



COALITION OF CARE AND SUPPORT PROVIDERS SCOTLAND

Implementing the Scottish Living Wage in adult social care: An evaluation of the experiences of social care partners, and usefulness of Joint Guidance

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Executive summary

- 1 This report presents the results of a qualitative study evaluating the introduction of the Scottish Living Wage to adult social care and the accompanying Joint Guidance. Thirty-six respondents from the Civil Service, sector lead bodies, voluntary and public providers, contracting authorities and trade unions were involved in gathering the data.
- 2 There was consensus among participants that the introduction of the Scottish Living Wage for adult social care workers represented a significant progressive effort by the Scottish Government to improve the working conditions and living standards of front-line staff in the sector.
- 3 There was agreement among providers, lead bodies of employers and contracting authorities that the level of transparency and consultation regarding the introduction of the SLW was limited.

The perspectives of local authorities and IJBs

- 4 The distribution of funding to resource the SLW in adult social care was viewed as being overly complex, and again there was limited transparency in terms of how decisions regarding final sums were arrived at.
- 5 Local authorities varied in the extent to which they engaged in consultation and correspondence with providers regarding the distribution of funding for the SLW.
- 6 Local authorities varied in their approaches to implementing the SLW ranging from percentage uplifts for all providers to undertaking detailed individual negotiations. Some authorities withheld payments to those providers already paying the SLW.
- 7 Standardised hourly rates, or efforts to minimise variations in hourly rates were reportedly being adopted by some authorities.
- 8 Some local authorities had to make 'efficiencies' in their other services to fund the SLW. Moreover, requests for providers to 'make efficiencies' were increasing as wider resource issues limited local authority ability to fund the SLW.
- 9 In response, local authorities experienced warnings from providers that they might have to withdraw from services, where they found requests for efficiencies to be unrealistic.
- 10 Some local authorities were reportedly making the SLW a *de facto* requirement of tendering.
- 11 Monitoring of provider compliance with the SLW was undertaken, but only limited evidence of non-payment to front-line staff had emerged.
- 12 According to contracting authorities there was limited impact on recruitment and retention. It was further felt that providers would have to focus on non-monetary rewards to attract and retain staff now the SLW levelled the playing field on pay.

The provider perspective

- 13 Providers felt Integrated Joint Boards were remote and too focused on NHS issues. Relationships were also in some cases in their infancy.
- 14 Providers recognised that local democracy had to be respected, but had concerns that the lack of transparency and complexity in the distribution of funding made final decisions appear arbitrary.
- 15 Consultation and information sharing from local authorities regarding the implementation of the SLW was mixed, with some very open, while others imposed solutions.
- 16 Providers with multiple local authority funders faced the complexity of experiencing each of the four payment approaches outlined in the Joint Guidance.
- 17 The level of payments varied considerably with some providers receiving 0% from some authorities.
- 18 Providers questioned the validity of some of the calculations made by officers from authorities. They also reported limited or no use of available templates such as the UKHCA or Implementation Group's published guidance (developed by CCPS) on the cost of care.
- 19 Some relationships with local authorities were becoming strained as a result of difficult discussions regarding the payment of the SLW. This was especially the case where local authorities refused to pay anything to a provider.
- 20 The climate of uncertainty generated by the SLW was leading to some providers raising concerns about their long-term financial stability.
- 21 Concerns were particularly acute over the intention to move to funding the SLW through 'business as usual' in future (that is, no longer allocating an identified resource for this specific purpose), with fears that this may lead to more closures of services or handing back of contracts.

Impact on employment and terms and conditions among providers

- 22 The most common impact on employment was the consequences for pay differentials. A range of differentials between front-line workers and others were affected, including senior more experienced workers, team leaders/supervisors, domestic, catering and maintenance staff.
- 23 Within some providers, delays in receiving funding for the SLW were leading to tensions with staff.
- 24 The narrowing of differentials was having negative consequences on the recruitment and retention of team leaders/supervisors, with existing workers reluctant to take on greater responsibility for limited additional rewards.
- 25 Some providers felt that the SLW initiative was rewarding competitors for being poor payers in the past whereas they had paid their workforce a fair wage that rewarded their skills.

- 26 Providers indicated that complying with the SLW represented surrendering a substantial element of control over pay and their independence as an employer.
- 27 There was limited evidence of providers sacrificing other terms and conditions of employment to fund increases in the SLW.
- 28 The impact of the SLW on sleepovers raised significant uncertainty among providers, regarding the ability of local authorities to fund them at a higher rate. Local authorities were already calling for fewer sleepovers raising concerns about quality among providers.
- 29 Absolute levels of pay were increased as a result of the SLW policy, but there were doubts as to whether the relative levels were increased in relation to public sector workers and those in retail and hospitality sectors.

The value of the Joint Guidance

- 30 Commissioning and contracting authorities used the guidance to a limited extent, while also utilising various peer network groups for advice regarding the SLW.
- 30 There were areas where commissioners and contracting authorities felt the Joint Guidance could provide more clarity, including: the status of the SLW as a contractual obligation, the implications for self-directed support, the timing of implementation, the consequences for sleepovers (timing of payment and rates), monitoring and compliance, and state aid.
- 30 Local authority respondents indicated that it would be better to introduce funding of SLW through 'business as usual' once it becomes part of the 'culture in practice'.
- 31 Providers valued the Joint Guidance and the efforts of their lead bodies (CCPS and Scottish Care) to represent their interests.
- 32 Problems with the Joint Guidance included limited or no use of it, vagueness in key points such as timing of payments, limited acknowledgement of the different types of providers and services they delivered, funders using the vagueness of certain areas of guidance to be inconsistent in their behaviour, a lack of boldness/ being too 'neutral', and a lack of clarity regarding issues such as relevance of Fair Work.

Barriers and Enablers to implementing the SLW

- 33 Across local authority and provider respondents commonly identified barriers to effective implementation of the SLW included:
 - Multiple payment methods by local authorities.
 - Multiple settlement dates by local authorities.
 - Under-funding of differentials and on-costs.
 - Risks to the sustainability of some providers and services.

34 Across local authority and provider respondents commonly identified enablers for effectively implementing the SLW included:

- Greater consultation by Scottish Government.
- Greater consultation between providers, local authorities and IJBs.
- Reform of Joint Guidance to address current differences in timing and variety of approaches to payment, including with regard to sleepovers.
- Further information in Joint Guidance re implications of any future move to funding through 'business as usual'.
- The support of sector bodies such as CCPS, Scottish Care and COSLA.
- Separately identified funding.

35 A series of recommendations for future implementation include:

- Detailed monitoring by Scottish government of funding by local authorities of SLW if and when the 'business as usual' regime begins.
- A distribution formulae that takes account of the degree to which services in local authority areas are outsourced as well as issues such as geography, deprivation and need.
- Exploration of the feasibility of coordinating the timing of local authority payment of increases to providers.
- Engagement of all partners in meaningful discussions re developing a template that recognises the true costs of providing satisfactory levels of care.
- To underpin and resolve concerns regarding differentials and fair work, the partners should consider moves to engage in national collective bargaining or some other coordination of pay and terms and conditions.
- According of greater weighting to workforce matters in procurement guidance.
- Reform Joint Guidance in line with the aforementioned concerns of commissioners and providers.
- Commissioning of further research into improvements in employee take-home pay /living standards from the SLW, consequences of handing back contracts and the balance between the cost and quality in the award of contracts.

Introduction

The purpose of this report is to review the experience of implementing the Scottish living wage in adult social care and make recommendations for future implementation. The research was commissioned by the Coalition of Care and Support Providers Scotland (CCPS) in response to the Scottish Government's policy, announced in February 2016, that front line workers employed in publicly funded social care services should be paid the living wage. This commitment has led to sums of public money being transferred to external providers through re-negotiation of contract prices, fees (including fees agreed under the National Care Home Contract) and hourly rates paid for service delivery.

To undertake this evaluation, a qualitative study of voluntary and private sector providers, lead body (employers and COSLA) and trade union representatives, as well as civil servants was undertaken between February and May 2018. Section 1 of the report begins with an overview of relevant studies in the area, beginning with a short summary of the effects of introducing minimum/living wages on employers, jobs, services and wages. The specific context of the Scottish social care sector is then outlined to highlight the environment in which the living wage is being introduced. Section 2 provides an outline of the method for the study. Section 3 presents findings, which outline the experiences of the various parties (providers, local authority and representatives from Integrated Joint Boards) from introducing the Scottish Living Wage. This section includes analysis of levels of consultation and information sharing, impact on the security of providers, implications for employment conditions, views on the value and reform of the joint guidance and perspectives on the barriers and enablers to implementation. Section 4 begins with a reflection on the differences and similarities in regard to prior studies that have explored the introduction of the living wage, and raises a number of key areas of potential reforms to improve implementation. Section 5 offers conclusions to the study, recommendations and future areas of research.

Section 1: Context

The economics of minimum/living wages

Theorising minimum (living) wage effects

There is no one universally accepted labour market theory. Rather, there are a variety of alternative ones. These include neo-classical supply and demand models as well as monopsony, efficiency wage and segmentation theories (Metcalf, 2007). There is consequently no one perspective on the likely economic effects of introducing a minimum (or for that matter a living) wage policy. For example, if the neoclassical assumption of a competitive labour market in which wages are set at the level of labour's marginal productivity is accepted, then the anticipated effect of a minimum wage will be to engender job losses should it be set above this level. In contrast, other theoretical perspectives which take the view that wages are set, not according to 'laws of supply and demand', but within a 'range of indeterminacy', do not see job loss as an inevitable outcome and, indeed, leave open the possibility that a rise in wages could lead to an increase in employment (Edwards and Gilman, 1999: 34).

It further needs to be recognised that at the level of the firm (or individual employer) economic theory embodies an acknowledgement that wages play two rather different functions:

- a) A mechanism for recruiting and retaining labour;
- b) A source of staff motivation

The role of wages in these areas is moreover influenced not only by their absolute level (how much one's wages are) but also how this relates to notions of relative fairness (how one's wages compare to others in the organisation). Such notions of fairness are influenced by both external and internal labour market factors and can exert an important influence over the degree to which pay is deemed satisfactory and acts to support lower labour turnover and high job performance. Thus, a minimum wage policy that risks internal pay differentials, either in percentage or rank order terms, may have a positive motivational effect on some staff and a negative one on others; a point that lends weight to the indeterminate nature of the economic outcomes of such policies. It follows of course from this that labour cost increases arising from minimum wages can stem from two different sources:

- a) The wage rises gained by those previously paid below the minimum wage level; and
- b) Spill-over increases granted to other staff to protect existing pay differentials

To confuse the situation further, it is also argued that minimum wage initiatives, by increasing the labour costs of employers, can stimulate them to find ways to secure compensatory improvements in labour productivity. For example, by improving staff training, reducing absence levels, reforming working methods and processes, and capital investment.

In some cases it might also be possible for employers to recoup their increased costs through price rises, or to bear these costs through cuts to profits (Metcalf, 2007).

The empirical evidence

In considering what the empirical evidence tells us about the impact of minimum and living wage policies it is important to recognise that the latter types of policies come in different guises and differ to the former in terms of their coverage and status. More specifically, Living Wage policies, unlike minimum wage ones, are for the most part voluntary. Moreover, where they are backed up by compulsion, as is the case in some cities in North America (see below), this compulsion is restricted to certain areas of employment.

The UK's National Living Wage should not be viewed as an exception to what has just been argued since its title is something of a misnomer given that the wage rate concerned has not been set by reference to any notion of what constitutes a 'living wage'. The Scottish Living Wage within adult social care is implemented, through processes of tendering, and so is effectively supported by a degree of compulsion while outside of this area of employment its adoption is voluntary. This, in turn, means that the SLW's application in adult social care has more in common with the Living Wage ordinances that have been adopted by a significant number of U.S. cities, most commonly in relation to those working for municipal contractors (and their subcontractors) or for firms receiving economic development subsidies or operating on land owned by the city (Luce, 2012; Farris and Reich, 2005).

In general, studies, whether focussed on the effects of the UK National Minimum Wage (NMW), the UK's National Living Wage or US Living Wage ordinances, have either found no negative employment outcomes, or very limited ones. Certainly, this has been the case with the UK's NMW, notwithstanding clear evidence that it has significantly improved the relative and absolute pay levels of those at the bottom end of the labour market (Metcalf, 2007). Strikingly, in terms of the focus of this study, the same picture emerges from research that has focussed on the impact of the NMW and the National Living Wage on workers in UK care homes (Dickins and Manning, 2004 a & b; Giupponi and Machin, 2018). Furthermore, in the case of the former, they also indicate, as with the impact of the NMW more generally, little in the way of knock-on increases in pay for those higher up the wage distribution (Dickens and Manning, 2004b). Evidence therefore suggests that the implementation of the NMW has been associated with a process of wage compression involving reductions in pay differentials (Grimshaw, 2013).

Given the way in which the NMW has increased the absolute and relative pay of those at the bottom of the wage distribution, it is unlikely that its limited employment effects reflect that it has been set below the 'competitive wage'. Other factors therefore seem to have played a role. In particular, research suggests that employer responses to the NMW have included ignoring the law, recouping the additional costs through work intensification and withdrawing or cutting other benefits, more tightly monitoring staff, increasing staff training, and seeking to move into more

profitable market niches (see e.g Heyes and Gray, 2001; Bullock et al, 2001; Ram et al, 2001; Green et al, 2018). In the case of care homes it would additionally appear that the costs of the National Living Wage have also been offset by cuts to the quality of services (Giupponi and Machin, 2018). Interestingly, it appears that similar dynamics are operating in relation to the voluntary adoption of the Living Wage by small British companies (Werner and Lim, 2017).

As already indicated, evidence on the impact of Living Wage ordinances echoes for the most part that relating to the pay and employment effects of the NMW (Farris and Reich, 2005). Establishment level research on the effects of ordinances, however, also suggests that there have been significant offsets to the wage increases imposed on firms through living wage mandates since studies have tended to show improvements in turnover, worker morale, effort and absenteeism (Farris and Reich, 2005; Luce, 2017).

Scottish social care and introducing the Living Wage

The Scottish social care market is made up of direct state provision and services provided by independent subcontracted organisations from the private and non-profit sectors (Crouch, 2011). One outcome of this process of marketization has resulted in the majority of residential and domiciliary care being outsourced (Hughes et al, 2009). The governance of outsourced services delivered by voluntary and private providers has come under the auspices of legally binding contracts, strict performance criteria, and other regulatory measures on care standards and the workforce (Crouch, 2011). The result is that the market is dominated by the interests of state purchasers of social care services in the form of Scotland's thirty-two local authorities. In line with this, studies have revealed how the dominance of public sector purchasers in the social care market means that local authorities largely set the price for care to the detriment of providers (Rubery and Urwin, 2011).

Research reveals that relations between purchasers and providers can differ considerably in terms of their nature. In particular, it has been noted that they can vary in terms of how far they embody 'transactional'- 'arms-length' relations or ones that are 'relational' based on partnership and a recognition of mutual obligations (Sako, 1992). Studies have revealed such diverse relations within the Scottish social care market. In doing so, they have highlighted that organisations subject to relations of the former type can suffer more insecurity in funding than those engaged on more relational and longer term contractual arrangements (Cunningham, 2008).

This social care market and its regulatory infrastructure combine together elements of both public and private regulation (see, e.g. Locke et al, 2013). In terms of employment, for example, the state has imposed standards to ensure the supply of appropriately skilled labour, through mandatory qualification standards based on the system of Scottish Vocational Qualifications (Gospel and Lewis, 2011). The Scottish Social Services Council (SSSC), as the regulator for the social service workforce in Scotland, registers all social service workers, and sets standards for

their practice, conduct, training and education to support professional development (SSSC, 2017). It is also responsible for overseeing 'fitness to practice' and in this capacity investigates concerns about workers and takes action where necessary as part of the Council's responsibilities for protecting and enhancing the safety and welfare of people who use services (SSSC, 2017).

At the same time, over and above statutory National Minimum Wage legislation, the regulation of pay has been shifted to non-state (private and voluntary sector) actors in social care. This was achieved through the removal of such provisions as the Fair Wages Resolutions and Schedule 11 of the Employment Protection Act 1975, which removed any hindrance for external, and often non-unionised, social care providers who wanted to, or felt compelled to, depart significantly from the terms and conditions negotiated nationally in the local authority sector. As a result, external social care providers have possessed considerable discretion to alter pay and conditions to respond to changes in external funding from public sector funders.

Scottish/UK and comparative international studies have revealed the implications of this regulatory regime (Cunningham, 2008; Cunningham, Baines and Charlesworth, 2014). Prior to austerity there was some debate relating to whether outsourcing care work had led to a uniform 'race to the bottom' in pay and other conditions (Rubery and Urwin, 2011; Atkinson and Lucas, 2013). This is not to say, however, that during this period that providers did not frequently experience financial pressures to cut labour costs. Many, for example, suffered delays in receiving funding increases from local authority commissioners or uncertainty regarding continuity of contracts. In a sector that is significantly less unionised than the public sector (Simms, 2007), this uncertainty, in turn, added to insecurity among providers and had a knock-on effect on the timing of pay settlements among external providers. Organisations dealing with multiple local authorities in particular could experience financial uncertainty given the differing timescales on which funding decisions were made (Cunningham, 2008). It was also the case that some social care organisations were made to move away from basing their pay on local authority terms and conditions as funding increases were not sufficient to match increases negotiated by public sector unions for comparable directly employed staff. In contrast, other external providers were able to sustain such comparability with public sector pay rates because they possessed stronger, more diverse funding, and an ability to secure strong market positions (Cunningham, 2008).

Longitudinal studies that cover the pre and post-austerity eras highlight a shift towards a more widespread 'race to the bottom' in pay. The advent of austerity in public sector funding settlements meant that the central way in which voluntary sector social care providers attempted to resolve the subsequent price-quality dilemmas confronting them was by revising their employment arrangements to reduce costs and increase efficiency. These revisions encompassed on-going, and often dramatic, deteriorations in staff terms and conditions (Cunningham and James, 2014; Cunningham and James, 2017). Such measures were also apparent among organisations that had previously not engaged in a 'race to the

bottom' on pay. Organisations were compelled to either award less than inflationary rises, introduce pay freezes or in some cases implement significant pay cuts. The result was that alignment by external providers with public sector pay scales almost completely ended (Cunningham and James, 2014). Market forces and austerity have, therefore, combined to allow local authorities, in shifting from the direct delivery to the commissioning of services, to cut costs in a way that would almost certainly not have been possible with their own internal workforces given the presence of collectively bargained terms and conditions of employment.

These employment-related developments have, however, led to growing concerns about the ability of providers to maintain service quality in the face of resulting recruitment and retention problems, rising workloads and growing staff discontent (Cunningham and James, 2017; Mulholland, Fawcett and Granville 2016). A study by the Office of the Chief Social Work Adviser (Mulholland, et al 2016), for example, found that the majority of participating providers had regularly or occasionally experienced problems in the recruitment of care and support workers, and believed these difficulties would only intensify in the future. In a similar vein, with regard to the retention of such workers, the majority of providers reported difficulties. The report identified low pay as the main reason why organisations were unable to recruit and retain key workers, with other contributory factors being the continuing shortfall in local authority funding, competition with other sectors for the same pool of labour and increasing anti-social hours driven by greater flexibility demanded from workers (Mulholland et al, 2016). It also noted that these pressures on pay and the recruitment were occurring at a time of increasing demands on the skills of the workforce through the aforementioned qualifications framework, 'fitness to practice' standards (SSSC, 2017) and policy developments in Scotland such as the personalisation of social care and health and social care integration.

Paying the Scottish Living Wage to adult social care workers

The state can potentially influence the operation of the social care marketplace in two main ways: first, through 'hard law' driven by legislation; alternatively, via softer 'best practice' procurement processes (Davies, 2011), such as the advocacy of longer-term contracts and hence funding, the award of 'full cost recovery', and the involvement of voluntary sector providers in the specification of the services to be contracted (HM Treasury, 2002; Home Office, 2005; Office of the Third Sector, 2006).

In Scotland, where employment regulation is not a devolved issue and remains the prerogative of the Westminster government, intervention in regulating pay is based on the above 'softer' forms of regulation. In February 2016, in a progressive shift to address issues of recruitment and retention in adult social care, the Scottish Government and COSLA jointly agreed that front-line care staff working in publicly funded adult social care should be paid at a minimum the Scottish Living Wage with effect from 1/10/16. Resources were allocated to local health and social care partnerships in the expectation that appropriate sums would be transferred onwards via local authorities to care providers/employers

through re-negotiation of contract prices, fees (including fees agreed under the National Care Home Contract) and hourly rates paid for service delivery, thus enabling these organisations to increase staff pay in line with the commitment.

As part of the policy, joint implementation guidance for health and social care partnerships and providers was drafted and issued by an Implementation Group (comprising provider representative organisations such as Scottish Care and CCPS and trades unions, via STUC). When the Scottish Living Wage rate was increased in November 2016, Scottish Government and COSLA identified further resources to meet this increase with effect from 1/5/17. These resources were again distributed to partnerships in 2017-18 in the expectation that the same process of onward transfer to providers would take place through further re-negotiation of prices, fees and rates. In 2018/19 the same process occurred, except this time sleepovers would be included.

The Scottish Government has suggested to the Implementation Group that in the future, it may move to a position whereby pay increases in line with the Living Wage rate will become 'business as usual', i.e. met from overall health and social care partnership budgets rather than from identified and specific resources.

The suggested move towards funding the payment of the SLW to adult social care workers through a 'business as usual' approach is raising concerns as current studies reveal doubts over whether it is sufficiently embedded in practice. For example, analysis of hourly rates among a sample of social care providers over the last two years indicates many providers are now paying the SLW, whereas previously they did not. At the same time, the same data reveals a number of providers apparently are still struggling to pay rates that match the SLW, with some still paying £8.25 an hour or less (Cunningham et al, 2017; Cunningham et al, 2018). These benchmarking results suggest a need to evaluate the implementation of the SLW policy and the effectiveness of the accompanying guidance.

In the light of the above, this report explores the following questions:

- 1 What are the experiences of providers /employers and commissioning/contract authorities in implementing the commitment to pay the living wage?
- 2 To what extent has the joint guidance been applied in practice, and what are the views on its usefulness to local partners?
- 3 From the review and assessment stage, what enablers and barriers to successful implementation of paying adult social care workers the SLW?
- 4 How can the implementation process be improved in 2018-19 and beyond?

Section 2: Method

Qualitative methods of data collection and analysis were used for the purposes of the study reported here. The research team adopted an inductive data-driven approach and conducted interviews with a wide range of respondents to ascertain multiple views on implementing the Living Wage.

These semi-structured interviews were held with a total of 13 voluntary and independent sector providers. Two focus groups were held with four and two voluntary sector providers respectively and were designed to draw out any similarities and differences in their experiences with implementing the Living Wage. To gain the perspectives of local partners, interviews were conducted with contracting and commissioning authorities in five local authorities, including Chief Officers and representatives from the Integrated Joint Boards, and procurement and finance managers. Finally, we conducted confirmatory and factual interviews with civil servants, representatives from COSLA, lead bodies of employers (CCPS and Scottish Care) and a senior trade union representative. The total number of interviews is 25 (36 respondents in total), which are outlined in Table 1 below.

Respondents	Number
Voluntary sector providers	11 (15 respondents)
Independent sector providers	2
Focus group of providers	2 (6 respondents)
Representatives of lead employer bodies	2
Union officials	1
Contracting and commissioning authorities	5 (7 respondents)
Civil servants	2 (3 respondents)

The interviews were recorded and transcribed verbatim with any identifying information removed to preserve confidentiality. All four members of the research team analysed the interview transcripts independently. Data analysis occurred by identifying central themes emerging from the interviews concerning the experiences of providers and commissioning/contract authorities in implementing the commitment to pay the Living Wage. Across all of the interviews, the research team compared respondents' perspectives on the Joint Guidance and its usefulness and contrasted their experiences to identify the main enablers and barriers to successful implementation. Finally, implications for improving the implementation process were drawn by iterating back and forth between these emergent themes and the prior literature on the economics of minimum wages and the social care context.

Section 3: Findings

The following sections report views on the initial consultation around the introduction of the SLW and outline the distribution of SLW funding before examining the experiences of contracting/commissioning authorities and providers in implementing the SLW. Thereafter, findings on the value of the Joint Guidance are explored, followed by a discussion of the barriers and enablers to the successful implementation of the SLW policy.

Transparency, representation and consultation

There was a consensus among providers and their representatives that the level of consultation and openness from the Scottish Government regarding the introduction of the SLW was limited. Lead bodies of employers in the sector reported how they had campaigned for the SLW for social care workers for a number of years, but before it was announced there was no consultation with central government. Moreover, despite the lead bodies becoming members of the *Scottish Living Wage in Care Implementation Group*, they continue to have no formal input or consultation regarding the resourcing of the policy or its adequacy. The lack of consultation over resourcing the policy was due to the relevant decisions being part of the overall local government settlement between the Scottish Government and COSLA.

Once resources were committed by the Scottish Government, the Implementation Group fulfilled its 'trouble-shooting' responsibilities which included the lead bodies representing provider concerns over the adequacy of offers from Integrated Joint Boards (IJBs). Lead bodies reported further activities as including *"hands on prompting in particular local authorities, picking up phones, how can we move this on? Here are the concerns we've got on behalf of providers"* (Lead body representative). At the same time, the Implementation Group has no responsibility for auditing the policy, or holding central and local government or particular providers to account.

Several providers reported that CCPS or Scottish Care represented their interests in particular regions when payments were not forthcoming. Indeed, providers generally praised the persistence and quality of representation by CCPS and Scottish Care in their roles on the Implementation Group, and beyond. At the same time, several providers acknowledged that the degree to which there could be a unified voice from employers in the sector to government was undermined by differences in interests within various subsectors in social care and across voluntary and private sectors. Some of these differences related to the variety of services provided by organisations. Moreover, several participants highlighted that providers were in a competitive market with each other, which further undermined efforts to project a unified voice.

Contracting authorities noted that prior to SLW implementation, they experienced insufficient consultation with Scottish Government around the expectations of what local authorities could deliver. Once the policy had gone into effect, discussions about implementation took place in councils rather than health and social care partnerships. The

Implementation Group, however, was viewed by respondents from the commissioning authorities as useful for providing guidance, partnership working and advising providers. As one respondent commented on the purpose of the Implementation Group,

“Essentially we set up that group because whilst we identified the funding, we came to an agreement, there’s a lot to work through, and we thought that the best way of doing that is on a partnership basis with providers, trade unions, ourselves and local government... and just working with partnerships to make them aware of things like employment legislation and things like sleepovers...where having a national partnership group like that means that we can actually build up a picture of what’s happening and then use that to advise providers, partnerships, others involved with that, in addition to, you know, being alerted by the providers to if you’ve got problems in x, y, z local authorities, you can help us here.”

and another respondent pointed out further benefits,

“It’s also been a useful forum to inform ministers about progress and issues as well.”

Some respondents were, however, uncertain about the purpose of the Implementation Group in the future.

“...that group is probably at a bit of a crossroads at the moment because it performed a useful function for troubleshooting in supporting policy implementation; now that it looks as though the Living Wage is something that will always be there, then we’re not entirely sure what we’re doing with that group...”

Distribution of SLW funding

Interviews with contracting authorities and providers conveyed a complex route through which the SLW funding flowed from Scottish Government to the organisations providing outsourced social care. Views from both of these stakeholder groups are presented below.

Local autonomy and stages of variation: The view from commissioning/contracting authorities

One commissioning authority described the process as implementing a national commitment to the Living Wage at a local level, thereby preserving the autonomy of local authorities in how to best distribute the funding. It was emphasised that COSLA does not override the budget setting and responsibility of local authorities. Consequently, representatives of COSLA noted ‘stages of variation’ through which inter-authority differences emerged in how SLW funding was distributed. From interviews with contracting authorities and civil servants, we identified the following three stages:

First, in terms of arriving at the local authority funding settlement for SLW implementation, this process was described as a “black box” that reflects the politics of budget negotiations. COSLA representatives reported that it was untypical, and somewhat unhelpful, of the Scottish Government to specify the annual sums of money being distributed for the SLW. This national figure is arrived at through a closed process whereby an end sum is fed into the local government settlement. As the distribution formula reflects various indices (e.g. population and geographical factors such as poverty, social deprivation etc), providers and their umbrella bodies view the formula as unrelated to the rate of outsourcing of social care in each local authority and hence to the expenditure potentially needed to raise pay levels to meet the SLW. One respondent explained the process by which the funding is distributed to local authorities in the following terms,

“...so there’s a figure that is kind of shouted out at a national level as a black box; something ends up in local authority budgets about it, and then the extra complication of the IJB at the moment whereby the council might or might not pass on or whatever, might not be seen to be passing on, the sum that people were expecting.”

Second, councils were reported to be keen to retain control over how their portion of the funding is used and how the policy is applied to serve their respective population. Given that councils and health and social care partnerships face “tremendous financial pressures”, local circumstances dictate how the money is spent. An IJB member commented on this discretion,

“...just because we’re giving you the money for education and giving you the money for social care, doesn’t mean you have to go and actually allocate it there if you can find some other way of seeing that commitment.”

Respondents also emphasized that the decisions local authorities make around the distribution of funds reflect the contingent nature of the budget in which changes in one part affect other parts (e.g. education, roads). Furthermore, the risks of putting public money into private providers’ hands through implementing the policy were also raised, especially where a profit motive is the underlying one:

“The only public industry I can think of where money’s going from public sector into the private sector hands and profits are being extracted as a result of that as well.”

In the third stage of variation, the funding travels a circuitous route to the councils. It is distributed via the NHS to health and social care partnerships that are responsible for planning and commissioning services in their area. These IJBs pose an additional layer of complexity for SLW implementation. In practice, however, the contract is delegated to the local authority and the uplift is passed on to providers to implement the SLW. In this constellation, IJBs take on a hybrid role as the

“contractor provider”. A commissioning authority respondent linked this particular flow of money to the Public Bodies Act,

“But in terms of where the money flows to, this is fundamental to the joint...the Public Bodies Act, in essentially when it created integration joint boards, so that’s why the money goes back and forwards, so some of it flows from the NHS, some of it flows from local government, and then they commission services back off the NHS and off of local government.”

and another respondent clarified that,

“...the health and social care partnership will set directions to the NHS and to the council to provide services, and so the money will go back to them to be able to commission the services in terms of the support required.”

Yet, local authorities found it challenging to navigate this funding route. As one local authority respondent reported:

“...initially going through a health board and back through a council, then forward to an IJB who then goes back to the council to fund the providers, was also quite a route for us to go as well, and at a time of financial constraint. Let’s just say, I think the angel’s share in most areas was taken off that, that then left you in a position where it was quite difficult to actually say, how do we fund the living wage at the same time as adequately dealing with the capacity issues that we have.”

From the above complex system of contracting in which local autonomy operates as the overriding principle, councils are (*de facto*) responsible for implementing SLW policy. At the same, they are viewed as accountable to their electorate only, resulting in a tension between responsibility and accountability. A Civil Servant explained this situation as follows,

“...every council will have their own way of justifying and they’re ultimately not accountable to anybody other than their electorate, so each council will have its own justification for, for example, not encasing their hourly rate within the contract by the exact same number of pence that the Living Wage has gone up that year...”

Complexity and uncertainty: The view from providers

Providers raised concerns regarding complexity and lack of transparency in the distribution of resources to fund the SLW.

“The idea there’s money which comes via the Scottish Government then to the IJB, then out to local authorities, I think there’s too many steps in the process...some issues should be local, but why can’t government just say this is what it’s going to be...there’s too

many things to be delayed, while people are making up their mind"
(Voluntary Sector (VS) Provider).

Providers reported they were unsure with regard to the precise formulas funders were using to allocate resources, with some indicating that local authority decisions appeared quite arbitrary, rather than based on clear criteria. Employer representatives suggested that the initial distribution formulae for the SLW adopted by Scottish Government was flawed. Specifically, while it was rightly seen to focus on issues such as population, geography and deprivation and other needs, it did not take sufficient account of the level of outsourced (voluntary and private sector) provision of services, and the level of wages within local authority areas.

"If you had an area where in that authority, most social care services are delivered in house, then they would have got a big pile of money, but they wouldn't have to spend very much, and they could spend it on other things...if this was about filling a gap in pay in outsourced services, you would think that the distribution would relate to that"
(Lead Body representative).

Contracting/Commissioning authorities' experiences of implementing the SLW

This section provides an overview of the local authorities' views of SLW implementation. It starts by outlining the different approaches towards delivering the SLW funding, and thereafter presents findings around tendering and monitoring the SLW in contracts. Finally, it summarises the initial findings of the impact of SLW on services and budgets, recruitment and retention, and quality.

Mechanisms of delivering the SLW funding

Transparency

We observed variation in the approach taken by local authorities towards implementing the SLW, resulting in *"32 local authorities trying to implement that 32 different ways"* (IJB member). Most respondents linked these differences back to the aforementioned principles of local democracy and autonomy.

Within the different approaches to implementing SLW in the councils, there were varying degrees of transparency surrounding how far the rationales behind their chosen approach were disclosed. This ranged from local authorities engaging in consultation or corresponding in writing with providers, at one end of the spectrum, to a lack of communication about their approach for several months, at the other end. At the former end, one contracting authority outlined how they

"...set up a series of information sessions in terms of discussing what the living wage was and the implications from it."

In a similar vein, a respondent in another local authority observed:

“...one of the key things it said in the guidance was about transparency, and we were transparent from the start, in that we set out quite clearly, and we had a lot of written correspondence with providers as well, that explained the mechanism that we were using.”

Approaches to implementation

Exercising their local autonomy, the contracting authorities adopted different approaches for implementing the SLW. Some gave a percentage uplift to all providers, whereas others conducted lengthy and painstakingly detailed individual negotiations with providers. One contracting authority described this process as follows:

“And it’s actually torture for everybody. It’s been really, really time consuming, it’s taken up so much of procurement’s time, that you’re writing to every single provider, you’re analysing all of the figures.”

Another council reported taking the approach of ‘looking creatively’ at how to use the block of money. In this case, providers were asked to submit bids for SLW funds or training and IT investments, if already paying the SLW. At the opposite end, councils decided to withhold any uplift to those providers already paying the SLW. One contracting authority stated that all providers who did not qualify did not receive the uplift:

“And it wasn’t even that they were penalised, it was just that they didn’t effectively qualify. So they’re looking at, what’s your qualification criteria. We sent out....a schedule to all of our providers saying, please list out all of your care staff and the rates that you pay them, if it’s below £8.25.”

In a similar vein, an IJB member noted an intention to move away from a percentage uplift toward a sliding scale of future uplifts with less funding to those already paying SLW and more to the lower payers.

One notable exception was a local authority that offered different rates for different kinds of services provided. Their approach included a percentage uplift for care at home and a range of rates for supported living. The latter entailed considering each provider on an individual basis and paying the difference to bring them in line with the SLW. In the first year of implementation, the provider paid 25% and the council funded on costs, differentials and SLW for sleepovers.

Several respondents mentioned the difficulties around implementing inflationary uplifts at the same time as the SLW, noting that increases in inflation had not been funded for several years. Furthermore, given the different mechanisms of delivering the SLW funding to providers, it varied whether differentials were funded across the local authorities. One contracting authority held the view that providers should have added in for differentials when tendering for contracts.

Standardising hourly rates

Despite the above variation in the mechanisms chosen for delivering

the SLW, movements towards standardising hourly rates was mentioned frequently across the interviews. Contracting authorities reported reducing the number of different rates for care at home. Examples included offering one rate of £15.10 that the local authority viewed as a transparent approach to providers; whereas, another contracting authority offered a set rate of £16.20 that accounted for inflation. Others noted that they planned to move from individual negotiations with providers to a two-tiered framework for all care at home providers to minimise the variation in rates.

Making efficiencies

Local authorities reported that within negotiations providers were asked to make further efficiencies and *“prove that you are operating as efficiently as possible.”* As a commissioning authority respondent put it in the context of the wider resource constraints that the Scottish Government and local authorities are facing,

“...that gets into quite difficult negotiations where the local partnership has probably been told they have to find a ten per cent saving, we have that internally as well, so you tend to pass these on down the line. So they might be saying to the provider, well, we’ll give you a 28p increase, but we’ll expect you to find efficiency savings.”

One contracting authority offering a single rate noted that providers had to re-design their offer if they charged a higher rate. Other respondents commented that some providers reacted to making efficiencies by raising the prospect of withdrawal from services. A contracting authority referred to a situation in which the provider had to hand back the service,

“But we would also start off with providers by saying to them, you know, what can we do to try to make things easier for you, and how can we help with efficiencies....So we had all these discussions with that particular provider, but they just really wanted more money. Let’s not do things more efficiently, let’s just, give us more money. And we can’t.”

Providers merging their back office, stripping out layers of management and investing these resources into their front-line workers were reported by commissioning authorities as examples of making efficiencies.

SLW: A de facto requirement of tendering

A mixed picture emerged amongst the contracting authorities around the theme of tendering and the SLW. Although respondents stated repeatedly that the SLW is not a contractual requirement of procurement and were aware that it is not legal to make it a requirement, respondents were using the ambiguity around SLW and tendering to give preference to providers paying the SLW. We identified a range of ways in which the contracting authorities were doing this:

- Specifying paying SLW as desirable and, should the provider no longer meet the SLW payment, the local authority could refuse to allocate business to the provider under the framework.

- Paying SLW for sleepovers with the stipulation that providers must confirm that staff will receive the full SLW rate (rather than balancing salaries over an average period).
- Requiring providers to declare a commitment to the SLW and give permission for the council to monitor its payment (see further below).
- Using fair work practices in tendering, despite the vagueness of “fair work”.

It appears therefore that some local authorities are making the SLW a *de facto* requirement of tendering. Thus, in the absence of procurement legislation that allows for requiring SLW payment, they are using other means through the tendering process to ensure that providers pay the SLW. One respondent highlighted the benefits of no longer scoring providers on costs, but on quality:

“...at one time if you were going out to procure a contract, you might have done something like 70 per cent quality, 30 per cent cost and the whole scoring mechanism. It’s now 100 per cent quality, so there is no...because everyone will get paid the same. So actually there can be a real benefit in terms of that, because all you’re doing is actually looking at a quality differential rather than a cost differential for that.”

SLW and monitoring

Pertaining to the lack of statutory requirement for SLW in contracting, tensions and contradictions emerge around monitoring whether providers pay the SLW. One civil servant respondent summed up this conundrum as follows:

“There is no legislation for the Scottish living wage, so we don’t have that back up in terms of compliance, but we’ve said from the start from this, this is a kind of partnership approach between national and local partnerships in government and the expectation is that people will comply with it...”

Several respondents monitored payment nonetheless through visits by quality assurance officers and spot checks. Others monitored how the providers invest in fair working practices in organisations already paying SLW rates.

Only limited evidence of providers paying below SLW rates was obtained. Two examples were given, both of which were in the independent sector (one an independent care home that was since put on a default rate). At the same time, the contracting authorities observed on their monitoring visits that some providers are undermining employment conditions. This entails, for example, passing on the costs of uniforms to staff and cuts to travel time or paid training:

“...we did find was that some of the employers were, where they previously many not have charged for uniforms, for example,...they

were then passing that cost on to their staff members. The other bit that was around, because it was very, very hard to calculate, validate who was paying the living wage or not because was it a straight hourly rate,. I may have paid the living wage but then you paid for your uniforms, your travelling etc, where another one maybe didn't do that..."

Although contracting authorities felt it was difficult to monitor any compensatory erosion of terms and conditions, again given the lack of relevant statutory authority, some planned to monitor these terms and conditions more closely as a part of their tendering by requiring providers to set out their approaches to "fair work" practices.

Impact of SLW

Although it is challenging to ascertain the impact of the SLW both at this stage and through the chosen methodology, respondents made useful observations about the perceived impact of the SLW on current and future services and budgets, recruitment and retention, and quality.

Services and budgets

In terms of contracting authorities' budgets, some councils noted they were having to make efficiencies with other services in the council to be able to fund the SLW. As one IJB member commented,

"...because we have so much of our care externalised [...]. It wasn't enough to cover the cost. [...] So we had to find some resources through savings elsewhere or other funding sources and using that money from there".

Other contracting authorities anticipated having to "*reduce services somewhere along the line to pay for it*" if the funding is no longer separately identified and partner organisations are no longer obligated to pass it on to the councils. Civil servants were opposed to the idea of separately identifying future funding as it takes away the responsibility from the provider to improve services.

The perceived impact of SLW on the outsourcing of services presents a rather mixed picture. On the one hand, there is evidence of providers handing back services. In these cases, contacts were handed back in supported living and care at home services because providers felt unable to offer the services at the rates on offer or without an uplift for provision in rural areas. Examples were given of both voluntary sector and independent providers handing back services. One council responded by contracting with other providers based in adjacent local authorities:

"...what we found is that we've managed to cover some of that by contracting with contractors who are based in other local authority areas, but who are right on the edge of ours. Who have got, you know, like a cluster of people they're servicing there, so they're just hopping across a border."

In another example, a provider withdrew from the contract as it was unable to pay its differentials at the rate provided. The contracting authority brought the contract in-house where respondents claimed unit costs were low:

“And indeed one of our providers was not able to work within the financial framework of ours, and that one provider withdrew from the contract that we then brought in-house....because of their differentials, because of their management infrastructure above that, that they couldn’t do it.”

Another contracting authority was conducting cost analyses of running services in-house to see whether it was able to draw on economies of scale and absorb back office costs. At the same time, there was continued evidence of the outsourcing of care. One council reported being in the process of gradually outsourcing its in-house care at home workers given the need for “value for money”, rather than *“using procurement as an exercise to cut it to the bone.”*

More broadly, some respondents suggested moving towards service remodelling and work redesign (e.g., technology, shared housing support that balances independence and inclusion). Respondents noted that the Scottish Government is developing a programme of reform for adult social care. Several contracting authorities emphasised this future direction, as seen in the call for *“more interesting models of caring for growing number of people needing care”*. Citing a need for innovation in the sector, respondents viewed the move away from sleepovers and towards technology positively. One local authority noted it is already phasing out sleepovers over the next 18 months as their costs increase.

Recruitment and retention

Recruitment and retention are difficult areas to assess the impact of SLW, not least because many other compounding factors beyond pay will influence the decision to apply for a job or remain within an organisation. Several respondents noted, however, that the SLW has a levelling effect in that it equalizes the playing field amongst the providers. One interviewee expressed the view that providers would now no longer be able to compete on wages and so might focus on developing the non-monetary rewards of the job:

“...in terms of the quality of provision all providers are equal-ish in terms of their pay rate. I think it is an impetus for them to develop better like psychological employment contracts with their people and retention and what’s around.”

Others noted that the SLW exacerbates recruitment challenges, especially for those providers who lost their higher wage advantage. Many contracting authorities understood and expressed concern around the diminishing differentials and the challenges they pose for providers in recruiting front-line managerial staff, both internally and externally. A dominant perception amongst respondents was that the

care sector still lacks competitiveness with retail and hospitality jobs as these sectors purportedly followed suit and raised their rates of pay as well. Furthermore, recruitment challenges in social care remain given the uplifts in both health and public sector wages. Respondents were unaware of any impact of the SLW on retention or doubtful that pay will play a role. For example, one local authority expressed the view that once pay is taken out of the equation, staff will likely move for non-pay related reasons. As a solution to these problems, respondents recommended more work be undertaken to promote social care as a career.

Quality

Finally, there were isolated reports of quality improvement and consistency in care homes, but respondents were unable to make any observations about quality for care at home. A union representative noted some evidence of improved attendance and reduced sickness and absence.

Providers' experiences of implementing the SLW

This section offers an analysis of the provider experience of implementing the SLW. It begins by outlining experiences and continuity and change with external funding bodies.

The role of IJBs

There were concerns relating to the role and level of consultation with IJB representatives. Providers indicated that IJBs could be either remote, or too focused on NHS issues rather than social care. There was also confusion regarding the role of IJBs in the SLW policy and whether they could address any problems that providers raised. In part, these issues were related to the IJBs being just recently established.

"The IJBs are fairly new, so they're still kind of forming, so you don't get a lot of dialogue from IJBs" (VS Provider).

Where there were positive relationships with IJBs, the importance of close, established networks appeared to determine such an outcome.

"I do have individual relationships with individual senior officers on IJBs, where I could say yeah, they get it...But it is just so variable, and so relationship based" (VS Provider).

The above respondent added that the creation of the IJBs had disrupted existing networks and led to some considerable rebuilding of relationships. This was coupled with reports of IJBs being remote and reportedly perceiving providers as being at the bottom of the supply chain, and therefore low on their priorities.

"It's (creation of IJBs) been a huge negative for us, to be honest, within our industry because we primarily dealt with local authorities and we had really good access to decision makers...It's been a big negative for us. They (IJBs) don't care about us: not interested. We're at the bottom of the pile" (Private Provider)

Providers further reported that they were aware that provider representatives on the IJBs were generally non-voting members. In this context, providers maintained that while they were aware of their representatives asking challenging questions of the IJB, they felt their impact was diminished because of their inability to vote. It was also the case, that despite the introduction of IJBs into market relations, contracts remained with local authorities, which determined where the majority of lobbying and networking had to take place to secure adequate SLW funding.

Furthermore, the union representative member of an IJB reported the lack of opportunities to assess workforce matters around contracting given the workload and agenda at IJB meetings, leading to questions around the capacity of IJBs in implementing SLW.

Consultation with local authorities

Provider views on the level of consultation and transparency at local authority level were also mixed. Individual local authorities were praised for having open and transparent processes, including meetings with groups of providers regarding how the SLW was to be implemented. These meetings were 'consultations' rather than 'negotiations', but nevertheless providers in this study were positive regarding these discussions. One provider with five local authority funders reported:

"One local authority had group meetings, and they called in all the providers into the room, did a presentation, and then really gave us kind of three or four options of how they might implement the living wage, and kind of really asked us what we all thought...the rest of them didn't have group meetings" (VS Provider).

In contrast, other local authorities reportedly imposed methods of paying the SLW with limited or no consultation with providers. One voluntary sector provider described their experience of consultation with a key local authority as a 'blanket of silence'. Others reported a similar lack of consultation over rates.

"It's been just setting the rate for this year, or last year...it hasn't been open for negotiation, it's just been this is the rate" (VS Provider).

"There was no proactive engagement with providers about when it was happening, so we were only really reading it in the press and then contacting the local authorities to say, how do we take this forward or where do we get the money for it?" (VS Provider).

Several respondents commented that the quality of engagement with local authorities could, again, vary according to the quality of relationships between key stakeholders. In terms of more positive consultation, the local authorities where partnerships with providers were well established contrasted favourably with those with more distant relationships. There were reports that in the latter case it could be up to the provider to be the more proactive party in order to gain information.

Mechanisms of delivering the SLW funding

No one clear approach was adopted with regard to funding the SLW. Amongst them, local authorities employed each of the four options detailed in the Joint Guidance. This resulted in a multitude of approaches by local authorities to paying uplifts to fund the SLW.

“Some of them went right inflationary rise across the board. Others went, right how much money do I have to give you to meet that? ... Some did ask for some workings, but a lot of it was ‘this is what we are planning to do here’” (VS Provider).

Where percentage uplifts were used, providers further reported that different authorities paid different levels of percentage uplift, ranging, in one instance, from 9% to 1.7% (VS Provider), while others reported the absence of any increase.

“So it was swings and roundabouts for us, some local authorities we got no rise because we are already at a high rate and other local authorities we got quite a good percentage increase so that kind of offset it” (Private Provider).

Respondents reported that local authorities explained the application of 0% increases based on their own assessments of existing provider income, and whether they felt some had the ability to pay the SLW without their intervention. Providers further reported incidences of receiving money in the first year of the policy, but not the second. When this was queried, one provider reported that a local authority claimed they had benchmarked with other funders and felt they had paid too much in the first year. Yet, the provider noted that this local authority would have received central funding for the second year.

The variability in approaches to payment was seen as the key problem for providers operating in multiple authorities.

“If you’re working across 12 local authorities, and one of them has decided to award three percent across the board, and another one is giving you nothing...and another one has decided that it’s horses for courses and they’ll give you a separate negotiation for each service and another one has decided they’ll give you 1.5 percent and another one will give you twenty five pence on your hourly rate, it’s just a nightmare trying to bring all that together” (Lead body representative).

Other reported problems included:

- Further evidence of a lack of transparency and consultation as providers experienced unexplained delays in the distribution of funding by some local authorities, leading to uncertainty and insecurity in organisations.
- Smaller local authorities struggling to respond quickly enough to the SLW policy because of a lack of internal resources and expertise,

and expressing uncertainty over some of the legal issues around state aid and EU regulations.

and:

- Questions over the validity of local authority calculations relating to the cost of care. This was due to reports of inaccuracies in calculations, and incorrect assumptions and misinterpretations of guidance provided by external bodies.

In the context of the latter point, one provider noted:

“Where officers have made assumptions about viable hourly rates, the calculations are less than competent, arithmetic errors, an assumption of statutory terms and conditions, necessary time and tasks omitted from the calculation, and if used a complete misinterpretation of the UKHCA model” (VS Provider).

And:

“I think some of them as actors are just basically working in self-interest, or to be blunt a bit of stupidity coming up with a way of modelling an hourly rate, which is just flawed in every way. It just doesn’t make any sense, and actually if they applied it to their own in-house services, they would see that they couldn’t run them” (VS Provider).

With regard to the aforementioned UKHCA model, providers generally reported a lack of usage by local authorities of such templates beyond *“trying to criticise it or say but it’s far too much look at the amount they’re put in for this or that”* (VS Provider). Nor was there evidence of any widespread use of the Implementation Group’s published template, or any joint working between providers and funders to estimate the costs of the different constituent elements of hourly rates of care. As a consequence, voluntary and private providers and their representatives felt that state funders have limited appreciation of the real cost of care.

A caveat to this point was made by several providers. In particular, they pointed towards some competitor organisations giving a false impression about the true cost of care by *“going in at rates that are just ridiculous to win contracts...so they (local authorities) must get confused in their minds about what does it actually take to deliver one hour of care safely and ethically”* (VS Provider).

Further delays and complexity occurred due to the timing of local authority settlements varying considerably. This brought more uncertainty among providers concerning whether they had sufficient cash flow to fund pay increases.

“You start paying it and a year later, you’ve not had the money because they’re still dragging their heels about the last one and the next one’s coming. It’s just like chaos!” (Focus group participant).

Despite the above issues and the recommendations of lead bodies in the sector, providers did not unanimously endorse one method of distributing resources by local authorities. The most common method appeared to be the across the board percentage increase. Where this was introduced, it was seen to have certain advantages. In particular, it could provide sufficient leeway to cover or contribute to costs associated with differentials.

Strained relations with local authorities

Although most providers indicated that existing relations with local authorities were generally sound, and that the SLW had contributed to this continued robustness, there were reports of strains in some areas. Generally, where a local authority had refused to pay anything to a provider, this led to a deterioration in relations.

“I would say there have been some clear and frank conversations in which both parties are kind of rigid in their positions. I don’t have any more money, I need more money, it’s quite intractable there” (VS Provider).

The strain on relations took providers to the point where several of them raised the prospect of withdrawing from services, or actually did so, unless additional funding was available. Several organisations also reported that they had refused to submit to particular local authority tenders given that the ceiling in the hourly rate was seen as too low.

Impact on provider planning and sustainability

In the context of this uncertain funding environment, all providers were asked whether they had undertaken a risk assessment of the implications of the SLW on their organisation. Almost all respondents replied that they had. In terms of the risks identified from these assessments, the overriding theme was one of uncertainty and instability from issues such as the implications of the SLW for sleepovers, slow payments by local authorities, and variable approaches to payment.

For some providers the above climate of uncertainty over payments from local authorities was having an impact on their financial stability. Several smaller organisations were temporarily in deficit or would go into deficit because of delays in funding.

“We couldn’t possibly manage the cash flow risk, it would be out of the question” (VS Provider).

“It had a significant impact on our financial viability...we carried deficit. We were unable to recoup the finance we required” (VS Provider).

In the case of providers operating in multiple local authorities, this could make planning and paying the SLW very difficult. Providers reported that pressure to pay the SLW by one or more local authorities could not be

complied with until others had agreed to pay. Similarly, smaller organisations were vocal in the difficulties they would face from delays in payments.

“Six months for a small organisation is a massive impact. We haven’t got those sorts of reserves to just be able to say, well, we’ll wait for it to come later” (Private provider).

Several providers also reported problems regarding planning for the forthcoming financial year.

“Like lots of other organisations, we’re in serious deficit, so being able to at least try and forecast what your income and expenditure’s going to be is getting nigh on impossible to come up with meaningful figures” (VS Provider).

A number of organisations further expressed concern that uncertainty would increase as the Scottish Government’s commitment to fund the SLW began to wane as the policy matured. Indeed one provider indicated that some local authorities were no longer negotiating with providers as the current year of implementation proceeds. Rather, local authorities were imposing increases in hourly rates, as opposed to entering into meaningful discussions with providers.

Providers generally felt that the intended move towards no guarantee of separately identified funds for the SLW and paying through what was labelled ‘business as usual’ would bring further insecurity among providers.

“I’m appalled...it worries me greatly. I don’t know what next year is going to bring. We need inflationary uplifts. We need it to cover the SLW and other cost increases” (VS Provider).

If this intended move to ‘business as usual’ should lead to reduced or no increases to cover the SLW, providers outlined a number of negative future consequences. Potential negative consequences would include worsening relations between providers and local authority partners as resources continued to be restrained and priorities shifted for the latter, but the requirement to pay the SLW remained with the former. In addition, the lack of separately identified money to audit may further encourage those local authorities that do not pass on funding to carry on and spend funding on other priorities. Respondents also anticipated further reduction in sleepovers as providers would be unable to sustain such cover if funding was unavailable. Providers expected having to make sacrifices in service provision in order to maintain wage rates at SLW level.

“It’ll push some services if we don’t get increases to closure. Because services are teetering on a knife edge” (VS Provider).

Moreover, as will be seen in the next section, the intended move to ‘business as usual’ was seen as likely to lead to several adverse workforce outcomes and associated difficulties.

Impact of SLW on HR and terms and conditions of employment

Sacrificing independence as an employer and lack of control over pay

As mentioned in the opening sections of this report, the state acts as a 'shadow employer', directly and indirectly influencing the employment conditions of voluntary and private sector organisations. Respondents indicated that one of the issues with the SLW policy was that it involved providers surrendering a substantial element of their independence as employers to external bodies.

An aspect of this notion of losing independence over HR and employment relations was linked to the aforementioned differences in the timing of local authority funding decisions. Delays in payments by local authorities were seen to lead to a loss of control over when to award a pay increase to staff. A number of respondents reported that they could not pay the SLW until they had either been fully paid by funders, or had reached a 'critical mass' of local authorities' funding decisions. Such delays, however, were leading to tensions with staff as they were reportedly aware that they were entitled to a pay increase.

"As a national organisation, even if one local authority said they would pay, if the rest were saying no, we couldn't implement the change for one local authority...that has involved quite a challenge for us with the staff group, not really appreciating. What we've had to try and do is explain quite complex budgets to main grade staff, and we're relying on the fact that they trust us enough to realise that the service would no longer be viable" (VS Provider).

and:

"We had to be honest and say to staff, we can't pay you until we are paid, and we don't know what the delay is, we don't even know what the position is about how the local authority's going to be paying for it" (VS Provider).

Several organisations reported that parts of their workforce could operate across different local authority areas, and have their projects funded by several funders that resourced the SLW using different methods or rates, and at variable times, further adding to a complex situation. Providers, however, were clear that they could not pay their workforce different hourly rates according to the local authority area they worked in, so they had to sustain consistency in pay across the regions, while working with diverse amounts of funding, that could be settled at different times. Interestingly, where unions were recognised, participants generally reported positive engagement with workplace officials, who were perceived to understand the problems faced by providers in dealing with these issues.

Another aspect of this perceived unpredictability and lack of control related to being directed by an external authority to pay a specific hourly (SLW) rate, while having no control or input into decisions regarding

annual increases. In relation to this, several respondents declared unease over the size of previous annual percentage increases in the SLW (e.g. £7.85 to £8.25), noting how these had deterred them from becoming an accredited living wage employer. Indeed, several respondents remarked that they would find a similar jump in the annual increase very difficult to sustain. One of these providers was even considering not paying the SLW in the future.

“We would maybe have to just say, we can’t do it, and take the consequences of that. The Scottish Government give a directive, but it’s not a legal directive” (VS Provider).

The perception of a lack of control over pay was seen to be exacerbated by the way in which the resources committed to the SLW failed to take any account of ‘on-costs’. These costs include national insurance, holidays, sickness benefits, statutory leave such as maternity and paternity, and pension. In addition, there have been other unexpected costs on providers such as the apprenticeship levy.

The impact on differentials

A most common impact on providers related to the effects of the SLW on wage differentials. The range of wage differentials affected included those between front-line workers and more senior support workers; front-line workers and their immediate team leaders; front-line workers and domestic, catering, administration and maintenance staff; and front-line staff and certain grades of unregulated staff. Providers also struggled to sustain wage differentials between less experienced and long-serving workers. One of the providers, for example, noted that the pressure on differentials had led to the eradication of differences between Support Assistant and Support Worker grades.

“We had Support Assistants and Support Workers that were both on scales, and so as the Scottish Living Wage effectively knocked off things, the scale got shorter and shorter and shorter...and overlapped, so that one has to now disappear” (VS Provider).

Several providers also reported difficulties in sustaining differentials between those on probationary contracts and established staff.

The squeeze on differentials was seen to exacerbate the already difficult recruitment and retention problems associated with the team leader/ first-line supervisor grades. Respondents reported growing reluctance among experienced front-line staff to take on first-line manager roles given that in some instances payment of the SLW meant that hourly rates of pay between them and their supervisor/team leader were narrowing significantly. In some cases payments from undertaking sleepovers, in conjunction with the new hourly rates, could almost eradicate differences in overall take home pay between the two grades of staff.

“The fact that staff do sleepover and sleepovers are paid at quite a high rate, actually staff are earning more, they’re definitely earning

more than assistant managers, and they're near enough earning the same as team manager" (VS Provider).

As a caveat to the above, the same respondent did add that the differences in salary were primarily due to the front-line employees working unsociable shifts, while managers generally did not. At the same time, providers indicated a growing sense among non-supervisory front-line staff and managers that team leader roles were under-valued in comparison to the volume of work and level of accountability that was expected from those occupying such posts.

"Because there's been nothing in terms of differential, there's a whole thing about morale, with people in management levels saying 'why am I managing for effectively the same money or very little difference'?" (VS Provider).

Indeed, another provider predicted that if the squeeze on the front-line team leader differential continued, the latter role would no longer be viable, prompting a reconfiguration of services.

Respondents raised further concerns regarding the widening of pay differentials between care workers and domestics, catering, administration and maintenance staff. Domestic, catering and maintenance workers, it was stressed, are vital to the comfort and living standards of the people receiving care and support in care homes. For example, it was reported how, because of their daily interaction in residents' rooms, or during meal times, some of the catering and domestic staff were a vital part of the lived experience of people receiving support. Respondents feared that a widening of pay differentials between these staff members and front-line care workers would exacerbate existing recruitment and retention issues among these staff, especially in the context of continued competition for labour from sectors such as hospitality.

Similar concerns were raised with regard to workers that were classified as 'unregulated' and therefore were not included in/entitled to the SLW funding for adult social care. Focus group participants listed a range of 'unregulated' workers that, in their experience, were excluded from receiving the SLW. This entails those responsible for helping people coming home from hospital, certain types of staff in preventative services, neighbourhood link services, forms of counselling, befriending and prison visiting. Several respondents from the focus group reported that these workers could make up a substantial part of their workforce. They further expressed frustration that the classification of 'unregulated' workers could be arbitrary. Subsequently, providers reported growing disruption to differentials between regulated and unregulated workers, causing dissatisfaction among the latter.

"They (unregulated workers) haven't been included in any of these settlements...you then have your workforce on quite an uneven keel unless you have the resources to make up that differential. People aren't in a position to come up with that extra money a lot of the time given the current environment" (VS Provider).

One of these providers employing unregulated workers reported how their solution to the issue was to start such staff on a lower rate, but with a commitment to meet the SLW as length of service increased.

Several of the providers also offered children's services that were not covered by the SLW policy. Although children's services were traditionally viewed as paying higher salaries than adult, these providers expressed some unease regarding the growing costs associated with compensating workers providing children's services to maintain existing differentials with those caring for adults.

Providers indicated that the on-going pressure on differentials was unsustainable. As a result, current practices that involved paying higher grades of staff lower pay increases than those receiving the SLW would have to cease.

"Our salaries of our managers and our deputies was not competitive... we are now in a position where we have scrunched differentials as much as we possibly can" (VS Provider).

"We've had to focus our increases in uplifts in grades one and two...we haven't been able to do anything about the other grades. We're only going to be able to sustain that in the short term because other people in the other grades are going to be saying 'what about us?'" (VS Provider).

At the same time, there were concerns regarding where the resources would come from to fund higher increases for other grades. One organisation estimated the additional cost of paying the full wage bill needed to sustain differentials to be £5m.

Paying at or above SLW prior to Scottish Government intervention

A number of providers perceived that the SLW policy has rewarded employers that traditionally set wages at the statutory National Minimum Wage or just above, while penalising those that had traditionally paid more. The latter approach to pay was reported to be part of efforts by some providers to recruit quality staff, and reward them with decent wages, and thereby to be seen to be a good and fair employer. A private sector organisation, for example, reported that it made a decision to sacrifice some of its profit to pay its workers above the SLW.

Yet the approaches of some local funding partners to paying providers reportedly undermined efforts to reward staff above the statutory minimum. Some local authorities focused their resources wholly on those organisations with rates of pay furthest away from the SLW, and consequently paid those that already rewarded their staff at that level or above nothing or significantly less. This reportedly led to increasing tensions between some providers and local authorities.

"For example, in XXX...do you already pay the Scottish Living Wage? If you do, you're entitled to nothing... but basically that was it...we were entitled to none of the uplifts from the additional monies made available by the Scottish Government, and that's still their position" (VS Provider).

The above provider described eventually successful negotiations with one local authority as *“some of the hardest, toughest negotiations I’ve ever had to enter into”* (VS Provider). These difficulties also came at a time when the provider had slimmed down central management functions where the expertise to deal with funders was located. The same respondent further indicated that to secure additional funding in this case the organisation had to resort to raising the prospect of handing back contracts – *“it’s disgusting and an outrage that we’re in this position”* (VS Provider).

Prior to the introduction of the SLW policy, another provider, in partnership with their union, had undergone a significant restructuring in order to pay its front-line care workforce a wage above the then SLW. The advent of the SLW policy and the reluctance of several of its funding partners to provide uplifts meant that members of the senior management team felt the organisation had been let down and would not continue with its policy of paying a rate beyond the SLW.

“It’s a real bone of contention. Because we think we did the right thing by paying more sooner and we feel we’ve been punished for doing it... we’re saying, we’re not making that mistake again. You know, we don’t have the cash to carry that gap, cause we’ve done it once and it was inordinately expensive” (VS Provider).

Indeed, again, this provider raised the prospect of withdrawing from services in one local authority where there were no funds forthcoming.

Other terms and conditions and workplace reform

Studies have cited incidents where paying the living wage can lead to employers cutting other terms and conditions. In the present study, one provider that was not receiving all of its funding from local authorities, made the decision to tighten up on the time that people were on shift. This involved additional scrutiny of time taken for administration, learning and development, travel time, team meetings and supervision, while also not filling vacant posts. In general, however, there was no evidence that providers had embarked on policies that would involve any widespread deterioration in other terms and conditions to fund the SLW.

One provider, when asked if such changes had been made, stated:

“Oh no, no, no, no. How very dare, no, no, no. We absolutely are committed, and because we have got recognised trade unions, trying to offer the best package that we can. So that would have been totally counter intuitive to offer the SLW and then started eroding others...it’s a struggle, but no we try not to” (VS Provider).

Another was more cautious regarding whether it would have to resort to such measures.

“We have looked at and we’ve thought about it. You don’t get a lot of add on’s, so the big ones for us are maternity pay, occupational sick

pay and our holidays, but we haven't tried to cut any of them to move forward. I can't deny it's a discussion that we had, but at the moment we've not had to do it" (VS Provider).

At the same time, there were some areas of concern regarding the future of other elements of terms and conditions. Several providers admitted that they were awaiting forthcoming funding settlements to ascertain if they were going to have sufficient resources to pay the SLW without making sacrifices elsewhere – *"depending on what happens... There might be things that go, and that's just to make it (SLW) affordable so that you can provide the service"* (VS Provider). Providers, as seen with the aforementioned local authority respondents, also reported anecdotal evidence of some organisations making employees pay for their uniforms or cutting the financial support for travel expenses. In the focus group several providers reported that, rather than rewarding employees for the work they were already doing, some local authorities expected more effort/efficiencies from the workforce in return for the SLW.

Some provider respondents further raised the increasing relevance of the 'Fair Work' agenda and accompanying statutory guidance. These respondents indicated how local authority funders were increasingly insisting that success in bidding for contracts was partially dependent on providers committing to such fair work practices. Several of them also, however, reported that such commitments were becoming increasingly difficult to achieve given that most resources had to be channelled into funding the SLW.

As previously mentioned, there were also specific workforce concerns among providers and their representatives regarding the implications of the Scottish Government's intended plans to fund the SLW policy through 'business as usual', with no guarantee of future separately identified resources. Data revealed the emergence of a sharp divergence of opinion between providers, their representatives and funders. In the latter case, interviews revealed a preference in the future for providers to institute further workplace reforms and efficiencies to assist in paying for the SLW. Included in such workplace reforms and efficiencies was the suggestion that providers flatten management layers so as to reduce differentials between different categories of staff. As well as such measures leading potentially to the loss of jobs for some, these suggestions also raised questions regarding prospects for career development in the sector. Providers further responded that they have already undergone a range of pre- austerity and austerity related rounds of cuts and restructuring that have intensified the work of management grades at team leader and supervisory level. Furthermore, providers expressed the view that they remain independent organisations and that it is out-with the scope of funders to suggest such reforms.

"You can't decide that somebody will deliver something by efficiencies... we are independent organisations, you can't just write a letter and say this... Because people can exit this market" (Provider representative).

The impact on sleepovers

The impact of the SLW on sleepovers raised a number of concerns among providers. The first related to some degree of uncertainty regarding the rate at which the Scottish Government was going to fund payment of sleepovers. Most were aware of the statutory requirement by HMRC that sleepovers should be viewed as working time, and be paid at the level of the National Minimum Wage, instead of the widely held practice of paying a flat rate sum. There was though uncertainty regarding whether the Scottish Government would be able to fund sleepovers so that providers paid the SLW rate. Respondents, therefore, expressed considerable unease over the cost implications for providers and their funders.

One provider projected that the increases in sleepover costs for twenty-two workers would be £130K. A study undertaken by CCPS of its membership meanwhile provides a wider estimate of potential costs, of approximately £15m in 2018/19. This is possibly a conservative estimate given that it was not clear from this study whether employers factored into their figures the additional costs relating to holidays, national insurance and the apprenticeship levy (CCPS, 2017).

Providers further reported that irrespective of the funding settlement by Scottish government, not all local authorities would have the resources to fully fund sleepovers at a rate that would pay the SLW. Organisations working with multiple local authorities could then possibly be faced with the dilemma of having only sufficient external funding to pay SLW for sleepovers in particular local authority areas. Rather than allowing such an anomaly in their pay scales, organisations suggested, that where possible, they would have to fund such increases from their own resources. In this context, providers placed the sleepover issue high on their risk registers.

Provider respondents also foresaw local authorities increasingly refusing to pay people to sleep when being paid the SLW. Unsurprisingly, therefore, there were calls to reform/replace the practice of sleepovers. One solution was the introduction of more technology into people's homes to monitor their well-being at night. Yet, several respondents in critiquing the move to introduce such changes reported that the technology itself required significant investment, and was not appropriate for all service users.

Respondents indicated, then, how some local authorities reportedly favoured replacing sleepovers with waking nights. For workers, the introduction of waking nights would bring changes to the type of work undertaken. Specifically, some providers anticipated a growth in teams of waking night workers in 'responder units' simultaneously monitoring several residences.

Providers feared that a move to waking nights would have significant additional costs, as workers would be unable to pick up a shift after waking night work in the same way as many of them do after completing a sleepover. Indeed, one provider calculated that a widespread move to waking nights would mean their organisation would have to recruit the

equivalent of 48 additional full time staff. Another respondent noted how the efforts by organisations to recruit additional 'waking night' workers would exacerbate an already tight labour market, so raising the possibility of further unfilled vacancies in the sector.

"Local authorities don't get that. We've already got a workforce issue, so how are we going to get all these extra staff" (VS Provider).

Some local authorities (including several participating in this study) were reported to be committed to cutting or completely abolishing sleepover provision. These developments brought additional concerns. Providers admitted some sleepovers were unnecessary and a leftover from earlier assessments of need that were outdated, but stressed that many were still relevant. The prospects of the inappropriate removal of sleepovers were therefore raising concerns among providers regarding the safety and quality of service provision to people currently being supported. Relatedly, there were concerns raised regarding calls for shared sleepovers, which undermined the principles of individualised and personalised support.

"We don't want to over-support people and we've a history as an organisation of being able to move from sleepovers as they get more independent, but for some that just isn't going to happen...the real worry is if they lose their tenancy, lose their home, and end up in group services" (VS Provider).

Recruitment and retention

The impact of the SLW policy on recruitment and retention was perceived by providers to be mixed. A minority of respondents indicated they had few, if any, major recruitment problems, or that they were limited to one or two difficult local authority regions. Several respondents did report improvements in retention in the care home sector. Other respondents felt that it was too early to say whether the policy had made a difference to recruitment and retention.

The majority of respondents indicated persistent or worsening recruitment problems. Indeed, there were cases where respondents indicated that worsening problems were actually due to the SLW policy, with one provider calling the situation *"business critical"* (VS Provider). For example, one provider mentioned shrinking differentials were making it increasingly difficult for some providers to recruit first-line supervisors and team leaders. Providers were further worried that the SLW was becoming the 'going rate' for care. In this context, it was feared that workers would be reluctant to be recruited into the more challenging services if they were able to secure the same level of pay in easier services.

"It's a reasonable question people have raised of having a simpler life, less complicated, less somebody threatening to punch me and those kinds of things, why should I put up with that when actually I get paid the same wage as a less complex service" (VS Provider).

A number of respondents also dismissed the notion that the SLW policy would make care work more competitive in the labour market compared to other sectors such as retail and hospitality sectors. These respondents had heard, again anecdotally, that organisations in these sectors had, in order to remain competitive, responded with compensating increases in their pay rates. A private sector participant commented:

“So ironically a policy designed to increase recruitment and improve retention is having the opposite effect, not least, surprise, surprise that nobody quite worked out that the rest of the community and retail and hospitality in particular would increase salaries to meet the challenge of more people in social care getting better terms and conditions” (Private Sector respondent).

With regard to the impact on turnover, some front-line workers would also reportedly leave providers that were struggling to pay the SLW to move to rivals who were able to pay it. Such differences in ability to pay were attributed to the aforementioned variability in the timing and generosity of local authority settlements, and differences in the ability and willingness of providers to risk paying the SLW in advance of receiving uplifts. One provider even reported increased absence and turnover at the team leader level as differentials shrunk.

In addition, in some organisations the retention of workers was undermined by the ability of competitors to pay the SLW for sleepovers. This ability to pay SLW rates for sleepovers was due to reports of comparatively generous funding settlements from certain local authorities. Workers, in response, would reportedly be attracted by the promise of being paid for sleepovers at the SLW rate.

Providers raised doubts about a widespread positive impact on turnover from the SLW, as they argued that quitting was not solely related to pay. Rather, people left the sector because their perception of working in care was initially misguided or unrealistic. Reportedly, once these workers experienced the intensity of care work, and its long and often fragmented shift patterns, they found they could not cope, and would leave.

“Retention in our sector is about other issues. It’s about people realising how difficult this job is...they come in and they realise that actually we’re asking a huge amount of them. So our retention figures are about people realising they want do other things or it’s the wrong choice” (VS Provider).

A private provider confirmed this by stating that the highest level of turnover occurred among those employed for less than six months, with this figure standing at 40%.

Impact of SLW on staff income

As previously mentioned, all respondents reported that they were broadly in favour of the SLW policy. The auditing of provider compliance with the SLW policy by local authorities was described as mixed in nature, ranging

from signing an undertaking to pay the SLW, filling in documentation to record hourly rates of pay for staff, and interviewing staff during quality visits. None of the providers found these compliance exercises particularly onerous and some added that given the non-statutory nature of the policy, they wondered what sanctions could be applied if they did not pay the SLW. Lead body representatives further added that provider compliance was not an issue.

Indeed, there was evidence of the SLW policy bringing advantages to the Scottish adult social care workforce. For example, several UK providers indicated that their workforce outside of Scotland was reportedly acutely aware of benefits of the policy, and that employees in England and Wales were falling behind comparatively due to a failure to adopt a similar commitment to the real living wage. In relation to this, as key informants pointed out, on 30th September 2016 some workers in the sector were earning no more than £7.50 an hour, but by 1st of May 2018 they were, or were likely very soon, to be earning £8.75.

There were, however, a number of unintended consequences from the implementation of the SLW policy that led some providers to voice concerns relating to whether workers received sufficient additional money. Several organisations raised concerns regarding the impact of the policy on people's in-work benefits, and whether earnings thresholds would be passed as a consequence of the SLW policy. Indeed, several providers reported a reluctance among some employees to take on overtime for fear of losing income from benefits.

The biggest concern came from those respondents that identified changes to sleepovers as a major area of uncertainty and risk, not only for providers and local authorities, but also workers. As a result of the aforementioned plans by some local authorities to cut sleepovers, workers would either be replaced by assistive technology, provision would be cut, or work redesigned so that staff would be placed on 'waking nights' on a standard 37 hour week, with no additional sleepover payments.

"The danger is that workers who were providing sleepovers actually go home with less pay because they haven't got their sleepover payment, which all feeds into the issue about recruitment and retention, because effectively people's salaries reduce" (VS Provider).

Several providers gave us illustrations of the loss of income this would entail for their workers.

"In a few years' time we'll have staff who say, 'I used to earn £75 a night or £85 a night for a sleepover, and I'm doing two of them a week, that's £600 a month that I was earning, I'm not earning any more'" (VS Provider).

In addition, as previously mentioned, prior to the SLW policy, at least one provider had embarked on significant organisational and workforce restructuring with a view to being able to fund decent pay and other terms and conditions for the front-line care workforce. As a result of decisions by some local authorities to not pay any increases to this

provider due to its hourly pay rates already surpassing the SLW, the organisation now refuses to pay further increases to the front-line that are not funded through the SLW policy. Given its ambition was to be an exemplar employer in the market that would attempt to surpass the SLW, this decision arguably implies this particular workforce may lose out in terms of future income.

Finally, a number of providers and other respondents observed that despite the increases in pay experienced by the outsourced workforce, it is highly likely that they will continue to fall behind the conditions of equivalent public sector workers. This continued shortfall in pay between the in-house and external workforce will possibly be exacerbated by commitments by government to increase the pay of the former, as well as the continuing strength and influence of unions in the public sector.

“I think one of the greatest things will be the public sector pay cap being lifted...I think a huge priority for all local authorities will be, we have to lift that...I mean, that’s a perfectly logical line of thought, and I think a tremendous risk for us” (VS Provider).

Voluntary and private sector provider differences

Respondents reported a number of differences between the voluntary and private sector providers relating to the impact of the SLW policy. The first related to the National Care Home Contract (NCHC). Providers, their representatives and several local authority officials noted that the NCHC made the implementation of the SLW policy more straightforward in care homes, which are predominantly run by the private sector. Respondents acknowledged that while the negotiations over increases in this contract were never straightforward, once agreed they dealt with the SLW issue. This meant funders and providers could apply the nationally agreed increase, including funding for the SLW. Therefore, private sector providers in the care home market were not subject to the complexity and uncertainty associated with the multiple negotiations and consultations faced by voluntary organisations delivering other services.

Another voluntary – private sector difference was that sleepovers were less of an issue for private sector providers compared to voluntary organisations. This difference was largely because the use of sleepovers to cover night work was less prevalent in private services, compared to voluntary ones.

Respondents from the private sector, however, revealed some additional vulnerability to issues arising from the introduction of the SLW. The sector is characterised by many small, independent organisations, so any delays in the payment of the SLW could lead to quite significant cash flow problems. Respondents reported there were quite a few organisations whose survival was thrown into doubt due to delays in receiving funding.

“It’s not what’s on paper that shuts an organisation down, it’s cash flow, and I think that’s what hits small organisations...there could be a whole load of small organisations go to the wall” (Private provider).

Another added:

“We’re talking about organisations with the economies of scale who could cope with the absence of funded differentials and absence of funded on-costs. So what happened was organisations having to draw reserves, having to reduce and raid training and learning budgets, having to lower dividends” (Private sector respondent).

In addition, despite the perceived advantages of the NCHC, care homes were more vulnerable to experiencing some of the tensions and problems associated with differentials between front-line staff and domestic, catering and maintenance staff.

“There was a failure on the part of government to recognise that in an environment like a care home, everybody contributes to the quality of care, whether that’s the domestic, the kitchen staff, the front of house staff, as well as the direct care providers” (Lead body representative).

In addition, irrespective of questions regarding the desirability of further workplace reform and efficiencies, calls on the private sector to flatten structures to pay for the SLW were difficult, again, because many organisations in the sector were small and had no structures to flatten.

The value of the Joint Guidance

The commissioning/contracting authorities’ view

Respondents reported using the Joint Guidance, but only to a limited extent. They also commonly made references to seeking additional advice from various peer network groups (e.g. Social Work Scotland’s commissioning and contracts group, CFO network).

Although there was seen to be clarity in the guidance regarding the fact that the SLW could not be made a contractual condition, interviewees expressed a number of concerns about the guidance that limited the extent to which it was viewed as useful.

One source of such concern related to the guidance’s lack of clarity around the applicability of the SLW to self-directed support staff, and the related need for a clearer definition of who qualifies for receiving the SLW (e.g., day services staff, wardens, ‘ancillary’ staff). Most respondents also reported confusion around providers’ contributions in year 1. Contracting authorities further felt that the guidance needed to clarify the timing of implementation and the dates by which the SLW needed to be implemented for sleepovers. As an IJB member commented,

“...one of the things that’s challenging for us all at the moment is this notion that payment of Living Wage for sleepovers will be introduced during 2018/2019 financial year. So what does that mean? You know some people are interpreting that as March 2019. Some are going for middle diddle, let’s go for October...I think some clarity around that expectation would have been helpful.”

Pertaining to this, one commissioning authority reported it would wait until 1 March 2019 for implementing SLW for sleepovers in order to save on costs. The guidance was furthermore perceived to be lacking in advice on calculating sleepover rates, which led to confusion given the different approaches taken by providers in this area (e.g. calculating sleepover rates at SLW vs. averaged over a period of work).

In light of the above concerns, the following future improvements to the guidance were suggested by contracting authority respondents:

- clarity on timing of implementation
- uniformity on timing of sleepover payments as seen in evidence of different implementation dates in local authorities
- clarity on how to calculate sleepover rate of pay
- more guidance on how to achieve compliance with the SLW policy in the absence of an ability to make it a contractual condition
- more guidance on how to monitor such compliance in a lawful way.
- more guidance on the issue of state aid.

Respondents diverged on whether a clear recommendation towards one approach to delivering the SLW is desirable. Some contracting authorities felt that a clearer steer would have been helpful and shortened the negotiation period with providers; whereas, others preferred using different mechanisms for delivering the SLW.

Finally, some respondents felt it would be helpful to have the funding separately identified until paying SLW rates becomes a 'culture in practice' for costing and commissioning. The contracting authorities had mixed views, however, on the usefulness of statutory guidance as a means to increase adherence to the SLW policy.

The providers' view

Provider opinions regarding the value of the Joint Guidance were mixed. In terms of the relevance of its advice to providers on key issues, there was positive feedback.

"That's (the guidance) effectively what we work to, and that's been a Godsend" (VS Provider).

In particular, several respondents indicated that they found it particularly useful for understanding the implications of EU regulations, best value and contract compliance. Several providers drew comfort from the fact that it was drawn up by the various stakeholders in the social care market, thereby ensuring it contained all perspectives. The information from the guidance was also frequently reported to have been complemented by advice from external bodies, notably professional networks in finance, law, and among senior officers of providers.

Problems were also perceived with the guidance, however. Several respondents admitted to not hearing about it, or never using it. In the

latter case, these respondents were satisfied with the advice they gained from the aforementioned professional networks to which they belonged. There were other specific issues with the content of the guidance, relating to:

- Vague information on key points or promoting choice rather than certainty, leading to important decisions being subject to local interpretation by local authorities.
- The guidance's failure to take account of the variety of types of providers and their different perspectives and interests in the sector.
- Funders using the vagueness of different aspects of the guidance to justify a lack of consistency in approach to funding the SLW.
- A feeling that the guidance was too descriptive and neutral and a related belief that it at times 'had to get off the fence'.
- The lack of statutory power compared to other documents such as the Fair Work Guidance.

With regard to the latter point it was observed:

"We would have preferred personally that it was just a lot more direct and it said 'actually, do you know what, if you really want this to work, there needs to be some key principles agreed that it should avoid tendering, that an hourly rate should be constructed using certain parameters'" (VS Provider).

Nevertheless, providers did largely agree on the continued relevance of having guidance, but felt there was room for improvements and amendments. Specifically, it should contain:

- Firmer recommendations regarding the timing of payments.
- Clearer information relating to the implications from changes to sleepover payments.
- A discussion of the implications of the intended move towards 'business as usual' in funding the SLW.

Barriers and enablers to implementing the SLW

At this juncture, it is useful to reflect on the above findings and draw out what providers and commissioning authorities felt were the barriers and enablers to the successful implementation of the SLW policy.

Tables 2 and 3 summarise the various barriers and enablers identified respectively by provider and contracting authorities' respondents. With regard to barriers, Table 2 shows there is a degree of agreement between the two parties around issues such as the multitude of approaches to paying the SLW, diversity in the timing of payments, the under-funding of differentials and 'on-costs', and concerns over the sustainability of the market. Although there were differences in the frequency and priority placed on these identified barriers to introducing the policy, their

common identification suggests that some opportunity exists for the parties to work together to overcome them.

This picture of commonality, however, exists alongside some divergence of views regarding the barriers that confronted the implementation of the SLW policy. Only providers raised the failure of partners to come to a commonly agreed costing template for an hour of care, a lack of consultation on the part of the Scottish Government and the tendency by funders to effectively reward low payers. Meanwhile, only contracting authorities identified problems emerging from providers having different calculations for sleepover payments, difficulties in evidencing provider compliance, limited acknowledgement of local variations under the NCHC, issues relating to internal negotiations over pay and conditions with unions and competing priorities within health and social care integration.

As Table 3 shows, jointly identified actual or potential enablers encompassed consultation with local authorities and IJBs, improvements to the Joint Guidance, engagement with trade union partners, the support of sector bodies, implementation of the SLW through the NCHC and the continuation of separately identified funding. In contrast, only providers emphasised the importance of placing the guidance on a statutory footing, and discussing ways of getting around the under-funding of differentials and reducing the vulnerability of small providers, as possible future enablers.

Perceived Barriers	Recognised by Providers	Recognised by local authorities/IJBs
Multiple approaches to paying the SLW across 32 Scottish local authorities	√	√
Diversity in timing of payments in terms of multiple settlement dates across 32 local authorities and protracted delays from specific funders	√	√
The under-funding of differentials or non-payment of 'on-costs'	√	√
Sustainability and the exit of providers from services or the market	√	√
Failure of social care partners (providers, local authorities, IJBs and Scottish Government) to agree the basis for determining the true cost of an hour for care	√	X
Lack of consultation & representation at Scottish Government, Integrated Joint Board (IJB) and local authority levels	√	X
Variable payments for traditional high paying providers compared to low payers	√	X
Different approaches to calculating sleepover rates among providers	X	√
No way of evidencing how providers are paying the SLW	X	√
Costs of the national care home contract, and its inability to account for local variation	X	√
National bargaining with unions and challenges of setting pay rates for own local authority employed care staff	X	√
Competing workforce issues such as the integration of health and social care	X	√

Perceived Enablers	Recognised by Providers	Recognised by local authorities/IJBs
Greater consultation with Scottish Government over implementation of SLW	√	X
Consultation with local authority and IJBs regarding method and timing of payments	√	√
Reform of joint guidance to take account of issues such as timing variety of approaches to payment, sleepovers and 'business as usual'	√	√
Engagement & partnership with workplace unions	√	√
Discussions re costs of differentials, on-costs and sleepovers	√	X
Statutory status for joint guidance	√	X
Reduce vulnerability of small providers	√	X
Support of sector bodies, i.e. CCPS, Scottish Care & COSLA	√	√
Implementation through National Care home Contract	√	√
Separately identified funding	√	√

Section 4: Discussion

Implementing the SLW: Policy dilemmas, challenges and implications

The findings obtained from the research are seen to highlight a variety of dilemmas and challenges surrounding the implementation of the SLW in adult social care that variously involve care providers, local authorities, IJBs and national level policy-makers. This section reflects on those dilemmas and challenges, firstly in relation to the established literature outlined earlier, and then in relation to areas of current and future policy and future opportunities.

The data has revealed how purchasers (largely local authority respondents) retain the dominant position in Scotland's social care market place. The study also outlines how this dominant position allows local authorities to introduce increases in resources to providers to pay for the SLW, but on the basis of what they believe to be a fair price for an hour of care. In doing so, issues such as 'on-costs' are often ignored. Indeed, where relations between local authorities are largely 'transactional' (Sako, 1992), for providers there remains little or no consultation over either the method or extent of supporting payments. At the same time, the present study does reveal how where more open 'relational' contractual relationships (Sako, 1992) exist, providers have greater opportunities to be consulted and informed of change. A further dimension to these findings is the influence of lead bodies such as CCPS and Scottish Care in promoting the interests of providers in terms of consultation with funders.

It can be seen that the implementation of the SLW in adult social care has been influenced by traditional characteristics of the market. Local democracy has traditionally fragmented payment dates to external providers, with local authorities operating on multiple settlement dates. Prior research reveals these delays have led to a degree of insecurity and workers having uncertainty regarding if and when they will receive a pay increase (Cunningham, 2008). This study reveals how this phenomenon appears to be repeated in the context of the introduction of SLW, with significant delays to providers and workers in terms of receiving the benefits of the policy.

Section 1's outline of the literature on the implementation of minimum and living wage policies and the context of the Scottish social care market identified a number of issues that can be seen to resonate with the findings in this study. The first relates to the problem of compression of wages/erosion of differentials (Grimshaw, 2013). The present study reveals similar problems for employers as the squeeze on differentials was highlighted across multiple groups of workers including the lowest paid front-line workers and senior front-line workers, team leaders/supervisors, 'unregulated' workers and domestics, catering and maintenance staff.

Secondly, other studies of the impact of such policies highlight how employers can attempt to recoup the additional costs flowing from

them through imposing work intensification, withdrawing or cutting other benefits, the tighter monitoring of staff etc. (Heyes and Grey, 2001; Bullock et al, 2001 and Ram et al, 2001). In this study, evidence of such compensating effects is limited, with only anecdotal evidence of such employer strategies emerging, but with some organisations actively considering adopting measures in the future if costs continue to rise without sufficient funding from government to fund the SLW.

Thirdly, studies of LWs and the UK NMW report a limited impact on job losses but a positive impact on the absolute and relative pay levels of the lowest paid (Metcalf, 2007). The current study similarly suggests that the Scottish Government's policy has not led to any widespread job losses. At the same time, a note of caution is needed given emerging evidence of concerns over the sustainability of services in some areas of the social care market, with reports of providers handing contracts and services back. As yet, we do not know the full implications of these moves on jobs and services. With regard to absolute and relative increases in wages, it is apparent that in the former case, wages have risen for social care workers to levels that would not have been the case if the Scottish Government had not intervened with its commitment to the SLW. The present study, however, casts doubt on whether wages in the sector have risen relative to either comparable workers in the public sector, especially now with removal of the public sector pay cap. Moreover, the study revealed evidence, albeit anecdotal, of private sector competitors in retail and hospitality raising wages to match those in social care.

Fourthly, the evidence in favour of LW mandates includes studies that reveal improvements in turnover, worker morale and absenteeism (Farris and Reich, 2005). Evidence in the study at this stage is mixed in this regard. There is some indication that providers are experiencing better levels of absenteeism and turnover with subsequent improvements in continuity for service users. However, other respondents reported no significant improvement in turnover, citing other issues such as unsuitable working time and lack of career progression as causes. Respondents further provide limited evidence of improvements in recruitment into the sector.

In the remainder of this section of the report, the various dilemmas and challenges surrounding the Scottish Government's SLW policy are drawn together and, where relevant, attention is directed to the potential implications they have for future policy. These aspects are discussed via a consideration of the following issues:

- Nature of contract pricing
- Mechanisms of delivering funding and their transparency
- SLW and service sustainability
- Compliance with the SLW
- Pay structures and SLW operationalisation
- Staff recruitment and retention
- Provider engagement

- Funding allocation and expenditure approval
- Policy guidance

Nature of contract pricing

Local authorities varied considerably in their approaches towards funding the implementation of the SLW, in combination making use of all four of the options detailed in the supporting guidance. Within this variety, however, there were signs of a trend towards commissioners using standardised payment scales. Meanwhile, various interviewees commented on how in the case of care homes it had been administratively easier to fund the SLW because of the presence of a laid down costing formulae in the National Care Homes contract.

The apparent trend towards use of fixed payment scales suggests that contract awards are tending to be less determined through price-based competition and more on the basis of quality. Insofar as this is so, it raises the question of whether the use of such payment scales by local authorities should be encouraged as a means of increasing further the weighting placed on quality in the awards of contracts. This is particularly so given research suggesting that the costs of implementing the National Living Wage in care homes has in part been accommodated through reductions in care quality (Giupponi and Machine, 2018).

Such considerations also raise the issue of whether there is a case for developing a set of national rates for different types of care packages that local authority commissioners would be obliged to use. Views on this idea are likely to differ markedly. Thus, some may take the view that such an approach would conflict with the principle that local authorities should have democratic control over how they spend their money and would be insufficiently flexible to encompass the variety of care delivery situations and contexts that exist. In contrast, others could argue that SLW policy already infringes upon this democratic control to some extent and the rates so developed would be minimum ones that could be updated where circumstances demanded.

Mechanisms of delivering funding and their transparency

Views differed between provider interviewees regarding their preferred method for passing on increased funding to pay for the implementation of the SLW. On balance, it seemed that flat rate percentage increases were favoured since they could take into account on-costs, such as increased national insurance and pensions contributions, and allowed some protection for differentials among different grades of care staff. This view though existed alongside frequent allusions to a lack of transparency regarding how local authorities were determining what it cost to deliver the care being commissioned. Indeed, only in a small number of cases was it reported that costing formulae, where they existed, were shared and discussed with providers. There was consequently little sign of local authorities following the published guidance by engaging 'care providers in negotiations to reach a voluntary agreement' and facilitating this 'by a funding process that is fair, transparent and collaborative, and achieves 'buy-in from providers'.

This lack of transparency meant that there was little opportunity for the costing assumptions being utilised by local authority funders to be debated and challenged. As a result, funding decisions were to a large extent made on a 'take it or leave it basis', with adjustments to them at times only being secured through providers raising the prospect of withdrawing from services or declining to bid for them. Such a process of adjustment, in turn, therefore suggests that the market power of providers (or market vulnerability of commissioning authorities) was at times influencing how contracts were funded- a situation that clearly carries with it the potential for unfair disparities in how particular services or providers are funded.

These last possibilities merit further investigation. They also raise the issue of whether local authorities should be required to be more transparent in how they are costing services so that the methodologies adopted can be subjected to more detailed and direct debate.

SLW funding and service sustainability

When first introduced, the national policy of providing the SLW to those delivering adult social care was supported by a specific allocation within £250 million government funding for social care, which also contained the requirement that providers make a 25 per cent contribution to its cost. Such separately identified funding may no longer be provided if the proposed shift to resourcing through 'business as usual' is established .

The conducted interviews provided little indication of providers failing to honour their commitment to pay the SLW to those providing adult care, particularly given the widespread support expressed for the policy among those interviewed. At the same time, concerns about its financial viability were often expressed. Several sources of such concern were identified. One was the failure of some authorities to provide funding to fund the previously mentioned types of on-costs. Another was the worry, against the background of the potential onset of a 'business as usual' approach that the ongoing provision of the SLW would require trade-offs with service quality to be made. A yet more general one was simply that the financial sustainability of adult care services was coming under increasing pressure due to a failure of funding to keep up with the rising costs faced by providers and the increasing complexity of the needs of service recipients. In this regard, there were indications that providers were tending to adopt more hard-nosed and financially driven approaches to tendering and as a result being more prepared to refuse to pursue contracts or to, at least, consider walking away from them.

This issue of the financial sustainability of services extends beyond the scope of this study. It is observed, however, that the resolution of what a number of interviewees reported as a growing crisis in social care funding would arguably be aided by a move, as already discussed, towards developing an agreed methodology for analysing and determining the costs of providing different types of care.

Compliance with the SLW

Adult care providers are not required by law to pay the SLW since the legal specification of such minimum pay rates is not a devolved matter. The issued supporting guidance further (and presumably not unrelatedly) took the view that it was not possible under EU procurement law for providers to be solely excluded from tenders because they were unwilling to (voluntarily) pay the SLW. While it is a moot point whether this is correct, what does seem clear is that a voluntary commitment by successful bidders to pay the SLW can be made a contractual requirement.

Notwithstanding this legal situation, as already mentioned, little evidence was found of providers failing to pay the SLW. Several provider interviewees did though note that their organisations had not committed to being 'Living Wage employers' because of a concern that they would be unable to continue to pay the SLW (and increases in it) in the future. In doing so, they therefore raised the possibility that current levels of compliance with it may in time decline in the face of financial pressures.

This possibility suggests that attention should again be paid to whether it is possible to put the SLW policy on a clear legal footing. It also, along with the uncertainty surrounding the pay rates provided to personal assistants under SDS, raises the issue of what local authorities are doing and should be doing to monitor provider compliance with the SLW.

From the interviews conducted it seems that most local authorities are not proactively monitoring whether providers are paying the SLW to relevant workers. Rather, they are mostly relying on written commitments from them. Thought needs to be given therefore to whether this approach will continue to be sufficient in the future and, if it isn't deemed so, what alternative strategies should be adopted. In addition, there would seem to be an argument for a unified approach to be adopted to any such proactive monitoring, as of course is done with the National Minimum and Living Wages via HRMC, so that providers are not required to cope with a range of different ones.

In a similar vein, no evidence was obtained to suggest that Scottish Government (or IJBs acting on its behalf) were engaging in detailed monitoring of whether local authorities were adequately funding providers to pay the SLW. How far this is in fact the case and what action, if any, should be taken to improve current practice in this regard, may consequently be other matters worthy of exploration. It is recognised, however, that such monitoring may also be seen to involve an infringement of local authority decision-making autonomy.

Impact on differentials

A frequent worry voiced by providers concerned the way that, in the absence of percentage uplifts to funding, the advent of the SLW was often leading to a narrowing of (vertical) differentials between senior and more junior care workers, including those in supervisory positions. Concerns were consequently expressed about whether in future staff would be willing to take on additional responsibilities for little or no reward.

Interviewees also expressed concern about the SLW policy's impact on horizontal differentials. In this area, some uncertainty was expressed about who precisely was covered by the SLW, for example, whether it applies to people working in day services or wardens working in sheltered housing complexes. More widely, unease was commonly apparent about potentially (or actually) paying staff in regulated adult social care more than those engaged in providing other types of care or undertaking other forms of work, including cleaning and catering. For example, several interviewees questioned the appropriateness of treating staff delivering adult care differently to those engaged in the provision of children's services. How far such differences can be defended and maintained in the future would seem to be issues that policy makers need to reflect upon. In particular, given the non-legal status of the SLW, careful thought needs to be given to whether such differential treatment of different categories of staff may be vulnerable to challenge on equal pay grounds.

The squeezing of vertical differentials has been found to be a common outcome of minimum wage policies and so the SLW is not unusual in this regard. It is nevertheless clearly a source of difficulty. How much of one is though difficult to judge.

Clearly a total removal of vertical differentials is likely to be highly problematic, unless the issue can be circumvented by re-organisations that remove such vertical grading structures – an option that is unlikely to be feasible in many cases. Beyond this, the impact on staff motivations is likely to be influenced by perceptions of fairness and how far differentials are judged in 'percentage' or more general 'rank order' terms. The issue of differentials needs to be kept under review and, more narrowly, it should be borne in mind when costing formulae are being developed.

SLW and staff recruitment and retention

Pay is only one, albeit important, component of the terms and conditions provided to staff. Any consideration of the impact of the SLW on the willingness of staff to join or leave therefore needs to take cognisance of this wider context. In a similar vein, how pay impacts on staff recruitment and retention cannot be divorced from what is happening in the wider labour market.

The conducted interviews indicated that the implementation of the SLW had varying implications for relevant categories of staff. In many organisations it led to staff receiving significant pay rises. In others, the opposite has been the case as a result of staff already being paid at the level of the SLW and local authority commissioners deciding not to make additional funds available to their employer – an approach that needless to say was not well received by the organisations concerned. Between these two extremes, were organisations that did pay the SLW already but nevertheless received some additional funding that enabled them to increase prevailing rates. In addition, where pay increases were provided to adult care staff, some organisations – on a funded or unfunded basis – choose to both protect – partially or fully – differentials and to extend the increases to other categories of staff.

While a few interviewees reported how payments for travelling time and uniforms had been cut, in general it did not seem that providers had been seeking to recoup the increased labour costs flowing from pay rises through cuts to other terms and conditions; although there was some suggestion that the UK government's apprenticeship levy had acted to reduce training budgets and provision. It should also not be forgotten that previous research highlights how sick pay, pensions and other benefits have often already been reduced as a response to the difficult funding environment within which providers are operating (Cunningham and James, 2014; Cunningham and James, 2017).

Evidence was mixed regarding how SLW-inspired pay increases affected staff recruitment and retention. Some respondents suggested positive effects in one or both of these areas, while others reported no such outcomes. On balance, it would appear reasonable to conclude that any effects were relatively limited. This is particularly so given how some respondents reported that supermarkets and other types of employers had increased their pay rates in response to SLW prompted increases and the concerns previously mentioned about how declining differentials were reducing the ability of providers to offer potential and current staff reasonable career development opportunities. In relation to these last concerns, particular worries were expressed about the way in which this combination of reduced differentials and career progression would impact on future internal and external recruitment into front-line managerial positions.

Such doubts, in turn, can be noted to exist alongside the fact that it remains unclear how far any pay increases received by staff through the implementation of the SLW have benefitted them financially. This lack of clarity flows from two considerations. The first is that many care workers are in receipt of benefits and there is consequently a risk that any pay rises received will have been partially or fully offset by benefit cuts. The second concerns the fact that the acceptance that sleepovers constitute working time and hence attract the SLW was reported to have simultaneously led to their lower usage and a reduced capacity of staff to legally undertake them on top of their 'normal working hours'. As a result, some interviewees argued that SLW generated pay increases were insufficient to compensate for the loss of previously provided sleepover allowances.

Overall, then, the collected evidence suggests that action to improve staff terms and conditions in the Scottish social care sector needs to be more broadly based and extend beyond the specification of single minimum rate of pay. One option in this regard, for example, might be to specify an appropriate framework of minimum conditions for the sector that could perhaps be used to underpin the formulation of a suite of standard national care rates that take account of the varying intensity of different types of support. In relation to this, a union interviewee called for sectoral bargaining arrangements to be established; a suggestion that echoed the support provided for such arrangements in the last Labour Party election manifesto.

Pay levels and structures

Provider organisations varied regarding whether they operated integrated pay and grading structures covering all the services they provided. Where they were, it was clear that in two ways the SLW policy had created challenges to the maintenance and operation of such structures for organisations working across more than one local authority. The first of these was the varying ways in which local authorities had chosen to implement the policy and, as already noted, the differing implications that these had for funding levels. The second was the differing timescales over which authorities reached funding decisions.

The first of these issues provided a further illustration of the difficulties that confront providers in creating common pay structures in the face of local authority funding regimes that vary widely in terms of their generosity. The second meanwhile created a dilemma for organisations as to when to uprate pay scales in the light of the SLW. Thus, they could delay raising pay levels until the last authority had decided on the funding to be made available to support its implementation and potentially in the meantime be uncompetitive in one or more local labour markets. Alternatively, providers could raise them before all the relevant authorities had made their decisions and possibly face resultant cash flow problems as well as the risk that the final authority settlements were insufficient to cover the costs of the provided pay increases.

These challenges, as well as the scale and complexity of the administrative demands flowing from potentially negotiating with over 30 local authorities, clearly involve the expenditure of considerable and costly time and effort. Such expenditure may be viewed as unavoidable. This requires further examination, however.

SLW and provider engagement

The government's decision to require the introduction of the SLW in adult social care was, in terms of its funding, taken forward through discussions with representatives of local authorities via COSLA. An implementation group was established around the time of the SLW commitment that also involved union and provider representatives. This board plays no part in funding discussions and decisions. Rather, its purpose is to resolve matters revolving around the policy's operationalisation. It is for this reason that an original proposal to call it a 'partnership board' was apparently resisted.

In a similar vein, at the local authority level, the general picture to emerge was, as already noted, one whereby little or no consultation with providers took place in advance of decisions regarding the funding that was to be provided to them to support the implementation of the SLW.

These findings would seem to capture a tension surrounding social care commissioning between, on the one hand, a desire for collaboration, or partnership working, with providers and, on the other, a reliance on distributional and arm-lengths commercial contracting. Such tensions are perhaps unavoidable. It is an interesting question, however, whether the current balance between these two policy elements could be improved at both the national and local levels in a way that enables

funding decisions to be made in the light of fuller and more mutual understandings of the costs of providing satisfactory levels of care and workforce issues relevant to its delivery.

Funding allocation and expenditure approval

The funding set aside by the Scottish Government was channelled through the NHS to the IJBs. Allocations to local authorities from it were, however, determined by the government using their more general funding distribution methodology; and hence not on the basis of what individual authorities needed to support the provision of the SLW by providers. At a more general level, this raises the question of whether any future funding provided to support decent and appropriate working conditions in social care should be determined in a more relevant way, for example, by taking account of the degree to which services are outsourced and therefore the degree to which they are being provided by staff falling outside the scope of nationally negotiated local authority pay rates.

Once local authorities had been informed of their SLW related funding settlement, it was then left to them to decide how the provided funding was to be distributed via the contracts they had with providers. These proposals, however, had to be forwarded to the IJBs for approval.

Many of those interviewed from provider organisations reporting finding the above system to be overly bureaucratic, if not bewildering. Against this backcloth, no evidence emerged to suggest that local authority funding proposals were subjected by IJBs to any detailed evaluation of their appropriateness and adequacy in terms of either supporting the payment of the SLW or the satisfactory delivery of care more generally. The value of their role remained therefore, perhaps because of the study's focus on the local authority and provider levels, rather unclear and perhaps worthy of more detailed examination. In addition, and more narrowly, another issue meriting consideration is whether criteria should be laid down regarding the factors that IJBs need to bear in mind when evaluating contracting proposals put forward by local authorities.

SLW guidance

Those interviewed invariably reported being aware of the guidance issued to aid the introduction of the SLW and generally reported that it had been of some help; although within this overall picture some criticisms were voiced. There was also some support for revised and updated guidance to be issued.

Inevitably views differed somewhat with regard to the strength and weaknesses of the current guidance and what improvements could usefully be made to it. As will be seen in the next section, there are particular improvements that we recommend.

Section 5: Conclusions & recommendations

Overall, the data outlined above indicates that the Scottish Government's efforts to introduce the SLW for adult social care workers is a progressive policy, but one that is marked by a lack of consultation, transparency and coordination between and within the different parties. As a result, providers report increasing insecurity and a number of unintended consequences for employment. In the former case, uncertainty over the receipt of resources from contracting authorities is leading to cash flow problems and a minority of providers handing back contracts. In the latter case, employment effects include a loss of control over pay determination, dealing with the fallout from late payment of SLW, the narrowing of differentials, pressures on sleepovers, as well as uncertainty concerning funding for them, pressure to resource the SLW from organisational/workforce reforms and some changes to other terms and conditions. There are fears across providers and some representatives of contracting authorities that the proposed move to 'business as usual' to resource the SLW will exacerbate these problems, challenging the sustainability of the policy.

While the authors recognise the difficult funding situation faced by all levels of government, they nevertheless put forward the following reforms to improve the implementation of the policy.

- 1 If the policy of resourcing the SLW through 'business as usual' is to become the new norm, then it is recommended that a process of detailed monitoring by the Scottish Government keep under review whether local authorities are adequately supporting providers to pay the SLW.
- 2 In the event of a move away from 'business as usual' and continuation of separately identified funding, consideration should be given to how this funding is distributed. In particular, it is argued that any distribution formulae should take into account the degree to which services in local authority areas are outsourced as well as issues such as geography, deprivation and need.
- 3 Examine the feasibility of increasing coordination among local authorities with regard to the timing of increases in hourly rates (and contract pricing more generally) with the aim of reducing the scale and complexity of administrative demands facing providers dealing with multiple local authorities.
- 4 All partners in the social care market engage in meaningful discussions regarding the establishment of a fuller and mutually agreed template that recognises the costs of providing satisfactory levels of care. The development of such a template should be flexible and take account of the need to:
 - Consult with providers over the costing methodologies being utilised and the way in which services are to be delivered;

- Ensure costings are not significantly out of line with those applying across the country, unless such variations are adequately justified in particular regions/local authority areas;
 - Enable contract costings to vary appropriately with the types and intensity of services being provided;
 - Pay due regard to the issue of differentials and associated on-costs;
 - Make provision for contract prices to be adjusted to take account of subsequent relevant cost increases that are out of the control of providers; and more widely
 - Ensure services are being procured through procedures that accord due weight to workforce matters, including 'fair work principles'.
- 5 To underpin the above considerations relating to differentials, and 'fair work', the partners should embark on discussions to introduce national collective bargaining, or some other form of central coordination of pay and other terms of conditions for different categories of care staff.
- 6 Change procurement guidance to give greater weighting to workforce matters, as some local authorities are perceived to be overly focussed on driving costs down, and place greater scrutiny on public service agencies with regard to the weighting they place on workforce matters when assessing contracts.
- 7 When considered in conjunction with other points raised in this section of the report, these views suggest that in the drafting of any future Joint Guidance on the payment of the SLW, consideration be given to the following issues:
- Reducing the number of funding options and/or being more prescriptive in how they are detailed;
 - Reconsidering the correctness of the advice provided regarding the legality under EU law of imposing the SLW as a tender condition and more particularly considering whether that advice currently provided is overly cautious;
 - In reconsidering the correctness of current legal advice on imposing the SLW as a tender condition, it is essential that any change must also recognise the need for the Scottish Government and local authority funders to adequately resource contracts so that the financial burden and risks are not passed onto providers;
 - Including some discussion of how payment of the SLW by providers is to be supported by local authorities and IJBs in a 'business as usual' funding environment;
 - Updating the guidance to encompass the current positions regarding the payment of the SLW for sleepovers and travel time, and provide better guidance on its application to the former;

- Providing a clearer definition of those categories of workers covered by the government's SLW policy;
- Detailing clearer and stronger expectations regarding:
 - Consultation with providers by local authority funders about funding proposals and decisions;
 - Disclosure of the basis on which hourly rates are calculated;
 - The need for rates to take account of differentials and on-costs like pension contributions and National Insurance payments;
 - The timing with which SLW related pay increases are fed into the hourly rates of providers; and
 - The actions that should be taken to monitor the extent to which providers do in fact pay the SLW to relevant categories of staff.

Future areas of research

Finally, arising from the issues identified in this study, it is suggested that the following issues could usefully form the subject of future research:

- To what extent have pay increases generated by the SLW improved the income of those receiving them, once account is taken of any associated cuts to benefits and removal of sleepovers?
- What happens to services and workforce in the event that contracts are handed back by providers?
- How far are local authority funders changing their approaches to costing services, and to what extent are these leading to a change in the balance between price and quality considerations when awarding contracts?
- To what extent will 'business as usual' lead to changes in working practices, terms and conditions and service design among outsourced social care providers?

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