Mr Joe Cooper
Policy Adviser and Communications Lead Low Pay Commission
8th Floor, Fleetbank House,
2-6 Salisbury Square,
London, EC4Y 8JX

Sent by e-mail to: joseph.cooper@lowpay.gov.uk

1 June 2018

Dear Joe,

Low Pay Commission Consultation 2018

Thank you for offering us the opportunity to submit evidence to the Low Pay Commission's Annual Consultation on the levels of the National Minimum Wage Rates, including the National Living Wage which I have pleasure to do on behalf of the United Kingdom Homecare Association (UKHCA).

The United Kingdom Homecare Association (UKHCA) is the national professional association for organisations which provide social care, including nursing care, to people in their own homes.

Yours sincerely,

Terry Donohoe

Terry Donohoe
Policy Officer

Direct line: 020 8661 8164
E-mail: terry.donohoe@ukhca.co.uk
Twitter: @ukhca

Low Pay Commission consultation questions 2018: United Kingdom Homecare Association (UKHCA) Response

Please consider the questions below when responding to the LPC's 2018 consultation. You can answer the questions that relate to you directly or use them as a starting point for your submission. If there is anything you would like to tell us that is not covered by the questions, do not hesitate to do so.

About you

1. Please provide some information about yourself or your organisation. If possible, include relevant details about your location, the occupation or sector you are involved in, your workforce if you are an employer (including number of NMW/NLW workers), and anything else you think is relevant.

United Kingdom Homecare Association (UKHCA) is the professional representative organisation for independent, voluntary and statutory sector providers of homecare services, covering a total of 2013 locations across all four UK administrations.

UKHCA provides technical and advisory support to member organisations of all sizes, from small and medium enterprises in the independent and voluntary sector to large multi-branch providers offering many thousands of hours of homecare per week. The majority of their workforce are employees and likely to undertake 'time work' for the purposes of the NMW.

We also represent a numerically smaller number of providers of "live-in" homecare, whose workforce will be engaged in "unmeasured work" for the purposes of the National Living Wage (NLW). A small proportion of those organisations act as Employment Agencies, introducing workers to be employed by private individuals.

UKHCA contributes to a wide range of policy fora and working groups, convened by Government regulators and arms-length bodies at national level whilst taking an active role in responding to consultations that

promote and highlight the benefits of a stable and viable social care market to all levels of Government and statutory agencies.

UKHCA also undertakes analysis of the operating environment for homecare providers, including its impact on businesses, the social care workforce and people who use services

Economic Outlook

2. **What are your views on the outlook for the UK economy, including employment and unemployment levels for, the period up to April 2019, and the period up to April 2020?**

In November, the OBR said it was expecting the economy to expand by 1.5% in 2017 and by 1.4% in 2018. The latest official figures from the Office for National Statistics show that growth was actually 1.7% in 2017 and the consensus among City, business and academic economists is that something similar is likely in 2018.

In its November 2017 report, the OBR forecast productivity at 0.7% for the next 5 years.

However, the ONS recorded a growth of 0.8% in the fourth quarter of 2017, following 0.9% growth in the third quarter.

In its April Monthly commentary, published on 15 May 2018, the ONS stated that the preliminary estimate of gross domestic product (GDP) shows that the UK economy grew by 0.1% in the first quarter of 2018, the weakest quarterly growth since 2012.The unemployment rate was at its lowest since 1975, at 4.2%, in the three months to February 2018. The number of unemployed fell by 46,000 to 1.42million.

The number of people in work increased by 197,000 in the first quarter of 2018 to 32.3 million. The ONS said that the75.6% of people aged from 16 to 64 years were now in work, the highest since records began in 1971.

However, many people still have incomes below where they were a decade ago.

Growth in employment is still being driven by UK nationals, with a slight drop over the past year in the number of foreign workers.

In adult social care, the National Audit Office reported that 83% of the workforce were British nationals with 7% from other European Economic Area (EEA) countries and 9% from non-EEA countries.[1] However, there was wide regional variation in the distribution of non-British nationals: 96% of the workforce in the North East were British compared with 61% in London.

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[1] Comptroller and Auditor General 6 February 2018 **The adult social care workforce in England**

At its meeting on 30 April 2018 the Public Accounts Committee took evidence on the state of the adult social care workforce in England and noted that future immigration policy after leaving the EU will potentially affect the care sector.[2] It recommended that:

"…the Department of Health and Social Care needs to understand fully the impact the UK's departure from the EU and future immigration policy, could have on the care workforce at both national and regional levels. It should put plans in place to address any shortfalls that may arise, to ensure that there is a sustainable workforce to meet the populations' future care needs…"

For the homecare sector the combination of low unemployment, competition for workers and wage pressures are recognised by the statutory sector purchasers, largely local authorities and to a limited extent, Clinical Commissioning Groups, but are not acted upon by way of fees which cover providers' actual costs and the increasing competition for workers in the local labour market.

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[2] Public Accounts Committee 30 April 2018 **The adult social care workforce in England** Thirty-Eighth Report of Session

3. What has been your experience of wage growth and inflation in the last year and what do you forecast for the next couple of years?

The ONS identified that average total pay for employees in Great Britain, in nominal terms, increased from £376 per week in January 2005 to £515 in May 2018; an increase of 36.8%.[3] Over the same period the Consumer Prices Index, including owner occupiers' housing costs (CPIH) increased by 34.2%.

However, the majority of homecare (70%) is purchased by councils. The fees they pay are impacted by budgetary constraints which, in turn, impact on workforce wages.

Impact of the National Living Wage and National Minimum Wage

4. What has been the impact of the NLW since April 2016? The rate was set at £7.20 in 2016, rose to £7.50 in 2017 and will rise to £7.83 in April 2018. Our critical interest is views or data on the effects on employment, hours and earnings. We are also very interested in evidence on pay structures (including premium pay) and benefits, outsourcing, differentials, progression, job moves, training, contract type, business models, productivity, prices or profits.

UKHCA has previously expressed both our support for the National Living Wage (NLW) and our concerns to the Commission that the NLW has evolved into a significant operational issue for the homecare sector because of the interaction between pay propelling policy and the continuous pressure local authorities exert on providers to reduce costs and to make efficiency savings. This has not abated since our previous response to the Commission.

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[3] Office for National Statistics May 2018 **Statistical Bulletin**: **UK labour market**

Current system

If the current funding system for social care is maintained, meeting future pressures on social care would require an estimated increase in funding of 0.4% of GDP by 2033−34, equivalent to around £8 billion in today's terms, or £280 per year for each household in the UK. If the system is reformed to increase the generosity of the public offer, spending on social care would need to increase by even more.[4]

Local authorities commission in excess of 70% of homecare across the UK, which is effectively a monopsony market. Fee rates still rarely take into account payments for travel and 'down time' between assignments despite this being 'working time' for the purposes of the National Minimum Wage Regulations.

For many providers meeting statutory obligations continues to be operationally difficult because of the unresponsiveness of councils to market signals. A distorted market continues to operate because of the power that their dominant purchasing position gives councils, particularly where increased costs, such as statutory wage increases, cannot be passed on to the purchaser, as would happen in an equitable market.

[4] The Institute for Fiscal Studies May 2018 **Securing the future: funding health and social care to the 2030s**

Care Quality Commission (CQC) view

Local authority fee rates continue to be obstinately low despite adverse comment from parliamentarians, a number of well-founded investigations and evidence from professional associations. In 2016, the statutory regulator, Care Quality Commission (CQC), stated that social care was at a "tipping point" – a point where deterioration in quality would outpace improvement and there would be a significant increase in people whose needs weren't being met. CQC used five pieces of evidence, including local authority funding levels as well as information from their own inspections and external data, in order to determine the impact on people's care.

In 2017 CQC reported that the overall picture remained precarious, with no long-term solution yet in sight. Demand for care was still increasing through an ageing population with increasingly complex health conditions.

At the same time, CQC observed that the capacity of the adult social care sector continued to shrink, with more people having to go without paid care and support at all. The additional £2 billion made available through the Better Care Fund was welcomed but greater integration of services at a local level was essential to ensure that people could expect care organised around their needs.

UKHCA survey of fee rates

The last UKHCA survey of fee rates paid by local authorities for the financial year 2016-2017 gave further indication that despite clear evidence of the negative impact of continued low fee rates on market sustainability, workforce stability and the quality of care, local authorities appeared to be immune from the market signals that demonstrated a potential for market failure. Our report, based on a freedom of information enquiry to over two hundred local authorities in Great Britain and the Health and Social Care Trusts in Northern Ireland suggested that, on average, fees had only increased by the most slender of margins in this period.

Indications from intelligence since this report was produced suggest that the picture is broadly similar and that fee increases granted by councils in 2017-18 and 2018-19 have barely, if at all, kept up with wage inflation and other inflationary costs.

UKHCA Minimum Price for Homecare

In April 2016, UKHCA calculated that the minimum price needed to cover the entire costs of homecare was £16.70 per hour. However, councils in the UK were paying, on average, just £14.58 per hour, with some regional variation, as illustrated in the following diagram

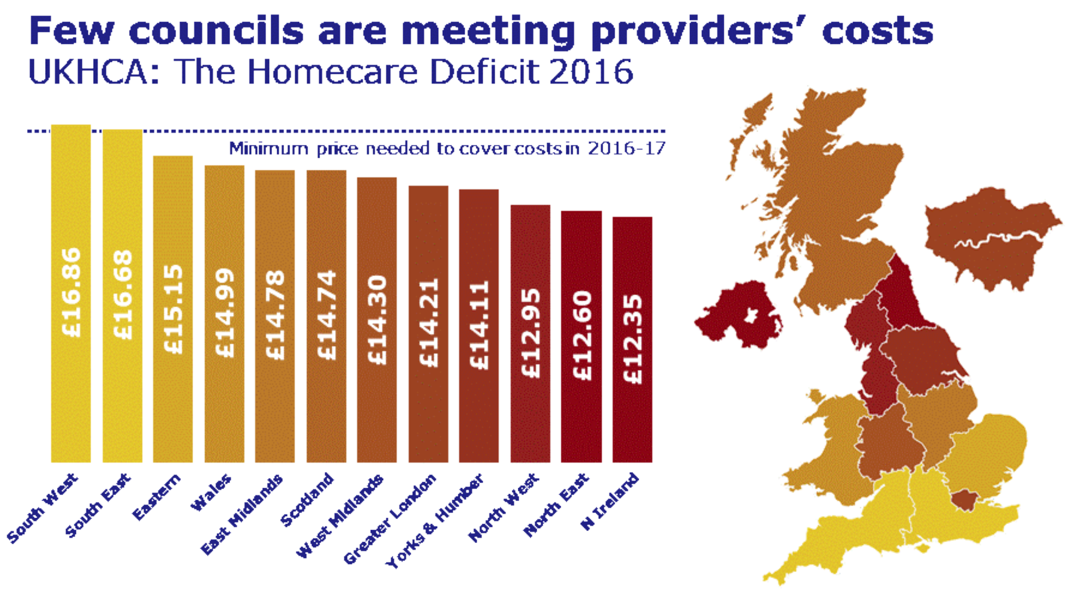

Figure 1: Local Authority Prices Paid for one Hour of homecare, in April 2016. UKHCA calculated that it cost £16.70 to provide an hour of care to guarantee compliance with legal requirements to pay the National Minimum Wage at the time

We recently updated our *Minimum Price for Homecare,* revising our calculations on the basis of two important changes in providers' cost pressures, which will come into effect in April 2018, namely:

- The increase in the National Minimum Wage and National Living Wage, as announced in the Autumn Budget 2017; and

- An increase in employers' contribution to workplace pensions (from 1% to 2% of gross pay).

Both factors create a significant increase in the fees required to cover providers' costs from April 2018, compared to our previous published figures. Our latest figure, as of April 2018, is £18.01 per hour.[5] The diagram below sets out the basis for our calculation.

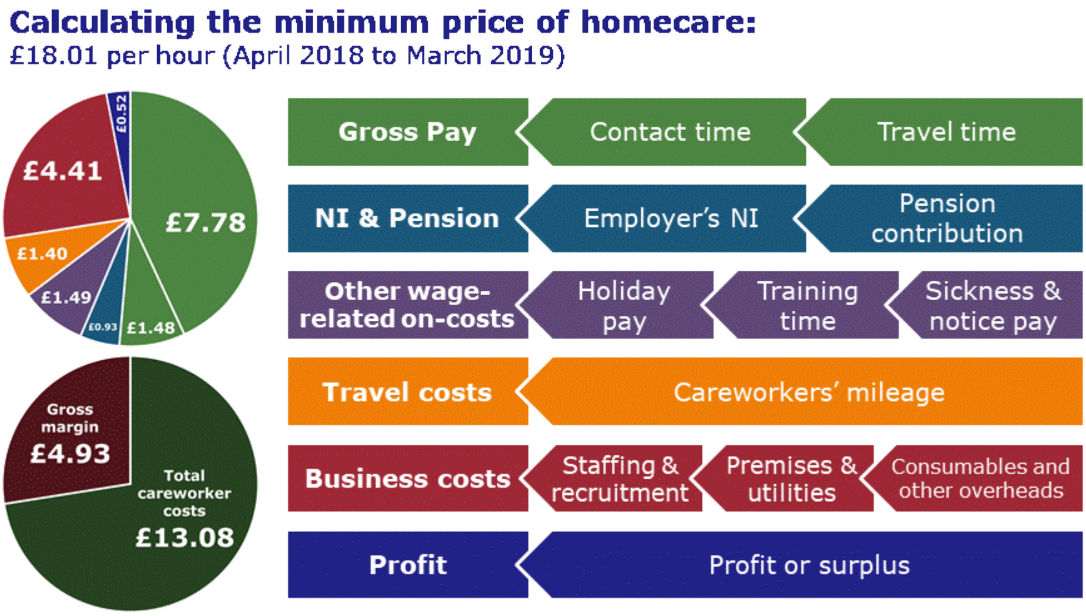

Figure 2: Calculating the minimum price for homecare

[5] Angel, C (2018) **A Minimum Price for Homecare** Version – 5.1

The continued impact of NLW increases and increased pension contributions add an estimated 82 pence per hour to the cost of homecare (See Figure 3) this year yet our intelligence suggests that many councils have based their fee increases for 2018-19 on the flat 33 pence increase in the NLW, increasing the gap in meeting providers' costs even further during this financial year.

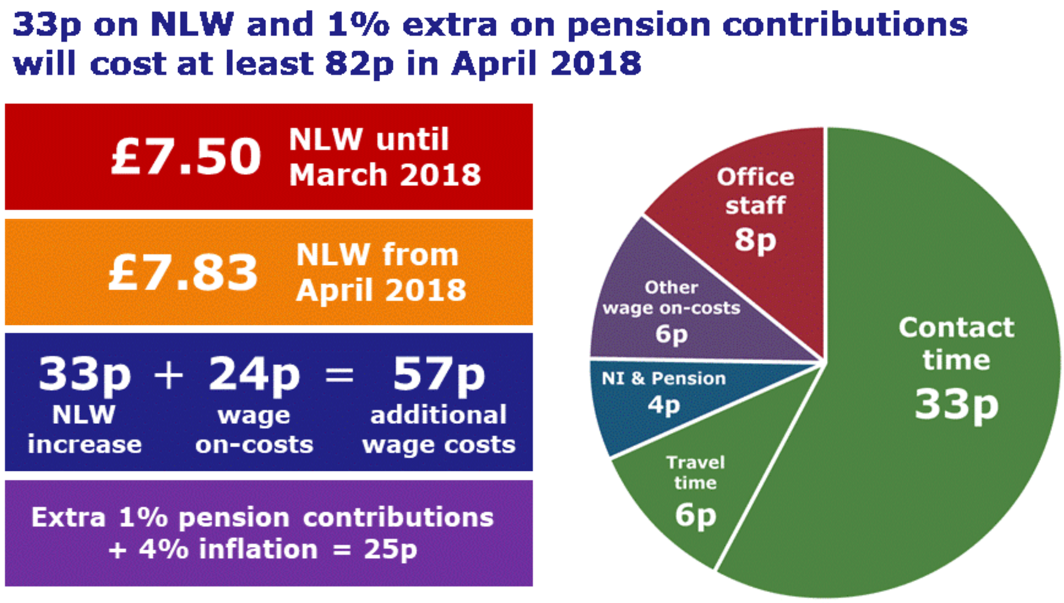

Figure 3: Impact of 33p increase on NLW

Additional financial pressures

An additional and unplanned for financial challenge this year was the Care Quality Commission's decision to introduce a new fees structure at the start of the 2018 financial year, based on numbers of service users. This has seen some very large increases in providers' regulatory costs. The greatest increase was over 1000%. With further increases planned for next year it is highly likely that wages will be adversely affected as providers seek to absorb the increasing costs against reductions in funding and pressures to meet the costs of wage inflation.

The decision by HMRC to require providers to fund up to six years' back pay arising from previous payments made for 'sleep-ins' has also had a negative effect on the sector as the payments are unlikely to be refunded by central Government.

Although there have been some minor improvements in funding in some locations, the overall situation is of economic and financial distress that has an immediate impact on pay, benefits and the quality of service that can be produced within these financial conditions.

Workforce considerations

Skills for Care estimates that there were 440,000 direct care providing jobs in domiciliary care services, 40,000 managerial jobs, 4,500 regulated professionals and 20,000 other jobs including ancillary and administrative roles.[6]

The turnover rate for domiciliary care services was 32.5%, which was higher than the average across all social care services (27.8%). This equates to an estimated 155,000 workers leaving their role in the previous 12 months.

Two thirds of the workforce in domiciliary care services were recruited from within adult social care (66%), which suggests that there is a high degree of 'churn' within the sector. This means that although the high turnover rate results in employers going through the recruitment process, with its associated costs, the skills and experience of many workers are retained by the sector. The turnover rate for independent and voluntary sector domiciliary care providers was higher (33%) than for local authority run domiciliary care providers (13%). Council staff tend to have better terms, conditions and pay than other providers.

Turnover is one of the biggest costs to care organisations because the cost of recruiting, inducting and training new staff is considerable. They also have to manage the expectations of their workforce with respect to wages against the reality of low level of fees paid for services commissioned by councils.

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[6] http://www.skillsforcare.org.uk/Documents/NMDS-SC-and-intelligence/NMDS-SC/Analysis-pages/State-of-17/Summary-of-domiciliary-care-services-2017.pdf.

UKHCA view

We believe that when calculating a fair and sustainable price for homecare provision local authority commissioners should include the following:

- Cover workforce costs, including careworkers’ travel time, to ensure full compliance with the National Minimum Wage;
- Recognise wage expectations of local labour markets to secure a sufficient workforce to meet local demand;
- Cover costs of regulation, supervision, organization and training to meet quality and safety requirements;
- Ensure businesses receive a profit/surplus to maintain market stability and reinvest in services.

5. To what extent has the NLW particularly affected certain occupations or industries, types of firms (small, large etc), regions or groups (for example women, ethnic minorities, migrant workers etc)?

April 2019 rates of the NLW and other minimum wages

ONS reported that, as of February 2018, approximately two in every five (41%) independent sector workers aged 25 and over were paid less than the next mandatory NLW rate (£7.83).[7] This equates to around 450,000 jobs being directly affected by the next increase in NLW.

ONS also reported that as of February 2018, around 80% of adult social care organisations in the independent sector were paying at least some of their workers (aged 25 plus) below the next mandatory NLW (£7.83) and will therefore be directly affected by its introduction.

Larger homecare providers tend to be highly dependent on local authority commissions whose constrained budgets and low fee rates are likely to make it more difficult for providers to meet NMW. But smaller providers who supply one or two councils are also victims of the financial decisions of their public sector colleagues.

Against a background of significant regional variation in fees paid by local authorities (see Figure 1) and their failure to increase fees, even greater pressure will be placed on independent providers and more workers will see their wages falling below the statutory levels.

Further increases in NLW coupled with continuing constraints on public sector funding could see greater variance from the NLW and increased challenges to the delivery of services to vulnerable people.

[7] Skills for Care March 2018 **Pay in the adult social care sector**. Source: Skills for care analysis of National Minimum Data Set for Social Care (NDMS-SC)

6. At what level should the NLW be set in April 2019? To continue on a straightline bite path to would mean a rate of £8.20 in 2019, rising to £8.61 by 2020 using current forecasts.

As in previous years, we are reluctant to provide a view on national pay policy which benefits the lowest paid members of the entire workforce. However, from the point of view of homecare employers NMW increases add further pressure on the providers' viability and ability to comply with NMW because of councils' purchasing decisions.

Concerns about the impact of council's purchasing decision and the lack of oversight is shared by other bodies, including the Public Accounts Committee. Following discussion its meeting in April 2018, the Committee recommended that, within two months, the Department of Health and Social Care "…should explain to the Committee how it intends to understand how well local authorities are commissioning care…"[8]

In our answer to Question 31 we make a recommendation to the Low Pay Commission that would help social care employers meet the NLW by improving the oversight of local authority commissioning practices.

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[8] House of Commons Committee of Public Accounts 20 April 2018 **The adult social care workforce in England**

7. What do you predict would be the effects of a rate of £8.20 in 2019 (earnings, employment, competitiveness)?

We predict increased market instability particularly for those businesses most reliant on local authority contracts. This could lead to an increase in providers withdrawing from the market.

Figure 5 shows the relative impact of such provider withdrawals on the residential and homecare sectors in 2017, drawn from the ADASS Budget Survey. The data show that 8,805 people in the homecare sector were directly affected by providers either handing back contracts or ceasing to trade.

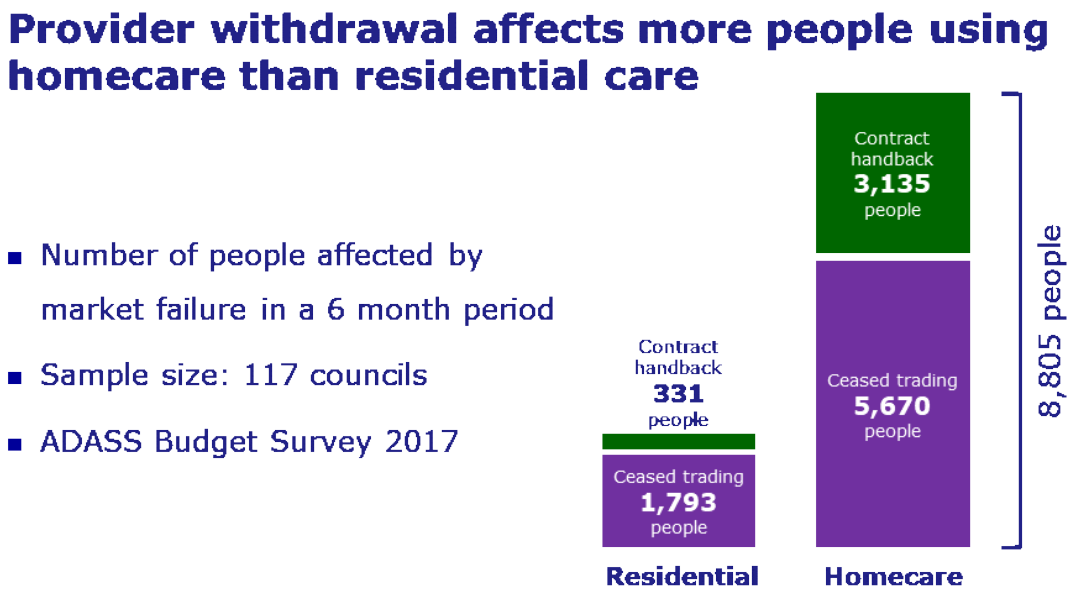

Figure 5: Relative impact of provider withdrawal.

8. At what level should the 21-24 Year Old Rate be set in April 2019?

The homecare sector does not employ a significant proportion of workers in this age range. In fact, around 11% of the homecare workforce in England is under 25.[9] There are no published data to suggest that the demographics vary considerably in Scotland, Wales or Northern Ireland. The average age for care workers is 43 and around 23% (305,000) workers are over 55. [10]

Whilst rates may vary in other sectors of the economy, the rates of pay, in the homecare sector do not tend to be age-related.

Our impression from employers is that very few younger workers receive a lower rate of NMW. Most receive the NLW for workers of 25 years and above.

Given that the ONS has identified that National Living Wage earners fall short of average family spending perhaps more focus should be on the older workforce, which is more representative of the adult social care sector. [11]

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[9] Angel, C (2018) **A Minimum Price for Homecare** Version – 5.1

[10] Skills for Care September 2017 **The state of the adult social care sector and workforce in England**

[11] Article: **National Living Wage earners fall short of average family spending** Office for National Statistics 29 March 1018

9. At what level should each of the other rates of the minimum wage be set in April 2017 – that is, for 16-17 year olds, for 18-20 year olds, for apprentices, and the accommodation offset?

As outlined in our response to Question 8 above, we have little evidence that rates currently paid to workers in the homecare sector show any variation based on the age of the worker.

10. Last year we recommended larger increases for the youth and Apprentice rates, to start narrowing the gap that had grown with the NLW and between the rates. What are your views on continuing to close this gap this year?

As outlined in our response to Question 8 above, we have no evidence that rates currently paid to young workers or apprentices in the homecare sector show any variation based on the age of the worker. In addition, apprenticeships are not commonly employed within the homecare sector for front-line staff.

21-24 year olds

11. What has been the effect of the minimum wage and the NLW on workers aged 21-24 and what effect do you think this has on their employment prospects?

As outlined in our response to Question 8 above, we have little evidence that rates currently paid to workers in the homecare sector show any variation based on the age of the worker.

12. To what extent are firms using the 21-24 Year Old Rate (set at £7.05 since April 2017)?

As outlined in our response to Question 8 above, we have little evidence that rates currently paid to workers in the homecare sector show any variation based on the age of the worker.

Young people and apprentices

13. What do you think has been the effect of recent increases in the minimum wage on young people, and on their employment prospects?

We have seen no evidence that the NLW has increased recruitment of younger workers to the homecare sector.

14. What has been the effect of the Apprentice Rate on pay, provision and takeup of places, and training volume and quality? How have changes to Apprenticeship policy affected these issues?

We have not seen wide use of apprenticeships in the front-line homecare workforce and there are no sufficiently granular data to show whether the apprenticeships in Adult Social Care are in homecare. Our impression is that apprenticeships are more often used in the residential care sector.

15. How does the level of the youth and apprentice rates influence employers' decisions on whether to employ young people or apprentices; or influence young people's labour market behaviour and decision-making?

As per our response to Question 14, we have not seen wide use of apprenticeships in the front-line homecare workforce.

16. What factors do employers consider when deciding whether to employ a young person or apprentice; and equally, what factors do young people consider when weighing up their options?

As per our response to Question 14, we have not seen wide use of apprenticeships in the front-line homecare workforce.

17. What bearing do the youth and apprentice rates have on employers when determining where to set pay for young workers?

As per our response to Question 14, we have not seen wide use of apprenticeships in the front-line homecare workforce.

18. Are there productivity differences between younger and older workers; and is additional training required, and provided, for younger workers?

Bearing in mind the limited number of younger people employed in the sector and our sense that apprenticeships are not widely used, it is difficult to assess this. However, we suspect that younger workers who are attracted to social care often need additional support for basic skills.

19. What influence do other policies – for example, National Insurance and/or the Apprenticeship Levy – have on employers when deciding whether to employ young workers or apprentices?

The Apprenticeship Levy is like a tax for many employers unless they can find a way to use apprenticeships. The 20% out of workplace requirement on apprenticeships is reported as a particular barrier to their use.

Compliance and enforcement

20. What issues are there with compliance with the minimum wage? Has the NLW affected compliance and enforcement? Are there any other trends, for example in particular sectors or groups?

Enforcement activity has increased awareness of the obligation to pay NMW or NLW for all working time.

UKHCA's National Minimum Wage toolkit has helped employers understand how to comply with the NMW given the complexity of a peripatetic workforce and we continue to make this resource available to employers and commissioners without charge.[12]

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[12] UKHCA 2017 **National Minimum Wage Toolkit (Revised September 2017)** www.ukhca.co.uk/downloads.aspx?ID=422#bk1

Guidance on NMW compliance for social care provided by HMRC has now been produced but is inadequate for employers' needs and was not produced collaboratively with employers or their representatives.

21. What comments do you have on HMRC's enforcement work? What is your opinion on the quality and accessibility of the official guidance on the NLW/NMW?

We do not have direct experience of this but the impression we have from employers suggests that HMRC inspectors make exceptionally high demands for documentation and that the process is lengthy, often with long gaps between activities.

It is also been felt that HMRC inspectors do not always seem to understand how to apply the new Regulations to a peripatetic workforce.

22. What more could be done to improve compliance with the NLW/NMW?

As highlighted previously, compliance with NLW/NMW is particularly challenging for those businesses reliant on council funding as commissioners often do not base the fees they pay on a fully costed model of the actual costs of delivering care.

The biggest obstacle is, in our view, the way that commissioners of services determine the fees they pay to employers

While homecare providers are subject to an inspection regime the commissioners of care are not and as previously mentioned, was highlighted as a significant issue by the Public Accounts Committee, in April 2018.

On 20 March 2018, the Secretary of State for Health highlighted increased oversight of councils within the seven key principles that will guide the Government's thinking ahead of the social care Green Paper, due to be published later this year

He referred to the local systems reviews carried out by the Care Quality Commission (CQC) during 2017-18 which have identified variation in performance between local authorities across a range of measures, including how they commission care from homecare providers and indicated the Department's intention to consider a ratings system for councils' social care commissioners as a means to spread best practice.

This proposed approach would provide Government with a mechanism to oversee councils' procurement practices including their impact on NLW, which the Low Pay Commission has, in previous reports, urged Government to consider.

We urge LPC to recommend that a ratings system to improve oversight is introduced with a request that councils are required to demonstrate how they have established the actual cost of the care they commission.

On 21 March 2018 UKHCA made a Freedom of Information request to all councils with social service responsibility in England Scotland and Wales and the Health and Social Care Trusts in Northern Ireland.

Our analysis of the data has not yet been completed but, so far, just over a third of UK authorities were able to provide us with the framework used, by them, to calculate homecare fees. Only half of them reported that they had carried out any form of cost of care exercise for homecare services, in consultation with their local homecare providers, within the last 3 years.

23. What are your views on the accommodation offset? To what extent is it protecting low-paid workers? What difference, if any, has the increase in the rate since 2013 made to the provision of accommodation?

As the accommodation offset affects few homecare providers we have not offered a view on this question.

The Taylor premium and hours/income volatility

24. What is the scale and nature of the problem described in the Taylor review – that is low-paid workers who face uncertain, unpredictable and volatile work schedules? Does it affect particular workers or parts of the economy?

We do not entirely agree that the problem described in the Taylor Review reflects the adult social care workforce.

Nature of adult social care work is unpredictable because it relates to people whose needs can change quite quickly (eg. An older person is admitted to hospital, or moves into a care home).

In the case of adult social care services, the presence of low paid workers and uncertain, unpredictable or volatile work schedules are a correlation. The pay and working conditions are both largely caused by system which has undervalued social care work and has been the victim of public spending constraint even before the financial crisis.

In our answer to question 25, we describe how the use of ZHCs operates in our sector.

25. How are these flexible working arrangements – zero hours, short hours and other arrangements – used in your sector?

Skills for Care estimate that 48% of the homecare workforce were employed on zero-hours contracts in 2016-17.[13] We suspect that this is an underestimation, particularly for the front-line workforce. It may be that the lack of a clear definition of what constitutes a zero-hours contract may have led to under-reporting in the data.

The high use of zero-hours contracts (ZHCs), in the homecare sector, is largely the result of the way that councils have purchased homecare and only willing to pay for the amount of time that direct care services are delivered (rather than paying for a sufficient number of people to be engaged to deliver the services). To illustrate the extreme nature of this, in recent years a number of councils have move to paying for care by the minute (or in bands between five and fifteen minutes).

However, we do not recognise many of the characteristics of the working arrangements for people employed on ZHCs in our sector. For example: Careworkers may experience regular changes in their planned working patterns (eg. An older person is admitted to hospital, or moves into a care home and no longer requires care), but they will usually be found alternative work quickly. It is rarely the case that workers will face the prospect of working or not working on specific days of the week, or will arrive at work only to be turned away.

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[13] https://www.skillsforcare.org.uk/NMDS-SC-intelligence/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/2Summary-of-domiciliary-care-services-2017.pdf

We also note that employers have repeatedly told us that even when they have made the alternatives of ZHCs and some form of guaranteed hours contract available to the workers, the majority (sometimes as high as 75%) have opted to remain on a zero hours' contract. We think that this may be a reflection of the high proportion of the workforce who see flexible working as one of the attractions of homecare, often because they are combining work with other caring responsibilities.

26. Are there examples of particularly good practice in the use of flexible employment arrangements for low-paid workers? That is, ways of working that manage to balance flexibility and security for workers but also work for employers?

A well-run homecare service will ensure that workers receive the maximum number of hours of work up to the maximum that individuals are prepared to do.

Staff rotas will be compared to demands for services so that gaps between careworkers' visits are minimised. A significant proportion of homecare employers use rostering software to achieve this optimisation.

27. What policies or approaches might tackle this problem and/or encourage existing good practice? How might these work in practice? What would their effect be on employers and workers? What compliance issues would need to be considered?

We have noted in our answer to question 25 that ZHCs are often the preferred option of the majority of the homecare workforce. Well-run services are likely to offer a choice of both ZCHs and guaranteed hours' contracts for their workers.

Greater use of guaranteed hour's contracts (and less unpredictability in the operation of ZHCs) could be facilitated if homecare services commissioned by councils were undertaken in a more organised manner than they are at the moment. In many authorities councils are spreading their purchase of care between many providers in the area, in a system which is largely determined by putting work out to the least expensive provider with capacity.

Some councils are beginning to award contracts in ways which are a little more systematic, by dividing contracts into geographic zones and awarding the zones to specific providers. This has the benefit of providing more concentrated coverage and with reduced careworkers' travel time, a positive effect on providers' costs.

28. The LPC has been asked to consider the impact of Matthew Taylor's idea of a higher minimum wage for hours that are not guaranteed as part of the contract. What impact would this have on workers? Would it achieve greater stability of hours/income for workers and/or compensate them for the volatility of their work schedules? Are there any trade-offs, for example more predictable hours in exchange for fewer hours overall?

We do not believe that a higher rate of pay for workers employed on ZHC workers would act as a strong incentive to reduce the use of these contracts.

In our answer to question 25 we have suggested that the use of zero-hours contracts, etc is created by the way that homecare services are commissioned by councils, who are trying to spread their limited budgets to cover the total amount of care for which they have a statutory duty to meet.

In fact, we predict that a higher pay rate associated with ZHCs would simply make the delivery of the lowest paid contracts unsustainable and lead to providers increasing the contracts they hand-back to the commissioning council, or declining to accept care packages which did not provide sufficient hours to be viable.

In the homecare sector, this policy would create fewer hours of work at a higher pay rate for the workforce, but would have the unintended consequence of reducing the availability of social care to people with relatively low level social care needs, particularly where their care is funded by a local authority.

In our view, the solution to unpredictable hours is better commissioning of services by councils and better allocation of funding for adult social care services.

29. How would employers respond to a higher minimum wage for non-guaranteed hours? In particular, would they seek to offer more fixed/predictable hours to workers or pay it to maintain their flexibility? What about changes to overall hours worked or employment, or more use of self-employed labour or technology?

Our responses to questions 24 to 28 provide the background to this question. In summary:

- Employers are more likely to refuse to deliver certain packages of care to councils (ie fewer hours available);
- The homecare workforce generally opt for flexible working even when given the choice of guaranteed hours;
- Councils' ability to commission homecare in ways which reduce unpredictability are a combination of their financial circumstances, and an established pattern or only paying for the hours of care actually delivered.

30. What are the potential interactions with the tax and benefit system for workers of Matthew Taylor's idea? For example, how would the higher minimum wage affect those on Universal Credit?

We have not expressed a view on this question.

31. In considering any recommendations on measures to alleviate volatile and unpredictable hours for low-paid workers, what should we bear in mind to make them most effective?

In relation to the homecare sector, as in our answer to question 28, the perceived problem will only be overcome by better commissioning of care by councils combined by better funding from central Government.

In previous years, the Low Pay Commission has repeatedly alerted central Government to the need to address the way that councils' commissioning practices affect the pay and conditions of the social care workforce. Government has accepted these recommendations, but has failed to take effective action.

We hope that this year the Low Pay Commission will recommend that central and devolved Government takes a more active role in its oversight of the commissioning of adult social care services:

- In England: by requiring a statutory regulator (such as the Care Quality Commission) to inspect and comment on the commissioning practices of councils, in relation to the way the councils undertake the market shaping responsibilities given to them under the Care Act 2014.
- In Scotland, Wales and Northern Ireland (where councils do not have equivalent Care Act responsibilities), a recommendation that Devolved Governments consider measures which assess the impact of councils' commissioning on the pay and conditions of the social care workforce

We believe that such regimes should require councils to demonstrate how they have assessed that the prices they pay for care are consistent with employers' legal obligations, including payment of statutory minimum pay rates.