

Call for Evidence Questions

Section 1 – About you

1.1 Please briefly tell us about you / your organisation and your interest in enforcement of labour market regulations.

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. It represents 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 as well as a numerically smaller number of providers of “live-in” homecare and organisations acting as Employment Agencies, introducing workers to be employed by private individuals.

Around 70% of homecare is bought by the State, mostly by local councils who, in many parts of the country, are the majority or near monopsony purchasers.

Section 2 – Four High-Risk Sectors

In previous Labour Market Enforcement Strategies, assessments have been made using the available intelligence and wider evidence to identify those sectors that are at risk of labour exploitation. We focused on three of these priority sectors (warehousing, restaurants, hotels) in our 2019/20 Strategy. For this current Strategy (2020/21) we are focusing primarily on non-compliance and enforcement in the following four sectors:

- **Hand car washes**
- **Agriculture**
- **Social care**
- **Construction**

The Strategy will go into detail on each of these, looking at what is known about the scale and nature of non-compliance, what is currently being done to enforce labour rights and what options there are for improvements going forward. In this section, we therefore ask for evidence that is specific to these sectors.

We recognise that risks are seen in other sectors beyond the listed above and these continue to be monitored. If you do not have evidence specific to the four sectors listed above, please go straight to **Section 3**.

A. Sector Specific Questions – Hand Car Washes

2.1 What are the issues of non-compliance in hand car washes? Have there been any changes in the past 12 months?

- What evidence do you have on the **nature** of the issues?
- What evidence do you have on the **scale** of the issues in this sector?

Not Applicable

2.2 What enforcement or worker rights protection activity are you aware of in hand car washes? Has there been any change/ developments in the past 12 months?

- By the three enforcement bodies (GLAA, EAS, HMRC NMW)
- By other government bodies (e.g. Health and Safety Executive, Local Authorities)
- By non-government bodies (e.g. by sector bodies, charities, campaigning groups, etc.)

Not Applicable

2.3 What impact do you think these interventions have had? i.e. are they effective? Why? What would make them more effective?

Not Applicable

2.4 What **three** changes to enforcement do you think would have the most impact on workers at risk of exploitation in hand car washes?

1. Not Applicable

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B. Sector Specific Questions – Agriculture

2.5 What are the issues of non-compliance in agriculture? Have there been any changes in the past 12 months?

- What evidence do you have on the **nature** of these issues?
- What evidence do you have on the **scale** of these issues in this sector?

Not Applicable

2.6 What enforcement or worker rights protection activity are you aware of in agriculture? Has there been any change/ developments in the past 12 months?

- By the three enforcement bodies (GLAA, EAS, HMRC NMW)
- By other government bodies (e.g. Health and Safety Executive, Local Authorities)
- By non-government bodies (e.g. by sector bodies, charities, campaigning groups, etc.)

Not Applicable

2.7 What impact do you think these interventions have had? i.e. are they effective? Why? What would make them more effective?

Not Applicable

2.8 What **three** changes to enforcement do you think would have the most impact on workers at risk of exploitation in agriculture?

1. Not Applicable

2. Not Applicable

3. Not Applicable

C. Sector Specific Questions – Social Care

2.9 What are the issues of non-compliance in the social care sector? Have there been any changes in the past 12 months?

- What evidence do you have on the **nature** of the issues?
- What evidence do you have on the **scale** of the issues in this sector?

From our analysis of non-compliance reports involving Social Care providers we have seen no evidence of extensive or major non-compliance with the National Minimum Wage (NMW).

Whilst no breach of the NMW regulation is acceptable, instances of non-compliance in the social care sector tend to be unwitting with low levels of HMRC underpayments, as compared with other sectors and may be reflective of a lack of specific HMRC guidance for the sector and a lack of detail in the existing guidance on GOV.UK.

Providers are coping with very low rates of payment from local authorities.

In October 2018 we published the Homecare Deficit 2018 report.

<https://www.ukhca.co.uk/downloads.aspx?ID=589#bk1>

The report contains the results of Freedom of Information requests sent to all local authorities and Trusts responsible for the commissioning of social care. It confirms the wide variation in prices paid for an hour of homecare across the United Kingdom over a sample period.

2.10 What enforcement or worker rights protection activity are you aware of in the social care sector? Has there been any change/ developments in the past 12 months?

- By the three enforcement bodies (GLAA, EAS, HMRC NMW)
- By other government bodies (e.g. Health and Safety Executive, Local Authorities)
- By non-government bodies (e.g. by sector bodies, charities, campaigning groups, etc.)

The main enforcement bodies relevant to this sector are HMRC NMW and EAS.

UKHCA as the professional body representing the sector makes annual submissions to the Low Pay Commission outlining our members' views of current and proposed future levels.

We have highlighted the peripatetic nature of the Adult Social Care workforces, reliance on zero hours' contracts and the continued low rates of payment for the delivery of homecare paid by Local Authorities and Clinical Commissioning Groups who purchase 70% of commissioned homecare in England.

The Migration Advisory Committee's latest advice to Government has added little comfort for our sector. We predict increased competition for workers and increased difficulty in recruitments and retention in general.

There is an additional risk that there will be an increased use of informal care arrangements which rely on 'cash in hand' workers and would be unregulated by social care regulators (such as the Care Quality Commission in England) increasing the likelihood of non-compliance and an erosion of workers' rights.

Specific comments follow:

HMRC / National Minimum Wage

- Evidence from Government's naming scheme for underpayment of NMW in the homecare sector is relatively low level non-compliance. Generally, few people and relatively low amounts of arrears.
- We think non-compliance is more likely to be attributable to a lack of understanding of the regulations and how they apply to a mobile workforce, rather than wilful and deliberate underpayment.
- We have commented in our responses to your Questions 2.9 and 2.10 our views on local authority commissioning, levels of payment and the perverse impact on sustainability and compliance within the sector.
- In its most recent report, the Low Pay Commission described council-funded homecare providers as "price takers" due to the impact of Councils' position as near monopsony purchasers.
- UKHCA has produced an updated report Minimum Price for Homecare (April 2020 to March 2021) which can be found here: <https://www.ukhca.co.uk/downloads.aspx?ID=434> and councils are directed to that in Section 4.31 of the Statutory Guidance to the Care Act. <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

Employment Agencies Standards

- We are aware of an apparent growth in employment agencies which are claiming to introduce apparently "self-employed" workers to members of the public.
- In England social care regulation usually falls under the remit of the Care Quality Commission (CQC), but the current social care Regulations, in England, preclude most employment agencies from registration with CQC. This is also true across the other regulatory bodies in the UK.

- CQC are looking at a number of situations to see whether they have sufficient powers to regulate some of these organisations (the ones which are leaning towards being 'direct service providers'). However, we do not believe that CQC has the powers to regulate those which are acting solely as employment agencies except where an employment agency provides additional services to the point where the organisation falls under the scope of the Health and Social Care Act 2012 (Regulated Activities), in England and similar legislation in the rest of the UK.
- We do not believe that the workers in this situation are actually "self-employed", and it is more likely that either (a) the end-user becomes an employer without realising it, or (b) the employment agency is possibly a direct service provider (but has avoided registration with CQC) and may, therefore, be trading unlawfully.
- Our concern is that workers engaged in this way are being misled as to their employment status, and that members of the public are not aware of the obligations placed on them.
- We believe that this model has started to develop because it is seen to be less expensive as it (a) avoids regulation by CQC, and (b) avoids incurring the costs of an employed workforce.
- We are particularly concerned to see a number of public bodies expressing apparent interest in this model. We suspect that they are doing so without a proper understanding of employment law.
- Although the criteria for self-employed status are known to be complex. Our impression is that these organisations are, at best, failing to take notice of employment law and at worst, wilfully ignoring a correct interpretation of employment law.

2.11 What impact do you think these interventions have had? i.e. are they effective? Why? What would make them more effective?

Better guidance, more regulatory oversight of Commissioners and sustainable rates paid for the delivery of homecare would increase the compliance of the sector as well as its resilience.

2.12 What **three** changes to enforcement do you think would have the most impact on workers at risk of exploitation in the social care sector?

1. Regulatory oversight of Local Authorities' and NHS Care Commissioning Groups' commissioning decisions and funding levels as these can have a perverse effect of the quality of care provided and for employers' ability to ensure compliance with National Minimum Wage requirements. In England, this would include a regime which assesses councils' compliance with the Care Act 2014 and accompanying statutory guidance as referred to in our response to Question 2.10.
2. Clarification and specific guidance with respect to the employment status of allegedly Self Employed workers, introduced to clients via Employment Agencies, not least for those employing such workers who may, unwittingly, assume employer responsibilities and fail to adequately understand and address them.
3. Registration and regulatory assessment of the activities of such workers to ensure that personal care is delivered within a commonly understood regulatory model and that a level playing field exists within the market.

D. Sector Specific Questions – Construction

2.13 What are the issues of non-compliance in the construction sector? Have there been any changes in the past 12 months?

- What evidence do you have on the **nature** of the issues?
- What evidence do you have on the **scale** of the issues in this sector?

Not applicable

2.14 What enforcement or worker rights protection activity are you aware of in the construction sector? Has there been any change/ developments in the past 12 months?

- By the three enforcement bodies (GLAA, EAS, HMRC NMW)
- By other government bodies (e.g. Health and Safety Executive, Local Authorities)
- By non-government bodies (e.g. by sector bodies, charities, campaigning groups, etc.)

Not applicable

2.15 What impact do you think these interventions have had? i.e. are they effective? Why? What would make them more effective?

Not applicable

2.16 What **three** changes to enforcement do you think would have the most impact on workers at risk of exploitation in the construction sector?

Section 3 – Non-compliance in other sectors

In this section, we are seeking evidence and views about sectors other than those covered above. We have asked the same questions to understand the scale and nature of the issues, what enforcement activity is already taking place and what could be done to improve the situation going forward.

3.1 Which sector/sectors are you concerned about and providing evidence on?

3.2 What are the issues of non-compliance in the sector? Have there been any changes in the past 12 months?

- What evidence do you have on the **nature** of the issues?
- What evidence do you have on the **scale** of the issues in this sector?

3.3 What enforcement or worker rights protection activity are you aware of in the sector? Has there been any change/ developments in the past 12 months?

- By the three enforcement bodies (GLAA, EAS, HMRC NMW)
- By other government bodies (e.g. Health and Safety Executive, Local Authorities)
- By non-government bodies (e.g. by sector bodies, charities, campaigning groups, etc.)

3.4 What impact do you think these interventions have had? i.e. are they effective? Why? What would make them more effective?

3.5 What **three** changes to enforcement do you think would have the most impact on workers at risk of exploitation in the sector?

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Section 4 – Cross-cutting issues

The Director is also interested in non-sector specific issues that affect labour market non-compliance and pose a risk to workers' rights and work conditions. In this section, we are seeking evidence and views on cross-cutting issues that fall under the remit of the three enforcement bodies that you think are important as risks or opportunities to improve labour market conditions for vulnerable workers. Issues that we are likely to cover in the Strategy include IR35, the growth of online apps for recruitment, umbrella companies and supply chains.

4.1 What are the **three** most important emerging trends, risks or issues in labour market exploitation / non-compliance that you have seen in the past 12 months, other than those you have covered above? What issues should the Director of Labour Market Enforcement be prioritising?

4.2 What **three** changes do you think would most impact on labour market enforcement? Or what are the three greatest opportunities for improving enforcement?

4.3 Please let us know about any other issues you would like to bring to the attention of the Director.

Thank you for providing your views and evidence to the Director of Labour Market Enforcement. Please send this to LMEDirectorsoffice@beis.gov.uk

