



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

The Rt Hon Nicky Morgan MP  
Chair, Treasury Committee  
House of Commons  
London  
SW1A 0AA

7 March 2018

Dear Nicky,

#### PAYMENT OF THE NATIONAL MINIMUM WAGE FOR SLEEP IN SHIFTS

1. During my evidence to the committee on childcare, I said that I would write to you with further details on the issue of sleep in shifts.
2. I am aware from correspondence and discussions that I have had, that many of our colleagues share concerns on this issue. It is clearly important that we look seriously at the impact it might have on private and charitable providers who look after some of our most vulnerable older and disabled adults.
3. That is why we have already taken several steps to support affected providers and ensure that we have some time to consider the issue. Firstly, we agreed to waive any financial penalties for non-compliance associated with sleep in shifts in the social care sector that took place before July 2017. Case law has evolved over several years on this matter, and the Government clarified its guidance in February 2015. Fundamentally, the requirement to pay the NMW is set out in regulations and all employers are required to follow this.
4. Secondly, we have created a Social Care Compliance Scheme (SCCS) which offers these providers the time to conduct a self-review, with access to HMRC technical support and then pay arrears by March 2019. Last year the Departments for Health and Social Care and Business, Energy and Industrial Strategy,



announced that that the government will, in the meantime, consider options to minimise any impact on the sector and open discussion with the European Commission to determine whether any support, if deemed necessary, would be subject to EU state aid rules. This work is being led by the Department for Health and Social Care.

5. Since then, the Department has opened discussions with the European Commission. They have also launched the next phase of market analysis, being undertaken by Frontier Economics and LaingBuisson, which will run to the beginning of April. While the first set of analysis undertaken by Deloitte was useful, it was necessarily limited by the requirement to obtain evidence in a very short space of time over the summer and the second phase will give providers longer to respond and us a much wider sample, increasing the strength of our evidence base.

Best wishes,

A handwritten signature in blue ink, appearing to read 'Elizabeth Truss'.

RT HON ELIZABETH TRUSS MP