide once the revised *Calculating the Minimum Wage* is available.

BEIS latest Guidance: Calculating the Minimum Wage July 2018

The government notes the judgment of the Court of Appeal ([2018] EWCA Civ 1641) in the joined cases of *Mencap v Tomlinson – Blake* and *Shannon v Rampersad*. The cases were heard on appeal from the Employment Appeal Tribunal and the Court of Appeal published its judgment on 13 July 2018.

The government is considering the implications of this case, including for its guidance on calculating the National Minimum Wage when staff are permitted to sleep between duties. Further guidance will be provided in this document shortly.

³⁸ * Author’s highlight.

Case Law review

Working time (NMW)	Not working time (NMW)
<p>Burrow Down – 2008</p> <p>Care workers supporting people with disabilities</p> <p>The Employment Appeal Tribunal (EAT) upheld an employment tribunal decision that an employee who was allowed to sleep for much of his shift, but had to deal with anything untoward that might arise, was entitled to be paid the national minimum wage for the whole shift.</p>	<p>South Manchester V Hopkins 2011</p> <p>Care workers supporting people with Downs Syndrome.</p> <p>In this case the EAT identified a “clear dichotomy” between those cases where the employee was working because they were present at the employer’s premises (such as a nightwatchman); and those where the employee was provided with sleeping accommodation and was simply on call”...this meant “that the claimants could only claim the minimum wage for the hours that they were “awake for the purpose of working”</p>
<p>Slavikovska 2014</p> <p>Senior Support worker supporting people with disabilities</p> <p>The EAT concluded that since the residential care home had a legal obligation to have a person with Slavikovska’s qualifications on site at all times, she was being paid to satisfy this requirement. Her mere presence was therefore enough to constitute working time for national minimum wage purposes</p>	<p>City of Edinburgh v Lauder</p> <p>Sheltered accommodation wardens 2012</p> <p>In this case it is reported that the nature of the work that the employee might have to carry out was decisive. In this case the decision was that the employer did not have to pay the employee. The Residential wardens in a sheltered housing development had to remain onsite but were not required to carry out their main duties. The EAT held that the wardens were not carrying out “their essential or core job” and were merely on-call; as such they were not “working”.</p>
<p>Whittlestone 2014</p> <p>Care worker</p> <p>The complainant was required by her contract to sleep-over. An express term of her contract stated that failure to do so would result in disciplinary action and there was evidence that she could not, as the judge put it, 'slip out for a late night movie or for fish and chips'</p>	<p>Shannon 2015</p> <p>On call night care assistant who lived on the premises</p> <p>The ET concluded that he was not working throughout each night shift; only on those rare occasions when he was called upon to do so by the night care worker on duty.</p>

Case Law review - Continued

Mencap v Tomlinson – Blake and Shannon v Rampersad Court of Appeal 2018

The Court of Appeal in *Royal Mencap Society v Tomlinson-Blake and Shannon v Rampersad* [2018] EWCA Civ 1641 were concerned with the issue of whether "sleep-in" workers were entitled to National Minimum Wage for the time asleep.

The Court of Appeal dismissed the claims of both Ms Tomlinson-Blake and Mr Shannon. The Court ruled that there was **a distinction to be made between their working arrangements - being available for work - and actively working**. Workers on sleep-in shifts can **only have hours counted for NMW purposes where they are, and are required to be, awake for the purpose of performing some specific activity**. Accordingly, the Court determined that the employers in each case were **not required to pay the NMW for the entirety of the sleep-in shift**.

Unison petitions to the Supreme Court

Following the Mencap ruling trade union Unison, which had been supporting Ms. Thomson-Blake throughout the proceedings, announced its intention to launch an appeal with the Supreme Court to attempt to overturn the Court of Appeals ruling.