

Taylor Review on Modern Employment Practices

UNISON Submission

May 2017

1. UNISON is the UK's largest public service union with 1.28 million members. Our members are people working in the public services, for private contractors providing public services and in the essential utilities. They include frontline staff and managers, working full or part time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector. As a trade union working to tackle exploitation, bad conditions of service and to help vulnerable workers, UNISON welcomes the opportunity to comment on any attempts to tackle labour market exploitation.
2. UNISON will focus its evidence on the exploitation of care workers and the need to improve wage slip transparency, given the sheer scale of the problem. No less a body than the National Audit Office has reported that up to 220,000 homecare workers in England are illegally paid below the National Minimum Wage (NMW)¹.
3. In doing so, we highlight worsening conditions in one part of the labour market, but this is not an isolated phenomenon. UNISON believes that the rise of insecure, low paid or stagnating wages has had a significant impact on the experience of work for too many workers in the UK.

General Recommendations

4. UNISON therefore also makes a number of general recommendations:
 - The rules on employment status should be modernised to ensure that all working people, regardless of the nature of their employment relationship, are entitled to the same decent floor of employment rights;
 - Measures should be adopted to ensure that workers in low paid jobs do not lose out on state benefits when they are unable to work, due to sickness, maternity and paternity leave or in retirement;
 - The government needs to tackle the problems of growth in false-employment which result in a loss of rights and benefits for workers, a loss of revenue for the exchequer and a loss of competitiveness for reputable businesses who are undercut by rogue firms;

¹ Adult Social Care in England: Overview, National Audit Office March 2014
<https://www.nao.org.uk/wp-content/uploads/2015/03/Adult-social-care-in-England-overview.pdf>

- Companies and public bodies should be required to report on the use of zero and short hour contracts and agency work in annual reports, including in their supply chains.
- Workers employed on zero and short hours contracts should have a right to be paid a premium for any non-contractual hours worked and compensation for shifts cancelled at short notice. They should also have a day one right to a written statement setting out pay and conditions, including expected hours of work.
- The government should also as a matter of urgency review tax rules to clamp down on false self-employment or avoidance schemes which incentivise the use of insecure forms of work;
- Policies should be adopted to assist unions to organise in insecure workplaces. Trade unions should have a right to access workplaces to tell individuals about the benefits of joining a union - and all workers should have a right to be represented by unions in the workplace.
- The Government should also strengthen economy wide mechanisms for worker voice, including restoring ACAS' duty to promote collective bargaining; requiring companies to include elected worker representatives on boards; and pilot new sectoral bodies which brings together business and unions to negotiate for better pay and conditions in low paid sectors.
- There is a positive role for public procurement in raising standards and eliminating insecure work.

Tackling exploitation in social care

5. UNISON sets out detailed evidence and analysis of exploitation in the social care workforce within this submission, including detailed recommendations, which includes:
 - Tackling the widespread non-compliance with the National Minimum Wage (NMW) in the care sector by making regulations (as provided for by section 12 of the 1998 NMW Act) requiring employers provide their workers with a statement demonstration compliance with the NMW. This should be the basis of a Government's potential pay slip pilot in the social care sector. UNISON has urged the Government to make sure employers pay slips are as clear, simple and transparent as possible utilising the power in s12 NMWA to make regulations for this purpose. UNISON considers that improving pay transparency is a vital step in improving enforcement.
 - HMRC action against care employers who do not maintain pay records which are able to demonstrate that they are paying care workers in compliance with the minimum wage. Allowing care employers to not maintain sufficient minimum wage pay records is at the heart of the

problem of the widespread levels of non-compliance in the sector. There should be rigorous enforcement on the issue of record keeping.

- UNISON believes that the care sector needs to be funded so it can deal with the new National Living Wage and the years of cuts that the sector has endured to prevent the further rationing of social care provision. UNISON notes that the Scottish Government has not only introduced a Scottish Living Wage across the social care sector, but extra money has also been provided to employers to help fund this commitment.²

Enforcement

6. UNISON also believes that additional steps should be taken to ensure that HMRC improves its work around enforcing the NMW and that councils also commission in a more responsible manner which ensures NMW compliance. These steps should include:

- Given the scale of non-compliance with the NMW in the care sector and the impact it has on care standards, when an employer has been found to be non-compliant with the NMW, HMRC should extend their investigation to ascertain the level of arrears owed to all of the workforce and ensure that all arrears are paid to the workers rather than allowing the employer to self-correct.
- If HMRC is unwilling to extend their NMW investigation to cover all the workforce when they identify non-compliance for an individual care worker then they should be made to carry out assurance checks on employers who have self corrected and publish the results of these findings. They should also strengthen the assurance process by increasing the range of information sources HMRC uses to monitor self-correction by speaking to local trade unions in addition to the care workers.
- HMRC should keep details of the number of care workers (both homecare and residential care) who call the Pay and Rights Helpline. Despite being able to give details in 2013 of how many homecare workers rang the Pay and Rights Helpline to complain about non-payment of the NMW the then Department for Business, Innovation and Skills claimed that information is no longer collected³. UNISON believes that collecting this information is vital as it can help to provide

² <https://news.gov.scot/news/living-wage-for-care-workers>

³ House of Commons, Hansard, 10 June 2013,

<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130610/text/130610w0002.htm>

a sense of the levels of awareness about non-payment of the NMW in the care sector and the willingness of care workers to make complaints themselves to HMRC.

- Support the Low Pay Commission's recommendation that the Government establishes a formal public protocol for HMRC to handle third party whistleblowing on breaches of the NMW, which should include arrangements for giving all possible feedback to relevant third parties and appropriate continuing involvement in any resulting casework.
- HMRC should also publish how many social care employers participated in the Government's National Minimum Wage campaign which commenced in July 2015, how many care workers were identified as being paid below the NMW and what level of arrears was paid to them.
- The Care Quality Commission to be given the power to inspect how local authorities commission care services in order to help eradicate poor commissioning practices which significantly contributes to widespread non-compliance with the NMW in the care sector.
- Transparency around the rates councils pay their providers, including the publication by each council of a breakdown showing how the fees paid cover pay, travel time, sleep-ins, other conditions, overheads and assumed profit margins
- Spot inspections of provider payroll records, provision of clear and understandable payslips and time sheets to staff should be carried out by councils, and measures to ensure providers allow trade union representatives to consult staff to ensure that the law is being complied with
- Councils should be told to carry out regular anonymous surveys of staff working for commissioned providers in conjunction with local trade unions to identify any risks of non-payment of the NMW.

Ethical Care Charter

7. In addition to the steps already outlined to tackle minimum wage non-compliance UNISON believes that the exploitation of care workers could be tackled by the implementation of a charter for care workers across the UK inspired by our Ethical Care Charter for homecare⁴. It has been adopted already by 28 Councils.

⁴ <https://www.unison.org.uk/content/uploads/2013/11/On-line-Catalogue220142.pdf>

8. The Ethical Care Charter is a set of commitments that councils make which fix minimum standards that will protect the dignity and quality of life for those people and the workers who care for them. The over-riding objective behind the Charter is to establish a minimum baseline for the safety, quality and dignity of care by ensuring employment conditions which a) do not routinely short change clients and b) ensure that the recruitment and retention of a more stable workforce through more sustainable pay, conditions and training levels.

Employment Tribunal Fees

9. Historically, Employment Tribunals have been a forum where workers and employers can seek to obtain justice adjudicated by a legal expert, a person with experience of business and a trade union / workers' representative. The aim was to provide the means for the effective, speedy, informal and inexpensive enforcement of rights for employees and worker.
10. The introduction of fees in July 2013 in Great Britain (but not Northern Ireland) has resulted in a dramatic and continued fall, averaging at about 70%, of all claims brought to Employment Tribunals. There has been an even greater drop in claims brought by women, with some quarterly statistics showing a 90% drop in sex discrimination claim. This is clear evidence that fees are pricing people out of justice.
11. Abolishing Employment Tribunal Fees is the essential first step to enabling workers to seek workplace justice. It is the most vulnerable and low paid of workers who face the highest barriers and face situations where fees are larger than the amount of lost wages claimed.

Background

12. UNISON has been documenting the widespread abuse and exploitation of care workers in recent years alongside the damaging consequences this has for recipients of social care. Given the demographic changes in our society we will need at least an extra one million care workers by 2025. However, the care sector has one of the highest turnover rates in the economy and has sizeable vacancies rates due to the poor treatment of the workforce. Clearly this situation must be addressed for the good of the care workforce and care recipients as well as for the future viability of our social care system.
13. In this part of our submission we mainly focus on the problems facing the care workforce in relation to the endemic levels of non-compliance with the minimum wage, along with the problems caused by the widespread use of

zero hours contracts and poor standards of training. We also put forward practical solutions to solving these problems.

Non-compliance with the minimum wage

14. The UK's growing care workforce plays a vital role in our society. There are currently over 1.5 million care workers in England alone and the need for them will grow as our population ages.
15. Homecare workers care for elderly and disabled people in their own homes and help keep them out of far more costly options such as hospital and residential care. One of the reasons why additional pressures are currently being placed upon NHS services is the lack of homecare packages that could be put in place for people who are ready to be discharged. The homecare system is in a state of crisis with major recruitment and retention problems.
16. UNISON believes that NMW non-compliance is significantly undermining care standards and condemning a large proportion of the workforce to poverty. UNISON has identified non-compliance in all the major homecare providers in the UK. These providers have also failed to produce workers with their national minimum wage records upon request for inspection in breach of their statutory obligations.

The problem

17. The National Audit Office has reported that up to 220,000 homecare workers in England are illegally paid below the National Minimum Wage (NMW)⁵.
18. Investigations by Her Majesty's Revenue and Customs (HMRC) of care providers between 2011 and 2015 have found that 41% were guilty of non-compliance with the NMW⁶. The Resolution Foundation has calculated that care workers are collectively cheated of £130m a year due to sub minimum wage pay⁷.
19. UNISON has identified non-compliance with the minimum wage in all of the largest homecare providers in the UK in various different parts of the country; Allied Healthcare, Mears, Sevacare, Carewatch and the City and County Group.

⁵ Adult Social Care in England: Overview, National Audit Office March 2014

<https://www.nao.org.uk/wp-content/uploads/2015/03/Adult-social-care-in-England-overview.pdf>

⁶ National Minimum Wage Low Pay Commission Report Spring 2016, The Low Pay Commission, March 2016

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507455/10493-TSO-Low-Pay-ACCESSIBLE_05.pdf

⁷ The scale of minimum wage underpayment in social care, Resolution Foundation, Feb 2015, <http://www.resolutionfoundation.org/publications/the-scale-of-minimum-wage-underpayment-in-social-care/>

20. Furthermore, there is a major problem in the care sector with confusing pay slips and a lack of pay transparency. A UNISON survey showed that around two thirds of homecare workers cannot tell from their payslips whether they are being paid for all the hours they have worked. The lack of pay transparency in the sector is allowing employers to mask or hide non compliance from the workforce.
21. Illegally low pay for care workers plunges them into poverty, causes high staff turnover rates (currently at 33% in homecare as of March 2017) and has a detrimental impact on care standards. Too many good experienced care workers are forced to leave the sector because they cannot afford to stay.
22. Not paying for travel time, even though it is working time and should be included in any NMW compliance calculation, encourages the practice of 'call clipping' whereby homecare workers leave their visits early in order to cut down on the amount of time they have to spend working for free. The National Institute for Health and Care Excellence recently issued clinical guidance for homecare where it was stated good homecare provision should

"Ensure service contracts allow home care workers enough time to provide a good quality service, including having enough time to talk to the person and their carer, and to have sufficient travel time between appointments[2]. They should ensure that workers have time to do their job without being rushed or compromising the dignity or wellbeing of the person who uses services."

Poorer levels of care in the social care system inevitably lead to more pressure and costs being placed upon the NHS.
23. *The Future Care Workforce* report by the International Longevity Centre found that the adult social care sector in England will need to add approximately 1 million workers by 2025 in response to population ageing and the implied increase in the numbers of people with disabilities⁸. Any efforts to try and recruit more staff are doomed to fail unless the Government takes a lead in ending the endemic practice of illegal pay in the care sector.
24. The combination of years of cuts to council funding and the introduction of the National Living Wage of £7.50 an hour from April 2017 has also led to warnings that this problem will be further exacerbated.

Why is the Government failing to enforce the NMW in the care sector?

A failure to tackle the largest homecare providers

⁸ The Future Care Workforce, International Longevity Centre 2014
http://www.ilcuk.org.uk/images/uploads/publication-pdfs/Future_Care_Workforce_Report.pdf

25. Thanks to pressure on the Ministers from Labour MPs in the last Parliament, the previous Government ordered HMRC to carry out a proactive investigation into the six largest care providers to see if they were paying their workers below the NMW.
26. The orders to carry out the investigations was made in February 2015. UNISON only received confirmation in a meeting with the Business Minister Margot James MP in January 2017 that the investigations had finally been completed. Despite UNISON identifying multiple instances of non-compliance and taking forward legal claims against Allied Healthcare, Mears and City and County Group companies we understand that HMRC gave these companies a clean bill of health.
27. Similarly another major homecare provider, Mihomecare, actually admitted in their internal documents that it was not compliant with the minimum wage. A report by the BBC stated that according to a leaked document MiHomeCare (a major homecare provider owned by Mitie) had examined the pay of 44 of its workers in Penarth in south Wales. It found that they are "likely" collectively owed up to £80,000 (an average of approximately £1,800 per care worker) because they were not paid for time spent travelling between appointments with their clients⁹. In March 2016 the BBC reported that they settled out of court with a homecare worker for £1,250 because she was not paid for her travel time between visits¹⁰. Again, despite this HMRC has failed to take any action against Mihomecare.
28. To date HMRC have only identified non-compliance with Sevacare for just 1 homecare worker and with Carewatch for just 4 homecare workers. In contrast to HMRC's failure to take meaningful action against any meaningful large care employers, UNISON have recently launched the largest minimum wage claim to date in the care sector¹¹ on behalf of 43 homecare workers employed by Sevacare and has claims for multiple members against the other major providers in the Employment Tribunals at present.
29. Allied Healthcare recently claimed that they have "automated payment top up scheme, agreed by HMRC, which ensures staff do not fall below the minimum wage once their travel time is included." However, HMRC has denied that it has any sort of agreement with Allied Healthcare replying to a recent UNISON Freedom of Information request with "HMRC do not have any policies or memorandums of understanding with social care providers specifically regarding travel time and the national minimum wage".

⁹ MiHomeCare Staff paid less than the minimum wage, BBC, 13 March 2015, <http://www.bbc.co.uk/news/business-31869447>

¹⁰ Care company MiHomeCare could face legal action over wages, BBC, 17 March 2016 <http://www.bbc.co.uk/news/business-35821338>

¹¹ <http://www.bbc.co.uk/news/uk-37350750>

Just a small number of social care employers named and shamed

30. Since the naming and shaming of employers with NMW breaches by the then Department for Business Innovation and Skills commenced in March 2014 only 70 separate small social care providers have been exposed.
31. Of the 70 social care companies that have been named and shamed 41 of them have been identified as owing arrears to just 1 care worker at their company. Given that care workers will routinely be employed on the same terms and conditions this raises serious questions as to why HMRC are failing to extend their investigations to see whether other care workers at these companies are also being paid below the NMW and whether they are consequently failing to recover arrears for these workers.

HMRC is allowing non-compliant care providers to 'self-correct'

32. This limited approach to identifying and recovering arrears for care workers is because of HMRC's preference towards using self-correction. An answer to a Parliamentary Question by Paul Blomfield MP revealed the details of this process. In many cases HMRC will recover arrears for only the care worker who had contacted them to make a complaint about non-payment of the NMW. HMRC does not take action on behalf of the other workers at that same company, instead the employer is allowed to self-correct and is supposed to pay back the arrears owed to other workers with little oversight¹². So social care employers can be publicly named and shamed for non-payment of the NMW with great fanfare from the Government, as was the case with the employers above, but then HMRC simultaneously trusts them to pay back the money they owe to the rest of the workforce.
33. The answer to the Paul Blomfield MP question above revealed that HMRC do have an assurance process in place to ensure that employers fully self-correct but UNISON believes that this is highly insufficient. Firstly, when asked how many named and shamed employers had been followed up to ensure that they had paid arrears owed to their full workforce they were unable to provide any details and admitted:

"HMRC are unable to provide an exact figure for how many of the 92 employers have been investigated beyond the original complaint"

34. The response to a further question from Paul Blomfield MP provided details of the assurance process that is in place and the weakness of it.
- "The assurance process involves Her Majesty's Revenue and Customs (HMRC) performing a sample check that arrears have been paid to workers"*

¹² House of Commons, Hansard, 2 March 2016

<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-02-23/28094/>

under self-correction. Workers are selected and contacted by telephone and correspondence to confirm that they have received the arrears they are owed, and the amount that the employer has reported. If HMRC do not receive a self-correction report from the employer they will remind the company and then follow up with an unannounced visit, where appropriate. If HMRC has concerns following the above processes then an investigation is re-opened¹³."

35. A recent Parliamentary Question also revealed that employers who self-correct are not subject to fines for the arrears they identify through the self-correction process¹⁴. Neither are details of how many extra workers employers have been forced to pay arrears back to via self-correction revealed by the Government.

Why self-correction does not work in social care

36. There are significant problems in taking this approach with social care employers. When care workers are paid below the NMW many will be unaware how much they are owed as arrears because many currently aren't provided with a proper break down of all their working time (in homecare this would be the time spent in the houses of homecare users plus their travelling and waiting time between visits) and the pay slips are often extremely confusing and opaque.
37. This could therefore result in an employer who has been asked to self-correct by HMRC to only paying their workers a fraction of the arrears that they are actually owed. Then when HMRC contact the care workers to carry out their cursory assurance checks the care workers will not be in a position to properly gauge whether they are being paid all the arrears they are owed.
38. However, this allows HMRC to tick their box saying that they have carried out their assurance checks without actually doing any proper investigations. There is nothing in place to check that the arrears being paid to the workers is actually the correct amount and a reflection of the sums they are owed for the work that they have done.
39. The Low Pay Commission has made a recommendation to make payslips for care workers more transparent and the Government is currently considering a pilot scheme in the care sector. UNISON has urged the Government to make sure employers pay slips are as clear, simple and transparent as possible utilising the power in s12 NMWA to make regulations for this purpose.

¹³ House of Commons, Hansard, 9 March 2016

[http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-04/29823/?cdosy1=TQ1e_QA89GCimA4MOKcYFeZz_mvZc04NJL1Lj_I2SooOGEcdueoczeZbGh)

[04/29823/?cdosy1=TQ1e_QA89GCimA4MOKcYFeZz_mvZc04NJL1Lj_I2SooOGEcdueoczeZbGh](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-04/29823/?cdosy1=TQ1e_QA89GCimA4MOKcYFeZz_mvZc04NJL1Lj_I2SooOGEcdueoczeZbGh)

[OWU-cqr_sdZZUBmyuX20gpbHvFfM1VI3ObRXNabKOWyAMZT-08uYjlyBu46dXtTLIDhay](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-02-23/65376/)

¹⁴ House of Commons, Hansard, 23 February 2017
<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-02-23/65376/>

UNISON considers that improving pay transparency is a vital step in improving enforcement.

Problems ensuring that all that care workers are paid the arrears they are owed

40. In early 2017 the Government launched a new campaign called "Check Your Pay" designed to ensure that workers are not paid below the statutory minimum wage. However, there is a major problem with payslip transparency in the homecare sector. UNISON has won a number of cases across the social care sector, including with all the largest employers, on behalf of our members where they have not been paid the National Minimum Wage. A common theme with all of these cases is that the amount of money that their payslips said they were owed did not correspond with the amount of money they were legally entitled to. This is largely because of the fact that travel time is not treated as working time by the majority of social care employers when it comes to the calculation of paying their workers and so is not paid for and by extension not listed on their pay slips.
41. A UNISON survey of 1,000 homecare workers in 2017 revealed that 63% could not tell from their payslip whether they were being paid for all the hours they worked. 63% also stated that they were only paid for their contact time with care users and not for their travel time.
42. UNISON has therefore been trying to determine whether homecare workers are being paid correctly by supporting members who submit statutory requests to inspect their National Minimum Wage records when they believe they are being under paid. Section 10 of the 1998 National Minimum Wage Act gives workers the statutory right to inspect their pay records if they believe they have been paid below the minimum wage. Employers have 14 days to produce records for inspection on receipt of a statutory request.
43. UNISON has made section 10 requests on behalf of workers at all of the major homecare providers in the UK
and and
failed to even acknowledge the request or provide a response. Of the two providers that did respond, one allowed the care worker to look at a small part of the selected records on a computer screen for 10 minutes and failed to provide access to the remainder or provide copies within the statutory timescale, and the second employer failed to produce records until a second request was made, and then provided a defective inspection. Failure to provide workers proper access to their pay records following a statutory section 10 request means that an employment tribunal can "make an award that the employer pay to the worker a sum equal to 80 times the hourly

amount of the national minimum wage". Currently this would equate to £600 per worker at each of the main homecare providers. However to bring a claim to enforce this right a worker must first pay £160 to lodge the claim and a further £230 by way of hearing fee at the Tribunal

44. Therefore, we have a situation whereby care workers who follow the Government's advice to check their pay are unlikely to be able to determine if they have been paid correctly due to the lack of pay slip transparency in the sector. They could then exercise a statutory right to access their pay records but as we have demonstrated our experience is that the main employers in the homecare sector are failing to comply with their obligations in respect of these requests. Finally although workers could seek to take their employer to the employment tribunal over the issue, fees would account for two thirds of the statutory award they could recover.
45. In the limited instances where NMW records were produced, UNISON's experience is that the records were indecipherable and could not be used to determine whether the employer was compliant with the minimum wage. UNISON believes that care employers are deliberately failing to compile clear and understandable minimum wage pay records in order to frustrate care workers and their representatives in their efforts to determine whether they are being paid legally. HMRC has failed to take action against care employers to ensure that they maintain proper pay records as the law requires. It is, after all, a criminal offence to fail to maintain NMW records.
46. UNISON believes that this clearly demonstrates why care employers must be forced to clearly demonstrate how they are compliant with the minimum wage on their workers pay slips so that workers know at the point of payment how their pay has been calculated.

Low levels of arrears recovered for care workers

47. Another problem with HMRC's approach to NMW compliance in the care sector is that they have consistently identified low levels of arrears that are owed to care workers. For the 70 social care employers providers that have been publicly named and shamed, the average amount of arrears owed to the care workers was just £190.98 each.
48. Beyond the naming and shaming scheme the Government has also said that over a longer period of time (2011-2015) that HMRC has identified just £1,749,975 of arrears for 8,698 care workers who have been paid below the NMW. This is an average of £201 per worker that has been recouped for care workers by HMRC¹⁵. This is in contrast to the £130m that the Resolution

¹⁵ National Minimum Wage Low Pay Commission Report Spring 2016, The Low Pay Commission, March 2016

Foundation estimates 160,000 care workers are collectively cheated of annually. Their conservative analysis estimates that the average rate of arrears owed to care workers is around £815 per year¹⁶. The BBC has recently reported on a group of homecare workers who are UNISON members who are owed up to £2,500 each as a consequence of being paid below the NMW because they were not paid for their travel time.¹⁷ A homecare worker in Greater Manchester, was awarded £3,250 for withheld travel time payments, equivalent to nearly 500 hours at the then national minimum wage rate of £6.70 per hour, by the major homecare provider Sevacare, when her case was brought by UNISON in March 2016.

Sub-standard commissioning guidance for local councils

49. The Government has also produced commissioning guidance for local councils to help address the problem but has failed to work with them adequately to put it into place:
 - a. *"When commissioning services, local authorities should assure themselves and have evidence that service providers deliver services through staff remunerated so as to retain an effective workforce. Remuneration must be at least sufficient to comply with the national minimum wage legislation for hourly pay or equivalent salary. This will include appropriate remuneration for any time spent travelling between appointments"*
50. An FOI request by UNISON carried out in September 2016 showed that 65% of councils in England do not make it a contractual condition for the homecare providers they commission to pay homecare workers for their travel time, a key driver for sub NMW Pay.

An over reliance on care workers making complaints to HMRC

51. The Government still primarily relies upon care workers ringing the HMRC's Pay and Rights Helpline before they will investigate care providers for non-compliance. However, many care workers are fearful of reporting their employer in case it jeopardises their employment, as a large proportion are now employed on zero hours contracts.
52. UNISON has represented care workers who have seen their hours cut as a consequence of reporting non-payment of the NMW. There is also low awareness that care workers should be paid for their travel time, and about

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507455/10493-TSO-Low_Pay-ACCESSIBLE_05.pdf

¹⁶ The scale of minimum wage underpayment in social care, Resolution Foundation, Feb 2015, <http://www.resolutionfoundation.org/publications/the-scale-of-minimum-wage-underpayment-in-social-care/>

¹⁷ MiHomeCare's staff £2,500 back pay for travel time, BBC, 8 January 2016, <http://www.bbc.co.uk/news/uk-wales-south-west-wales-35260953>

the Pay and Rights Helpline. As a consequence, a Parliamentary Question from 2013 revealed that only 11 homecare workers rang to complain in 2011-12, and a further 19 the following year¹⁸.

53. The alternative way to seek redress is for care workers to take their employer to an Employment Tribunal. UNISON has supported members doing this, but it has taken over a year for our members' cases to be resolved. A recent Parliamentary Question revealed¹⁹ that the average length of time of cases in employment tribunals related to non-payment of the National Minimum Wage between 2010 and 2015 was 46 weeks and in 2014-15 alone, the average time for cases was 74 weeks.

54. The presence of employment tribunal fees has added a further obstacle to these low paid and often vulnerable workers being able to access justice.

UNISON RECOMMENDATIONS

55. UNISON believes that the Government's approach to the problem of widespread non-compliance with the NMW in the care sector is not fit for purpose. A major change in policy is needed if the Government is serious about stamping out this deep rooted practice and protecting the legal rights of homecare workers which will help to significantly improve the standards of care they are able to provide for the elderly and disabled people they care for.

56. UNISON therefore believes that the Government should make regulations, as provided for by section 12 of the 1998 NMW Act requiring employers to provide their workers with a statement demonstrating compliance with the NMW. UNISON considers that this is integral to improving NMW compliance and enforceability.

57. Section 12 NMW provides that:

Employer to provide worker with national minimum wage statement.

(1) Regulations may make provision for the purpose of conferring on a worker the right to be given by his employer, at or before the time at which any payment of remuneration is made to the worker, a written statement.

¹⁸ House of Commons, Hansard, 10 June 2013,
<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130610/text/130610w0002.htm>

¹⁹ House of Commons, Hansard, 11 February 2016,
<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-02-03/25609/>

(2)The regulations may make provision with respect to the contents of any such statement and may, in particular, require it to contain—

(a)prescribed information relating to this Act or any regulations under it; or

(b)prescribed information for the purpose of assisting the worker to determine whether he has been remunerated at a rate at least equal to the national minimum wage during the period to which the payment of remuneration relates.

58. UNISON believes that it is essential that regulations are made as provided for under the Act. Employers are already required to pay workers the NMW, are required to maintain NMW records for a period of 3 years and have the payroll information to demonstrate compliance so it would not result in any increased burden upon them.

59. They would simply be required to provide workers with the details of a calculation of compliance that they must already be undertaking and provide it to the worker at the point of payment. By doing so, workers will be able to verify to their own satisfaction that they are being paid in compliance with the NMW. Where they are not, they will be better able to challenge that non-compliance in a timely manner. This is especially important given the current stance of HMRC to allow employers found to be non-compliant with the NMW to be able to self-correct for their wider workforce.

60. The extent of the problem of NMW non-compliance in the social care sector demonstrates that provision of this information on a voluntary basis is not sufficient. Workers are not being provided with information on NMW compliance, not least because NMW non-compliance is so endemic across the sector. Action must be taken and employers must be compelled, by law, to provide the information to workers at the point of payment.

61. UNISON strongly believes that by increasing transparency and requiring employers to provide this information would mean that the social care workforce would be able to be satisfied that they are being paid at least the NMW. Making employers demonstrate compliance would, in our view, be a significant step towards reducing the number of care workers being paid illegally, which would in turn help to improve care standards. It would also make cases where employers are not paying the NMW far easier to identify which will also assist with the enforcement process.

62. In the Low Pay Commission's recent report of Spring 2016 they also expressed support for having greater transparency around this issue stating:

“We recommend that the Government reviews the current obligations on employers regarding provision of payslips and considers introducing a

requirement that payslips of hourly-paid staff clearly state the hours they are being paid for.”²⁰

UNISON welcomes that the Low Pay Commission also recognises that this is a serious problem but calls for stronger action than the Government carrying out a review.

63. Beyond provisions being made around Section 12 of the 1998 NMW Act

UNISON believes that the care sector needs to be funded so it can deal with the new National Living Wage and the years of cuts that the sector has endured to prevent the further rationing of social care provision.

64. UNISON also believes that HMRC must take action against care employers who do not maintain pay records which are able to demonstrate that they are paying care workers in compliance with the minimum wage. Allowing care employers to not maintain sufficient minimum wage pay records is at the heart of the problem of the widespread levels of non-compliance in the sector. There should be rigorous enforcement on the issue of record keeping.

Other suggested actions

65. UNISON also believes that additional steps should be taken to ensure that HMRC improves its work around enforcing the NMW and that councils and the NHS also commission in a more responsible manner which ensures NMW compliance.

66. These steps should include:

- Given the scale of non-compliance with the NMW in the care sector and the impact it has on care standards, when an employer has been found to be non-compliant with the NMW, HMRC should extend their investigation to ascertain the level of arrears owed to all of the workforce and ensure that all arrears are paid to the workers rather than allowing the employer to self-correct.
- If HMRC is unwilling to extend their NMW investigation to cover all the workforce when they identify non-compliance for an individual care worker then they should be made to carry out assurance checks on employers who have self corrected and publish the results of these findings. They should also strengthen the assurance process by increasing the range of information

²⁰ National Minimum Wage Low Pay Commission Report Spring 2016, The Low Pay Commission, March 2016
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507455/10493-TSO-Low_Pay-ACCESSIBLE_05.pdf

sources HMRC uses to monitor self-correction by speaking to local trade unions in addition to the care workers.

- Given the scale of non-compliance with the NMW in the care sector HMRC should again keep details of the number of care workers (both homecare and residential care) who call the Pay and Rights Helpline. Despite being able to give details in 2013 of how many homecare workers rang the Pay and Rights Helpline to complain about non-payment of the NMW the then Department for Business claimed that information is no longer collected²¹. UNISON believes that collecting this information is vital as it can help to provide a sense of the levels of awareness about non-payment of the NMW in the care sector and the willingness of care workers to make complaints themselves to HMRC.
- Support the Low Pay Commission's recommendation that the Government establishes a formal public protocol for HMRC to handle third party whistleblowing on breaches of the NMW, which should include arrangements for giving all possible feedback to relevant third parties and appropriate continuing involvement in any resulting casework.
- HMRC should also publish how many social care employers participated in the Government's National Minimum Wage campaign which commenced in July 2015, how many care workers were identified as being paid below the NMW and what level of arrears was paid to them.
- The Care Quality Commission to be given the power to inspect how local authorities commission care services in order to help eradicate poor commissioning practices which significantly contributes to widespread non-compliance with the NMW in the care sector.
- Transparency around the rates councils pay their providers, including the publication by each council of a breakdown showing how the fees paid cover pay, travel time, sleep-ins, other conditions, overheads and assumed profit margins
- Spot inspections of provider payroll records, provision of clear and understandable payslips and time sheets to staff should be carried out by councils, and measures to ensure providers allow trade union representatives to consult staff to ensure that the law is being complied with
- Councils and the NHS should be told to carry out regular anonymous surveys of staff working for commissioned providers in conjunction with local trade unions to identify any risks of non-payment of the NMW

²¹ House of Commons, Hansard, 10 March 2016,
<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-04/29835/>

Zero hours contracts

67. The use of zero hours contracts in the care sector is widespread. A response from the former Care Minister Norman Lamb in 2013 to a Parliamentary Question revealed that 307,000 care workers in England are employed on zero hours contracts. This number has continued to grow in the subsequent years.
68. A UNISON survey of 1,000 homecare workers carried out between February and May 2017 found that 66% of private sector workers (which makes up the overwhelming majority of the sector) were employed on zero hours contracts.
69. Employing care workers on zero hours contracts provides uncertainty around what hours they will work. Uncertainty around their working hours also mean that many homecare workers are not allocated the same service users which makes it hard for them to develop bonds with their service users. Having continuity of care is valued extremely highly by people who are in receipt of homecare services. Zero hours contracts mean that many care workers do not enjoy basic workplace rights such as sick-pay and can lead them struggling to access benefits.
70. Zero hours contracts contribute to the perception that care work is not a desirable career choice and help to exacerbate other poor employment practices in the sector. For example, many care workers on zero-hours contracts are not entitled to sick pay. This fact, combined with very low rates of pay, means that many are forced to contemplate working whilst they are ill. Given that care workers now almost increasingly caring for users with high levels of care needs, this presents an enormous risk to service users. UNISON has received reports of clients picking up infections and illnesses from care workers who should not have been at work but felt they had no choice but to be. UNISON has also received reports from care workers who have been pressurised by their employers to work while ill.
71. Zero hours contracts may place staff in awkward difficult position if they seek to challenge a loss of hours (and therefore pay), because they are unable to seek unfair dismissal as they have not technically lost their job. UNISON has experience of a number of care workers having their hours significantly reduced after they have challenged their employer on the issue of non-compliance with the minimum wage. There can also be problems for staff in proving that they have lost sufficient employment in order to qualify for state benefits.
72. The Cavendish Review, commissioned by the previous Coalition Government was highly critical of the use of zero hours contracts in the sector, stating: *"It will not be possible to build a sustainable, caring, integrated health and social care system on the backs of homecare workers who have to travel long*

distances on zero hours contracts, to reach people who have to see multiple different faces each week"

Similarly, the then care minister Norman Lamb MP pointed out that zero hours contracts are in most cases "completely incompatible with a model of high quality care, in which the individual really gets to know their care worker."

Poor quality training

73. Many care workers are provided with inadequate levels of training which as well as being unsafe for them and their service users helps to foster the perception that the job role is not valued. The contrast with the amount of training that care workers in the NHS receive compared to social care workers is stark and helps further bolster the view that society does not value their job roles. In 2015 UNISON carried out a survey of 1,020 homecare workers²² from across the UK about the levels of training they are given to carry out their roles. The findings revealed that homecare workers are increasingly being asked to perform intimate procedures that would previously have only been carried out by registered nurses. Many are expected to provide this care with absolutely no training, in a rushed manner, whilst being paid poverty wages. In the worst case scenario this lack of training could have potentially fatal consequences for service users. At best the findings illustrated the lack of dignity that is being afforded to both service users and homecare workers.

74. The survey revealed that of the homecare workers who administer medication, 24% had received no training despite some administering controlled medication such as oramorph (liquid morphine) and insulin. Of the homecare workers who carried out the following tasks:

- 59% had received no training in how to attach or change a convener catheter
- 52% had received no training in how to undertake stoma care;
- 45% had received no training in how to change a catheter bag;
- 38% had received no training in how to carry out peg feeding.

75. Furthermore homecare workers who actually received some form of training to carry out these tasks also registered their dissatisfaction with the quality of the training they received:

- Only 46% stated the peg feeding training was good enough to help them do this task properly;
- Only 39% stated the stoma care training was good enough to help them do this task properly;

²² <https://www.unison.org.uk/content/uploads/2015/04/TowebUNISONs-Homecare-Training-Survey-Report.pdf>

- Only 47% stated that the changing a catheter bag training was good enough to help them do this task properly;
- Only 34% stated that the attaching or changing a convene catheter training was good enough to help them do this task properly;
- Only 64% stated that the administering medication training was good enough to help them do this task properly

76. UNISON also carried out a survey of 1,102 homecare workers about the lack of time they are given to provide care for service users and released the findings in January 2016:

- 74% of homecare workers who responded to the survey felt they did not have enough time to provide dignified care for the elderly and disabled people they visited:
- 58% had been asked to provide personal care in 15 minutes;
- 61 per cent said they had not had enough time to provide a dignified level of personal care to a service users aged over 90 years old;
- 57% of respondents had been asked to provide personal care in 15 minutes or less with an elderly person they have never met before. 85% said they regularly did not even have time for a conversation during some homecare visits
- 32% said they had no time to address people's personal hygiene needs such as washing
- 24% had no time to take people to the toilet. 49% said a quarter of an hour wasn't long enough to prepare a nutritional meal
- 49% the same proportion said the shortness of the visit meant there was no time to assess any change in the person's health.

77. Homecare workers found the limited time they are able to spend with each person distressing because 82% of the people they saw on their rounds suffered from dementia and more than three quarters (78%) had mobility issues. More than half (53%) were stroke victims, had mental health issues (51%) and 42 per cent had Parkinson's disease. Some had multiple conditions. Homecare workers also said that more than a third (37%) of the people they saw hardly ever had visits from friends or relatives, which is why they felt it was important to be able to spend time in each person's home. These problems, compounded by illegally low pay undoubtedly make it difficult to retain homecare workers.

A solution to the exploitation of care workers

78. In addition to the steps already outlined to tackle minimum wage non-compliance UNISON believes that the exploitation of care workers could be tackled by the implementation of a charter for care workers across the UK inspired by our Ethical Care Charter for homecare²³. The Ethical Care Charter is a set of commitments that councils make which fix minimum standards that will protect the dignity and quality of life for those people and the workers who care for them. The over-riding objective behind the Charter is to establish a minimum baseline for the safety, quality and dignity of care by ensuring employment conditions which a) do not routinely short change clients and b) ensure that the recruitment and retention of a more stable workforce through more sustainable pay, conditions and training levels. Given that councils are the main purchaser of care services across the UK it is clear that the state has the ability to set standards in large parts of this sector and can at least set minimum standards.

79. The implementation of charter for care workers across the UK would also improve the retention rates of care workers which would be good for care users and care employers. An analysis undertaken by Southwark Council after UNISON's Ethical Care Charter was adopted there highlighted improvements in retention. Islington Council which has also adopted the Charter has also had similarly positive feedback. As well as witnessing improvements in the morale of homecare workers, homecare providers commissioned by the Council have also reported significant improvements in staff retention rates since the Charter was implemented²⁴. One of the private providers commissioned by Islington Council pointed to notable improvements in staff well-being as a result of higher wages. Prior to introducing the London Living Wage turnover amongst its staff averaged over 10% but now it is less than 3%. The policy director of the provider stated that "retention and recruitment – serious struggles in social care – improved dramatically. Care workers became more motivated and so became more reliable, supportive, happier and healthier – all of which directly benefits service users...stable, reliable, high quality care services deliver improved outcomes for individuals and save the health and care system money." A near constant need to recruit and train new care workers across the sector due to the high levels of staff turnover is a source of huge expenditure for care employers.

80. The cross party Select Committee for Communities and Local Government also recently called for the introduction of a charter for care workers to help tackle the exploitation of care workers after drawing inspiration from UNISON's Ethical Care Charter. *"The high vacancy and turnover rates, particularly among nurses in social care, point to severe challenges in the*

²³ <https://www.unison.org.uk/content/uploads/2013/11/On-line-Catalogue220142.pdf>

²⁴ Living Wage a welcome boost for homecare firms, staff and clients in Islington, Islington Council, November 2015 <http://www.islington.gov.uk/islington/news-events/news-releases/2015/11/Pages/PR6221.aspx>

social care workforce. We heard that a range of factors contributed to these. These included low pay not reflecting the amount or importance of the work involved, low status, poor terms and conditions, and lack of training opportunities and career progression". The Select Committee went on to say:

"The Government, working with the Local Government Association, should publish a care workers' charter, which would set out what care workers can expect from their employer on wage levels, employment terms and conditions, training and career development."²⁵

81. UNISON believes Government should not carry on looking the other way any longer whilst such widespread levels of abuse and exploitation occurs in the sector. Given the state, via local councils, is the main purchaser of care services and has the ability to shape and influence care markets it must take steps to improve the treatment of the care workforce.

²⁵ Adult Social Care, Communities and Local Government Committee, March 2017, <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmcomloc/1103/1103.pdf>