United Kingdom Homecare Association
The professional association for homecare providers

Modern Employment Practices Review Team,
Department for Business, Energy and Industrial Strategy,
1 Victoria Street,
London,
SW1H 0ET

23 May 2017

Dear Sirs,

Review of employment practices in the modern economy

Thank you for the opportunity to respond to the independent review on employment practices in the modern economy, which I have the pleasure to do on behalf of the United Kingdom Homecare Association (UKHCA).

Please do contact me if you require any additional information.

Yours sincerely,

James Whynacht
Policy Officer
Tel: 0208 661 8163
E-mail: james.whynacht@ukhca.co.uk

About UKHCA:

United Kingdom Homecare Association (UKHCA) is the professional association of homecare providers from the independent, voluntary, not-for-profit and statutory sectors. UKHCA helps organisations that provide homecare services (also known as domiciliary care), which may include nursing services, promoting high standards of care. The Association represents the homecare sector with national and regional policy-makers, regulators and the public. UKHCA has over two thousand homecare providers as members across the United Kingdom.

Introduction to domiciliary care and modern working practices:

The majority of home care services in England, over 80%, are commissioned by local authorities who estimate demand, go through tendering exercises, and award contracts to providers of care services[1]. Homecare workers are almost always employed by their "agency" and are not normally agency workers. The term "homecare agency" is therefore, to a greater extent, a misnomer.

Like many other sectors, the domiciliary care market has felt the effects of changing employment practices in the modern economy. Over the last two years we have recently seen a limited number of online introductory agencies (operating as "employment agencies") mostly, but not exclusively, providing 24/7 live-in care services. These introductory-only services often claim that their

[1] Angel, C. (2016), *The Homecare Deficit 2016*, https://www.ukhca.co.uk/downloads.aspx?ID=525

care workers are self-employed (a description which we believe is mistaken), which has several ramifications expanded upon in later sections.

The home care sector also makes use of zero-hour contracts for careworkers. There is a demand for zero-hour contracts in the sector for the flexibility they can offer.

We do not recognise the working patterns of zero-hours contract-holders in the homecare sector reflecting the experience of homecare workers. For example, while care workers may experience visits to individual service users being cancelled at short notice (e.g. a person using care is taken into hospital without prior notice) there are rarely, if ever, situations where a careworker is left without work on a single day that they were expecting to work. The use of zero-hour contracts in the homecare sector is largely down to the way that services are commissioned by local authorities who are often unable to offer the terms and prices for services that could guarantee market stability.

We are aware of the negative way that zero-hours contracts are often portrayed in the media, however, where used appropriately, zero-hours contracts offer benefits of flexibility to employees as well as employers. Many providers report the widespread attraction of flexible contracts amongst their workforce, whilst enabling providers to manage the peaks and troughs in demand.

Security, pay and rights:

The domiciliary care market is generally a low paying sector, often only able to pay rates marginally above National Living Wage to care workers due to financial pressures in the sector, largely determined by the fee rates paid by councils. In

"A Minimum Price for Homecare" UKHCA have calculated a minimum price for an hour of homecare that should be paid to providers of £16.70 (as of April 2016.) [2]

This minimum price is designed to cover an hour of homecare commissioned by local authorities, while enabling providers to meet their legal wage obligations and the ability to run a sustainable business. Our 'Homecare Deficit 2016' review found that only one in ten local councils were paying at or above this figure[3]. The average price paid for an hour of care by councils in England was only £14.66, far below what we consider to be the bare minimum.

Some introductory-only agencies appear to offer higher rates of pay to care workers in comparison to direct service providers. However, introducers also claim that their care workers are self-employed which has several impacts on the level of pay that the care workers receive, as well as other related issues.

If the care workers in these cases are truly self-employed, which we believe to be inaccurate, the introductory agency is not obliged to deduct income tax, or pay national insurance or pension contributions on behalf of the worker. A genuinely self-employed worker is expected to pay their own contributions out of the money that they earn. Once this is taken into account, the claim to be paying a higher wage looks a little more doubtful in practice.

It may also be more difficult to ascertain whether self-employed care workers are actually receiving the National Minimum or Living Wage. Additionally, in this case, self-employed workers are also not automatically entitled to sick pay, holiday pay and time off for maternity or paternity leave.

[2] Angel, C. (2015), *A Minimum Price for Homecare*, Version 3.1: https://www.ukhca.co.uk/downloads.aspx?ID=434
[3] Angel, C. (2016), *The Homecare Deficit 2016*, https://www.ukhca.co.uk/downloads.aspx?ID=525

There are also further implications for care workers under this model of supposed self-employment. Direct service providers (where care workers are employees of the provider and are managed by them) are required to have the appropriate level of business insurance to ensure cover in the event of something going wrong in the delivery of care. Under a 'self-employed' model, care workers would be required to insure themselves. More guidance is needed to make sure that care workers are aware of their insurance requirements in order to minimise liabilities and avoid exposing people who use care services to uninsured risk.

Progression and training:

We believe that regulation is an important part of facilitating career progression, training and quality. Individual careworkers in England are not required to be registered with any professional body, and there are no plans for them to do so.

In this respect, England is unique out of all the UK administrations as all care workers in Wales, Scotland and Northern Ireland are either currently required, or are soon to be required, to be registered with a professional body before they are allowed to work. We believe that requiring careworkers in England to register would be a first step towards developing the care sector into a well-regarded profession with demonstrable career progression.

Within regulated homecare services, all care workers are usually required to complete the Care Certificate when joining a care organisation. While not a legal requirement, the statutory regulator (the Care Quality Commission in England)

does check whether the Care Certificate, or equivalent training, has been undertaken.

The Care Certificate demonstrates that the worker has been assessed against a specific set of standards and has demonstrated that they possess the skills, knowledge and values to ensure that they provide compassionate and high quality care. 'Self-employed' careworkers are not required to take part in the Care Certificate and we do not currently have the data to show how widespread the voluntary uptake of it is.

We believe that the introduction of workforce regulation could be an effective lever to ensure that all careworkers, irrespective of employment status, complete a minimum introduction standard of training. This would be an important part in ensuring that all careworkers have at least a basic standard of competency that is universally recognisable and acknowledged.

The balance of rights and responsibilities:

Current definitions of employment status could be updated to avoid some further potential problems associated with companies who claim that their careworkers are "self-employed".

Our primary concern is that service users may not always receive sufficient explanation from their provider to understand exactly what service they are buying when being introduced to a self-employed careworker. There is a risk that services users may unwittingly be the employer in this situation if they are dealing with the terms of service with the care worker directly (as opposed to employing a worker introduced to them by an employment agency). This can

have negative impacts for the service user as they may be expected to take on all of the responsibilities of an employer despite having no prior experience or knowledge.

It is possible that an employment tribunal may decide that a service user is the employer, and that the service user will have therefore unwittingly taken on obligations that are usually taken care of by a regular employer and possibly all of the risks that go along with this. Providing service users with the correct information to help make an informed decision on the type of care they want to receive would help to manage some of the risks in this situation, as would efforts to inform people on the differences between working with self-employed and employee care workers.

Opportunities for under-represented groups:

We firmly believe that zero-hour contracts can play a part in encouraging under-represented groups to join the workforce. The flexibility that can come from such contracts can be useful for people who need to fit work around other commitments and can therefore turn down work as needed. Therefore we believe that a discussion on possible changes to how zero-hour contracts are used by companies would be more beneficial than an outright ban on their use, an idea which has been put forward in the media on occasion.

New business models

We are not against the use of on-line platforms or introduction only services in principle. However, we are concerned that the end user does not always fully

understand the relationship between parties in this instance and the potential risks of the relationship that they are entering.

So long as people are fully informed about potential risks, we believe that people should be able to choose a service that best suits their individual needs. In practice, we are not convinced that this is the case.

There are also a number of other steps that we believe could minimise the risks of new business models for providing care services.

We believe that it is important to bring introduction only services within the scope of the statutory regulation as enforced by the Care Quality Commission (CQC), the national regulator for care providers in England. This would require all providers of care to adhere to the same standards of care to ensure that all care services are safe and of a high quality.

Requiring all care workers, regardless of employment status, to register with a professional body would help to develop care work as a profession. This would bring England in line with Scotland, Wales and Northern Ireland who either already have, or are soon to be enacting, a requirement to register with a professional body. A universal induction standard requirement for all care workers would help to guarantee that all participants, regardless of employment status, would have achieved a minimum level of competency that the public can trust.

We would also urge restraint on banning the use of zero-hour contracts. They do have a place in home care provision and would benefit from a degree of reform rather than an outright ban. If they were to be removed in favour of guaranteed

hours, local councils and clinical commissioning groups (CCGs) would need to be able to pay providers accordingly.

Conclusion

We strongly urge the Government to take these factors into account when considering any new models for providing home care services. There would need to be a significant change in approach, including ensuring that changes in regulation keep pace with changes to service provision, and new methods for ensuring that all care workers who work within new models of employment meet the required training and safety standards that we would expect from front-line providers of care.