# Make Work Pay: Employment Rights Bill – Evidence for the Business and Trade Committee

Submitted 20 December 2024

## Summary

Just raising the minimum wage and improving employment rights will not improve retention and recruitment. We also need changes to funding, commissioning and procurement of homecare. If councils and the NHS buy homecare at low fee rates, providers may resort to cutting costs, such as paying for travel time and training. This increase risks of poor quality, unsafe care and labour exploitation. This could also force conscientious employers out of business and cause job losses for care workers.

Only 1% of regular homecare contracts with public bodies are at a price that covers delivery costs, of which 70-75% relate to employment. Only 6% of public bodies increased fee rates this year (2024/25) to levels that kept pace with the cost of the minimum wage increase. Further legislation could exacerbate this issue as providers' costs increase without a sufficient increase in income.

Allowing unethical commissioning and purchase of homecare by public bodies is scandalous. Zero hours working at low wage rates is driven by zero hours commissioning at low fee rates.

We call on the Government to outlaw zero hours commissioning and procurement practices that encourage a race to the bottom based on price. The Government must implement a National Contract for care services, which sets minimum fee rates. The fee rates must enable compliance with employment and care regulations and ensure market stability.

Careworkers deserve better. Employers cannot offer Fair Pay without a Fair Price for Care.

## Who are we?

The Homecare Association is a national membership body for homecare providers, with over 2,200 members across the UK. Our mission is to ensure society values homecare, and invests in it, so all of us can live well at home and flourish in our communities. We lead the way in shaping homecare and provide practical support for our members. Our members encompass the diversity of providers in the market: from small to large; state-funded to private-pay funded; generalist to specialist; live-in services to visiting services and from start-ups to mature businesses.

## Introduction

Careworkers deserve better protection, recognition, and pay for their vital work in our communities 365 days a year. The Employment Rights Bill will not deliver this until the Government acts to enable conscientious employers to thrive in the care sector. This requires changes to funding, commissioning, procurement, and regulatory enforcement. What is happening in the care sector now is a national scandal.

We begin by outlining how provisions could risk exacerbating existing business viability issues. Next, we examine how provisions in the Bill and developments outside of the Bill might affect homecare employers. Then we highlight how current protections for workers are failing and our concerns about enforcement. Finally, we look at the implications this may have for economic growth and our recommendations for government action.

Social care is a fundamental part of the foundational economy. Skills for Care reports that the social care workforce contributes £68.1 billion to the economy per year and employs 5.4% of the labour force in England[[1]](#footnote-2).

## Impact on businesses

### Current business viability issues in the Homecare sector

Employment costs are significant to the viability of homecare providers. Providers are already severely under-funded, and commissioning and procurement practices can encourage a race to the bottom in employment standards. The higher employer taxes and minimum wage announced in the Autumn Budget worsen the deficit. This could see care businesses close unless addressed. The measures in the Employments Rights Bill are being proposed against an already precarious backdrop.

#### Employment costs matter to homecare providers

Homecare is all about people. It should be no surprise that labour accounts for 70-75%[[2]](#footnote-3) of the cost of care. Where fee rates are lower, employment represents over 90% of total costs. Small, local businesses deliver a lot of care – 85% of all care providers have fewer than 50 employees[[3]](#footnote-4). The public sector pays for most care. Data from LaingBuisson[[4]](#footnote-5) (Figure 1) show that councils and the NHS purchase 79% of homecare services; with 50% from councils, 25% from the NHS, 3% from direct payments and 1% from other sources.

Figure : Sources of funding for homecare providers, England 2022-2023

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Some older and disabled people purchase their own care. Funding from private pay represents 21% of the total. Access to public funding is means-tested. The thresholds for means-testing are low. If someone has assets over £23,250[[5]](#footnote-6) they may need to pay for their care in full. With such a low asset threshold, those purchasing care privately are not necessarily wealthy.

This position means it is difficult for providers to increase prices. Providers often have an agreed contracted rate with a council for an extended period with little room for negotiation. Homecare providers are therefore highly vulnerable to increases in employment costs.

#### Funding deficit

Each year, we look at the costs of care delivery to calculate a minimum price for homecare. This is the minimum rate a homecare provider needs to meet employment and care regulations, deliver quality services and operate sustainably. Staff costs include the National Minimum Wage (NMW) for all work hours (including travel), and statutory employment on-costs. These include statutory pension; national insurance; sick pay; holiday pay; and training time. The hourly rate also includes a contribution to other running costs. These include wages for the registered manager and office staff; recruitment; training; digital systems; telephony; insurance; regulatory fees; PPE and consumables; office rent, rates and utilities; finance, legal and professional fees; general business overheads; and a small surplus for investment. We show details of figures in Figure 2. For the 2025/2026 financial year, we calculate the [Minimum Price for Homecare to be **£32.14**](https://www.homecareassociation.org.uk/resource/minimum-price-for-homecare-2025-2026.html).

Figure : Why regulated homecare costs £32.14 per hour in 2025-2026.

A chart of various business icons

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Homecare Association research conducted in 2023[[6]](#footnote-7) showed only 5% of public bodies across the UK were paying fee rates, which met this minimum price. This means few public bodies are supporting compliance with minimum wage legislation and care regulation. 18 public bodies were buying homecare at rates below the amount needed to cover direct staff costs at the then minimum wage. There is significant regional variation in rates with the amount commissioners in Greater London were paying averaging at just £19.01 in 2023/24, despite higher living costs in London. Many [London councils have signed Unison's Ethical Care Charter](https://www.unison.org.uk/care-workers-your-rights/the-ethical-care-charter/councils-which-have-adopted-the-ethical-care-charte/), but their fees do not cover minimum wage staff costs or other expenses.

In August 2024, we published further research investigating fee rates for homecare after the minimum wage increased to £11.44 per hour on 1 April 2024[[7]](#footnote-8). **Only 1%** of contracts with public bodies for regular homecare were paying the minimum price we calculated (then £28.53 per hour). **Only 6%** of regular homecare contracts with local authorities in England had a fee increase that kept pace with the NMW increase. The average rate paid in England was £23.21 per hour – well below the minimum rate required. We estimate that in 2024/25, there is a £1.08 billion deficit to meet delivery costs at minimum wage in homecare alone[[8]](#footnote-9). This rises to a £1.8 billion deficit for 2025-2026[[9]](#footnote-10). Minimum wage is not an attractive wage rate – if providers are to compete with supermarkets and hospitality, they need to offer more than that.

Figure : Average 2024-2025 fee rate per hour in each administration of the United Kingdom for regular homecare contracts with local authorities/HSC Trusts

A graph of different colored lines

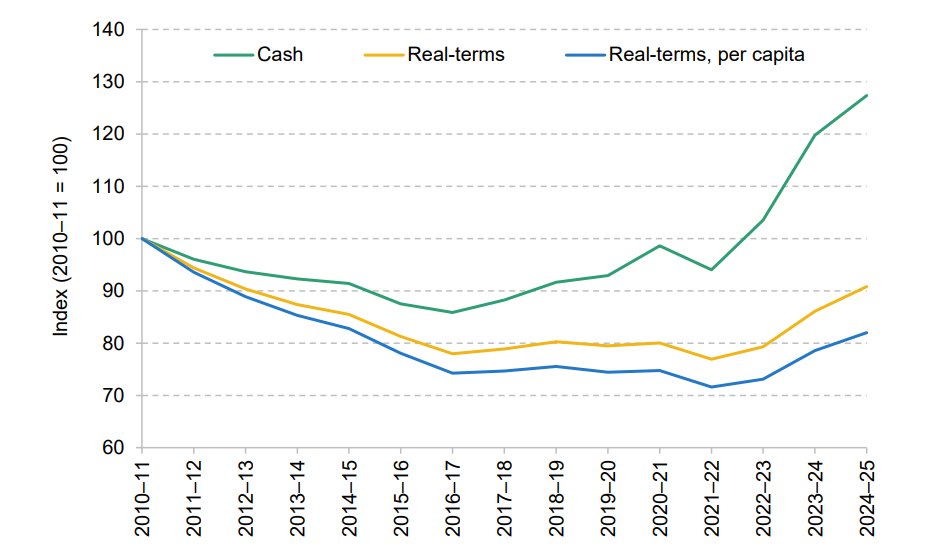
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This leaves providers in the impossible position of being pressured to accept rates from commissioners, which do not cover necessary employment and other costs.

#### Commissioning practices

Need for social care has increased, and the population is ageing[[10]](#footnote-11). The Kings' Fund reported that fewer people received care in 2022/23 than in 2015/16, despite more people requesting care[[11]](#footnote-12). However, real terms, per capita funding for Councils in England has not yet recovered to 2010 levels, let alone increased to account for increased need levels (Figure 4).

Figure : Institute of Fiscal Studies analysis of cash and real terms core council funding per person (2010/11 = 100)



Source: Institute of Fiscal Studies[[12]](#footnote-13)

ADASS report that 81% of Councils in England expect to overspend on their adult social care budget this year and 35% are being asked to find savings[[13]](#footnote-14).

The need to reduce cost therefore often influences commissioning and procurement approaches. Examples of cost-cutting actions include:

* Increasing eligibility criteria to reduce the care that councils must pay for.
* Delaying assessments until people deteriorate and end up in hospital, so that the NHS pays rather than councils.
* Placing people in care homes rather than supporting them at home. They do this because people must sell their houses to pay for care in care homes, reducing costs for councils.
* Zero-hour commissioning and purchasing of homecare for contact time only. If a person goes into hospital, for example, the councils and NHS stop paying providers immediately, which means there is no money to pay careworkers whilst the person they usually care for is in hospital. There is also no guarantee of work for the provider, which makes staffing decisions difficult to manage and hiring international workers complex (as they require a guaranteed salary).
* Offering fee rates which are too low to cover the costs of delivery (as discussed above).
* Exhorting providers to bid at lower fee rates to win work, favouring low cost regardless of quality, trust and previous working relationship.
* Terminating lead provider contracts with agreed fee rates before the agreed contract term has ended and shifting to framework contracts where the lowest bidder wins. This means providers who won contracts with secure hours and income for several years must bid for every hour at the lowest price.
* Encouraging people who need care and support to take direct payments at low rates in unregulated forms of care. This is cheaper to deliver because there is no regulatory oversight such as training, record-keeping, etc. This means there is no oversight of quality and safety.
* Encouraging individual care workers to claim they are "self-employed" which reduces administrative burden and costs for all parties. This means that individual care workers have no employment rights. They do not receive pension contribution, holiday pay, sick pay or travel time. If they want training, they must source and pay for this themselves. It is unlikely many individual care workers would meet HMRC's tests for self-employment because of requirements of the Care Act 2014. This puts older and disabled people at risk of historic tax liabilities if an employment tribunal later considered the worker to be an employee. Anecdotally, we hear "cash in hand" payments are common in the unregulated market, creating potential risks of tax avoidance and benefit fraud.

The rates being paid by councils suggest it is convenient to turn a blind eye to regulatory issues because of their inability to meet statutory duties otherwise.

We know delays in inspections by the Care Quality Commission (CQC) mean many authorities are now contracting with providers that the CQC has not inspected. As of June 2024, 60% of community social care providers had either never been rated by CQC (23%} or had a rating of 4 to 8 years old (37%). Where inspections have taken place, concerns are more common - in community social care, the locations "Requiring Improvement" have increased from 0.5% in 2017 to 26.3% in 2024[[14]](#footnote-15).

#### Budget measures

Our calculations show the announced changes to the NMW and employer's national insurance contributions (ENICs) for 2025-26 will add about £2.04 per hour to direct staff costs in homecare. Total direct staff costs become around £22.71 per hour. This is a 9.9% increase in employment costs over 2024/25, before we account for inflation in other running costs. Staffing costs make up 70-75% of delivery costs. We estimate the sector needs overall fee rate increases of 9-10% to maintain the current position. Some providers may be eligible to claim the Employment Allowance, which would reduce direct staff costs by 13p per hour.

The government has just published the local government settlement. Councils will need time to process the implications and set their budgets. The extra funding allocated for social care is £880 million, and councils may use some for children’s services. Most councils have told providers to expect fee uplifts of 0-5%. Given cost increases of 10% and wafer-thin margins, this will be nowhere near enough. Many providers will face unsustainable losses without urgent additional government investment.

A survey by the Care Provider Alliance (of which the Homecare Association is a part) found that 95% of providers were seriously concerned about the Autumn Budget measures. They expected the potential effects could include:

* 57% of providers handing back contracts to local authorities or the NHS.
* 43% of providers needing to shorten homecare visits
* 73% of providers refusing to accept new packages of care from LAs or the NHS.
* 92% of providers increasing rates for already burdened self-funders to compensate for any government shortfall
* 64% of providers needing to let staff go.
* 76% of providers making cuts to training and resources for staff
* 86% of providers not increasing wages of other staff, thereby reducing salary differentials
* 64% of providers stepping back from paying Real Living Wage
* 75% of providers reducing or stopping investment in digital transformation
* 78% of providers reducing or stopping investment in service development
* 78% of providers reducing or stopping environmental/de-carbonisation efforts
* 71% of providers will be abandoning business growth plans.
* 22% of providers are planning to close down their businesses.
* 36% of providers are planning to close some of your services.
* 32% of providers are planning to sell their business.

It is clear the sector cannot absorb these costs.

Whether we see widespread contraction or consolidation in the market, there is likely to be significant disruption for people using services. Employers delivering at the lowest prices are more likely to survive. This could favour larger companies who are better able to absorb costs, many of whom deliver good quality care. It could also favour providers who are prepared to deliver at low cost and compromise on quality and working conditions.

#### Cost of sector failure

If the gap between income and expenditure widens, there will be an impact on homecare provision.

This may manifest as providers leaving the market and homecare capacity shrinking. If this were the case, then we would see multiple social and economic impacts, including:

* Increases in wait times for people in the community seeking care or support (as we saw in 2021/22).
* Escalation of healthcare needs as people become more unwell because their basic needs are not being met.
* Reductions in care and support packages for people already in receipt of care; reducing their ability to take part in society.
* Increased pressure for people to take Direct Payments for personal assistants, even if this isn't their first choice.
* Increased pressure on families to support their loved ones until they can get a care package – potentially disrupting their work and other family responsibilities.
* Increased pressure on families to support their loved one's long-term – potentially seeing more unpaid carers dropping out of work.
* Increased pressure on GPs from people being discharged from hospital without the appropriate care[[15]](#footnote-16)
* Increased waiting times in hospitals as it becomes harder to arrange support for people being discharged.

However, provider exit, and lower service capacity is only one potential outcome. Providers may seek to offset the deficit in other ways.

**Seeking to increase profit from other sources**

* Providers may increase private-pay clients and reduce or cease to support those funded by councils and the NHS. This is already happening.

**Reducing overheads**

* Providers may reduce pay differentials between supervisory/management staff and careworkers. However, we know that this has already happened in large parts of the sector. A careworker with five years' experience is earns on average only 10p per hour more than a careworker with one year's experience.[[16]](#footnote-17)
* Reducing office headcount. For example, cutting line management and increasing the number of people each supervisor manages. On average, there are at least 25 careworkers to one supervisor.
* Reducing the number of spot-checks and quality checks undertaken.

**Cutting corners in relation to employment practices**

Poor treatment of staff is unacceptable. It is clear this is happening as a consequence of the economic conditions and commissioning practices. We receive concerns from providers about being undercut by others who adopt practices such as:

* Not paying staff for travel time, training time or sick leave.
* Not paying for short gaps between calls.
* Not paying adequate mileage rates.
* Asking staff to pay for their own uniforms.
* Asking staff to cover work related costs incurred through using their own mobile phone for work.
* Not giving internationally recruited staff the number of hours they need to meet the salary requirements.
* Staff being asked to work too many hours, not being given compensatory rest breaks or be constantly on standby.
* Other modern slavery concerns – including provision of poor housing; threats of deportation; demanding international recruits repay costs which should fall to the employer, etc.

**Cutting corners in relation to care quality**

The most common practice here is 'call clipping' or 'call cramming', where a company is contracted to provide an hour of care to someone but only provide a 20-minute care call, or less. This enables them to fit more calls in per day, increasing profits by under-delivering.

People may avoid raising concerns or making complaints if they fear finding new care will be difficult because of shortages.

Providers engaging in labour exploitation and call cramming give the sector a bad reputation, drive conscientious providers out of the market and lead to valued and skilled care staff leaving the sector. Adequate funding and regulation could prevent this from occurring on a significant scale. Most of these practices are already unlawful. Ensuring enforcement of existing legislation is, therefore, a priority.

## The impact of the Bill in this context

Thinking specifically about the impact of the Bill, we will first outline general concerns and then respond directly to the questions the Committee has asked.

#### General concerns regarding impact on business

The context above shows that:

* Existing funding is insufficient.
* Local authorities and the NHS are driving prices down.
* Most fee rates paid already do not support employers' compliance with existing legislation.
* Some employers are complying but can only do this by flattening pay differentials, for example.
* Existing employment legislation is not always being complied with by some providers.
* Conscientious employers are being undercut.
* Existing quality assurance and enforcement methods are not effective.

One objective of the Bill[[17]](#footnote-18) is to:

*Raise the floor of protections so that businesses are no longer undercut by those that compete based on low pay, low standards, and insecurity.*

We welcome the potential of the Bill to address elements of poor practice to protect good employers. We fully support improving conditions for the social care workforce.

Poor pay and working conditions in social care are driven by inadequate funding, commissioning and regulation. New legislation may improve rights in certain respects. Legislation may also exacerbate the situation if the costs associated with it are unfunded. This will mean the gap between income and costs grows wider. This could risk encouraging more corner cutting.

Unless the Government funds the sector adequately and reforms the way public bodies commission and purchase homecare, more legislation will change the form of the problems but will not resolve the problems. Indeed, it risks creating fresh problems.

Security of income and total pay for careworkers are, for example, significantly reduced by councils contracting with too many providers and using dynamic purchasing systems. Fragmenting hours between many providers, across a wide geographic area, results in unpredictable schedules, gaps in rotas, and unnecessary travel. Increasing the headline pay rate will not address this problem, which leads to insecure income and poor employment experience.

To illustrate this, the graph below (Figure 5) shows the routes of homecare workers from six (of c. 60) providers in Bristol on one day[[18]](#footnote-19). These providers deliver c.50% of the homecare purchased by Bristol Council. You can see the complex tangle of journeys made.

Figure : Homecare workers' routes on one day in Bristol.

A map of lines and text

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During the day, there was unused capacity (Figure 6), and homecare workers lacked sufficient time to travel between visits (not shown). Councils pay providers for client contact time only, not for shifts. With random allocation of clients, which occurs with framework contracts and dynamic purchasing systems, providers cannot plan rotas efficiently. This leads to poor worker utilisation and poor income in relation to hours on the road.

Figure : Utilisation of homecare workers on a given day.

A graph with red arrows and blue lines

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Reorganising the routes into three tighter geographic zones, reduced mileage by 65% and the number of careworkers needed by 35% (Figure 7). This led to fairer, more efficient schedules with a higher ratio of client contact time to travel time. This resulted in higher income, less travel and less stress for the homecare workers. At scale, this approach would increase retention and free up substantial resource to support others in need.

The measures in the Employment Rights Bill do not address the commissioning and purchase issues shown here. These arguably have a much higher impact on retention in homecare than the headline pay rate *per se*. For example, the government could set a fair pay rate of £15 per hour, and providers could guarantee 14 hours over a week. This would likely be less attractive to a careworker than a pay rate of £13 per hour, with 14 hours of work over two days, involving less travel, and more flexibility.

Figure : Impact of optimising homecare workers' routes.

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Reform of commissioning and purchase of homecare must accompany the Employment Rights Bill. There must be a willingness to fund and commission social care ethically and sustainably.

## Committee's questions

**What impact will the areas covered by the Employment Rights Bill have on small, medium and large businesses?**

#### Overview – business size.

As explained above, 85% of homecare businesses have fewer than 50 employees[[19]](#footnote-20).

The Government has identified that businesses will have immediate costs in understanding and implementing new legislation. They will also have some ongoing costs (e.g. changes in Statutory Sick Pay) because of this legislation. The Government has estimated that the costs of the Bill will be lower than £5 billion for employers or an increase of less than 1.5% of employment costs[[20]](#footnote-21). However, the measures in the Bill will affect low-paying sectors – including social care – disproportionately. We have multiple concerns about this.

First, an increase of 1.5% is on top of an increase of at least 10% from the Budget measures – bringing the increase to 11.5% in total. Social care funding must increase proportionately, for reasons outlined above.

Second, the increase in employment costs could be greater than 1.5% for the homecare sector, depending on the detail of the legislation. A Social Care Fair Pay Agreement would increase costs significantly. It is unclear how yet.

The Bill is likely to affect small to medium businesses more significantly:

* Larger businesses are likely to have more centralised support in implementing changes to HR policies, so administrative overheads to implementing the legislation will be lower.
* Larger businesses have greater ability to assign workers to different jobs if a commissioner cancels a call at short notice – this could offset potential costs associated with a reduction of zero hours contracts.
* Larger business might also have more liquidity and, therefore, greater resilience to increased cost pressures than small businesses. They might have more bargaining power in certain regions.
* We know local authorities and the NHS often pay providers late[[21]](#footnote-22) and that this can cause cash flow issues, which reduce business resilience and can make it even harder for small to medium-size enterprises.
* Costs to a small or medium-sized business of defending a case in a Tribunal can have a considerably larger impact on the organisation if there is no in-house HR or legal support, no one in the organisation has experience of the process and managerial staff need to take time away from the business.

#### The impact of specific measures – zero hours contracts and guaranteed hours

We fully support measures to enhance workers' rights and improve job security. However, if this substantially increases costs and leads to negative rather than positive changes in working practices, it could affect the stability of the sector.

An increase in guaranteed hours contracts might see more employers paying staff for hours when there isn't work available for them to do. If this happened, it might increase employment costs well beyond 1.5% for some employers (we discuss further later).

38% of the homecare workforce in England are on zero-hours contracts[[22]](#footnote-23). The reasons behind the use of zero hours contracts are complex but are driven by several factors, including:

* The commissioning of work on a zero-hour basis by NHS and local authorities. Many commissioners only pay for the hours of care contact time delivered. The work is often unpredictable because of the rapidly changing needs of people who need care and support. The demand can therefore be highly variable, and employers have no guarantee of the number of hours work they will secure, so they cannot pass on a guarantee of hours to staff without substantial financial risk. Existing financial margins do not cover this risk.
* Where employers do have security of work and offer staff guaranteed hours arrangements, staff members are not always keen to take these up. There are several reasons for this. From a careworker's perspective, not all guaranteed hours are equal. If, for example, an employer guarantees them 20 hours per week but expects them to be available from 0700 to 2200 seven days per week, this is unattractive and arguably exploitative. In such cases, they would prefer zero-hours contracts, which allow them to turn work down. If, though, an employer could offer guaranteed hours on a shift basis, so a careworker receives a guarantee of 7 hours of pay for work on two to three days, that would be attractive. This gives them greater security of income, whilst affording them flexibility. Many careworkers need flexibility to fit around their personal circumstances, such as care responsibilities for family members or other jobs. The former approach reduces their flexibility. The latter balances income security and flexibility but requires a move away from framework contracts and hyper-fragmentation of provision; this requires more government investment. The Bill will not help address this issue.
* There is a higher demand for work at certain times of the day (for example, when people want to get up and go to bed) that inevitably influences working patterns.

If there is a move to guaranteed hours based on a 12-week reference period, this means employers will have a higher risk of needing to pay staff when they do not have work available.

For example: a careworker works with two people providing 6 hours care a week to one person and 12 hours to the other. The person receiving 12 hours of care a week experiences a deterioration in their health and moves into a care home. The employer would then need to find another 12 hours that match the careworkers' availability. If they are on a guaranteed contract, then the careworker will need to be paid for those 12 hours in the meantime, but there may only be odd bits and pieces of cover for colleagues who are on sick, etc. available. This means that the careworker is likely to have some slack time which will need to be covered as an overhead. This would increase the per hour cost of care. If the care provider cannot persuade the local authority to pay a higher per-hour rate, where will they find the money to cover the cost?

Unpredictability also stems from councils suddenly changing how they buy homecare without talking to providers. Examples include doubling the number of providers on a framework agreement, halving the hours available per provider. Changing a lead provider contract before the end of the contract term to a framework contract; instead of having some certainty of hours, providers have to compete on price for every package. Or placing an embargo on admissions pending investigation of quality concerns, though there is no serious risk to safety.

The Bill includes provisions for employers to agree working patterns and hours in advance. The Bill proposes workers can take an employer to Tribunal if the employer offers them work at short notice. While most homecare providers will plan work ahead, the ability to start packages (for example, to get someone out of hospital) or cover shifts when someone calls in unwell might depend on being able to assign work to staff at short notice. The only way to manage this situation otherwise, would be to have surplus staff on duty in order to support responsiveness and cover. This would increase costs and favour larger care providers.

Implementing this reform will also increase the burdens of administration. Providers will have to analyse rosters and payroll records over a 12-week period. If employers guarantee hours and later lose work through no fault of their own, they will have to consult with employees about contract changes.

Paying workers for shifts cancelled at short notice would also mean increased costs. Some changes in working patterns are inevitable – for example, where the person being cared for is admitted to hospital. Most local authorities do not pay providers for calls when a person is in the hospital. This means the provider has no income to cover the careworker's wages in such scenarios under current arrangements. Local authority policies would need to change to paying on planned rather than actual hours delivered to allow for this. They would also need to continue to pay for care when a person is in hospital, and that would require adequate funding.

#### The impact of specific measures – Fair Pay Agreement

The Homecare Association has been engaging with colleagues in the Department of Health and Social Care about the Fair Pay Agreement.

We fully support the idea of providing better pay to careworkers. Care work is a skilled profession, which does not suit everyone. It demands responsibility. It needs people with the right values, judgment, emotional intelligence and discretion. Care work should not be a minimum wage profession.

Practices in commissioning and purchase of homecare limit providers' ability to improve employment conditions. HM Treasury and other relevant government departments must ensure sufficient funding for any agreements.

The adult social care sector includes 18,500 PAYE employers[[23]](#footnote-24). There is no overarching organisation with a mandate to represent employing organisations. There are no structures for organising employers for pay negotiations. Nor is there legal support or existing negotiating skills within the trade organisations in the sector. At most, 15% of careworkers belong to unions; many independent providers say the number is closer to 5-10%. Will there be funding to support people to take part in negotiations?

The sector is also extremely diverse. The working arrangements and employment contracts vary hugely between those working in live-in care, or supported living, to those working in care homes, or visiting homecare services. Some work night shifts; others don't. Some have specialist skills tailored to the specific needs of the person they support.

The Government has repeatedly made policy decisions based on the assumption that most social care workers work in care homes. For example, pandemic infection control guidance drafted for the homecare sector sometimes showed signs of originally being drafted for care homes and then adapted (e.g. calling the people being supported residents). One outstanding example is the guidance on linen handling in adult social care (which is mostly about care homes and has not been updated despite our raising this some months ago)[[24]](#footnote-25). We had to work hard to ensure that less frequently commissioned forms of provision (like live-in care) were included in pandemic guidance at all. This must not happen. The Government must recognise the diversity of the sector.

We are also deeply concerned that if the Secretary of State agrees a provision that is not adequately funded without the agreement of provider representatives and this is read into contracts, that it could cause the sector to collapse.

We have repeatedly experienced situations where funding or services have been arranged or distributed to local authorities to pass on to adult social care providers but there have been widespread problems with providers receiving funds or goods (for example PPE via Local Resilience Forums, vaccinations for homecare staff via local authorities, the Infection Control Fund). It would, therefore, not be sufficient merely to allocate funding to Local Authority budgets without ensuring that the rates being paid to social care providers by Local Authorities are adequate.

We need a National Contract setting minimum care prices. This will ensure protection of people receiving services, fair employment and provider sustainability. This must cover the reasonable costs of meeting any standards agreed.

#### The impact of specific measures: Statutory Sick Pay

We fully support better sick pay for careworkers. There are key advantages to ensuring that careworkers have adequate sick pay. This includes infection control. Encouraging workers to come into work when they are unwell can mean that they pose an infection risk to the people that they care for. We also see better retention rates for employers that offer occupational sick pay[[25]](#footnote-26).

During the pandemic, our research revealed that the vast majority of providers (93%) paid more than the minimum statutory sick pay. They could do so thanks to the Infection Control Fund. When the Fund ended, the same group of respondents reported that only 6% were paying full pay for sick leave – so there was a significant reduction in sick pay when the Fund closed. This was largely because of financial constraints[[26]](#footnote-27).

Removing the Lower Earnings Limit and wait time from Statutory Sick Pay will significantly increase costs for many social care providers who haven't been able to pay more than the statutory minimum because of cost pressures (see our introductory note on the context of the social care sector). We estimate that the increased cost of this provision could be as much as 10p per hour of care delivered. This adds a significant financial pressure that is not funded to an already precarious situation.

#### The impact of specific measures: Other measures

Social care employers, like others, will face extra costs for new policies on harassment, paternity leave, employee rights, and bereavement leave. In particular, managers will need to carefully handle issues, understand the legislation clearly, and document their actions to a greater degree. This will increase overheads – particularly for small businesses. It may increase the number of disputes and Tribunal claims that need to be managed. Clear and accessible guidance for all parties is vital.

**What impact will these measures have on staff retention, hiring practices, probationary periods and wages?**

The impact of the Employment Rights Bill will depend on whether there are also changes to funding, commissioning and purchasing of care.

For example, if the Employment Rights Bill increases employment related costs by 1.5% as predicted, then unless there is additional funding, wage structures in social care organisations could flatten further. Employees wanting career progression may leave the sector for better paid jobs in healthcare or other sectors.

Because of the extremity of funding constraints (outlined above), much of the care workforce already receives pay at the wage-floor.

There are some concerns that increasing the minimum wage in recent years has also seen an increase in non-compliance with the minimum wage[[27]](#footnote-28). This should be unsurprising if the Government does not fund the minimum wage increase. We could see a similar impact if measures like statutory sick pay or guaranteed hours contracts effectively increase employment costs. We may see a corresponding increase in non-compliance.

**How will other areas set out in the Plan to Make Work Pay impact businesses?**

The 'Right to Switch Off' will need to be thought through carefully to consider how to ensure that on-call managers of social care services can remain 'on call' whilst being in line with any such legislation. Employers also need to contact staff urgently sometimes to provide cover, including when a colleague is unwell or if a careworker has had to stay with a client to wait for an ambulance and the other people they support need care, for example. It is important that the 'Right to Switch Off' supports this.

Other provisions will affect the sector; exactly how is unclear. TUPE is often used in the care sector to transfer work and workers to new providers when local authority contracts change, for example. Sometimes care providers use 'worker' status (for example, for bank staff). It is likely that changes to this legislation would affect the homecare sector and may increase the administration, expertise, and funding needed to operate. We are keen to take part in further consultations on these matters.

Given so much of the social care sector's work is for the public sector, it is also possible that the Freedom of Information, Public Sector Equality Duty and other provisions could affect social care, but this depends on the detail of the legislation. We would have concerns about how, for example, Freedom of Information requests could affect small care businesses contracting with local authorities if they were in scope for this.

**What impact will strengthened protections, such as day one rights, have on the hiring practices of businesses, UK employment rates and UK investment rates?**

Care work requires committed, responsible people with strong values and high emotional intelligence. The responsibility and emotional demands of the work mean it is not suitable for everyone.

Many discover the care sector is not for them. Conversely, an employer may take someone on who doesn't have experience in the sector, and they are unsure whether it will work out. Day one rights may make it harder for employers to end an employment arrangement if the candidate isn't suitable for the work. This could lead to employers being more risk-averse to hiring people without experience in the sector.

The Government has said it will ensure that businesses can still use probationary arrangements. We recommend a probation period of twelve months, or at least no less than six, so that employers can really understand if someone is suitable for the job. What will be important is that there is clear guidance for small businesses on how to use probationary arrangements in situations where they want to test someone's suitability for the sector.

**To what extent could the Employment Rights Bill cause businesses to offshore employment and continue with weaker workers' protections abroad?**

Offshoring is unlikely to apply directly to the care workforce. However, international recruitment of careworkers is currently required to maintain workforce levels and is increasing, while the number of people recruited from within the UK is decreasing[[28]](#footnote-29).

## Protecting workers

***Does the Employment Rights Bill adequately safeguard the workers it seeks to protect?***

As we have argued throughout this submission, not on its own. The Government must also improve funding, commissioning and regulation of care. Commissioners must pay attention to the quality of the services they are paying for. Right now, many public bodies are focusing on reducing cost rather than quality. Workers and employers need clarity on employment rights and easy, affordable ways to settle disputes. Is there enough Tribunal capacity?

***Are there weaknesses or loopholes in the Bill that could be exploited or have unintended consequences?***

Increased costs could have unintended consequences and lead to providers seeking to cut corners (in the ways outlined above such as erosion of pay differentials removing progression prospects, reduced supervision, call cramming or lack of pay for travel time) in order to make ends meet.

Budget cuts may force workers to see more clients in less time. Nobody wants their care to be rushed, so this is clearly bad for people being supported. It would also reduce job satisfaction for workers.

**Unfunded costs of improved employment rights lead to a high risk of increasing unregulated care provision. This risks safety and quality of provision. It also leaves careworkers with fewer or no employment rights and benefits.**

Demand for social care will remain high. It is hard to know if stricter worker protection laws will make it harder for younger or less experienced people to find jobs. At present, there are high vacancy rates in the sector. While international recruitment remains a possibility, this also comes with risks. Employers need to provide sufficient hours to international recruits; additional training compared to UK counterparts; more pastoral support; and cover high recruitment costs.

***Are there areas of employment law not covered by the Bill that weaken workers' protections?***

We, and other businesses, doubt the Employment Tribunal system and ACAS can handle an increase in their workloads. Long waiting times for resolving disputes benefit nobody. The measures in the Bill are likely to result in increased caseload. Will ACAS and the Tribunal Service be able to expand their services?

There are other areas of law related to employment (though not employment law) about which we have concerns.

The Homecare Association previously expressed concerns[[29]](#footnote-30) that a significant portion of the workforce (c. 20%), specifically Personal Assistants and 'self-employed' care workers, are currently unregistered and unregulated. In England, the CQC oversees managed services, but not Personal Assistants. England lacks a professional register for careworkers. The devolved administrations register some of the workforce but not Personal Assistants. Registration ensures basic health and safety training, such as manual handling and infection control. It also ensures workers can access emergency resources; for example, making contact during pandemics with guidance, PPE, vaccination information. Registration provides extra confidence in the worker's suitability, beyond standard DBS checks and references. In Northern Ireland, careworker registration focuses on conduct and practice, rather than qualifications. This is a pragmatic and effective approach which recognises the nature of the care workforce at present.

We worry about foreign workers whose complaints cause the Home Office to revoke their employer's licence. The Home Office then gives the worker 60 days' notice to leave the country. The government might offer temporary visas better to protect workers from exploitation and allow easier job changes. Australia's Workplace Justice Visa might be a model. Alternatively, Skilled Worker Visa modifications are possible.

***Can the measures in the Bill be adequately enforced? What are the barriers to setting up a Single Enforcement Body (Fair Work Agency) and how can these challenges be overcome?***

We support the tripartite model of the proposed advisory board and would like to see workers and employer representatives on the Board. We have valued working with the Low Pay Commission in previous years, which has a similar structure.

Sector-specific working groups that include provider representatives and frontline careworkers would also be beneficial.

We have three major concerns about whether the Fair Work Agency and other measures to enforce the Bill will be effective. First, the resourcing of the organisations. Second, the adequacy of enforcement arrangements for international workers here on a visa. Third, the adequacy of sharing of data and intelligence between different regulatory groups, e.g., HMRC, UKVI, CQC.

#### Resourcing

The Law Gazette reported earlier this year that Employment Tribunals in London were listing Tribunals as far ahead as 2026. This points to resourcing issues within the Tribunal system. It can mean a very extended wait for anyone seeking adjudication of a case[[30]](#footnote-31). While the Fair Work Agency might reduce caseloads (by resolving pay complaints, for example), the new Bill will likely increase the caseload (e.g. unfair dismissal claims). Prompt hearing of cases is vital for access to justice. The Government should consider the timing and relationship between the Fair Work Agency becoming active and the other elements of the Bill coming into force.

Tribunals aside, the new Agency has the potential to inspect employers. According to the International Labour Organisation (ILO)[[31]](#footnote-32) the median inspector to employee ratio for high-income countries is 0.84 inspectors per 10,000 employees; the figure for upper-middle and middle-income countries was 0.41 and in lower-middle income and low-income countries 0.47. The UK has 0.29 inspectors per 10,000 employees. This results in around 0.4% of workplaces subject to inspection having received a visit in the last year[[32]](#footnote-33).

The labour inspection regime is grossly under-resourced. Efficiencies gained from combining the agencies will not offset the deficit. Employers who are not seeing inspectors visit them and are not seeing other employers in the area receive inspections (some of whom are clearly not abiding by lawful employment practices) are likely to lose faith in the enforcement system.

The new Fair Work Agency needs more resources in terms of inspectors per employee. Resources must exceed the combined total of current agencies.

#### International workers

The existing enforcement regime relies significantly on workers to make complaints to enforce their own rights. We worry international workers might lose their jobs if they complain, even if they know their rights.

For a UK worker, to lose a job may mean some financial hardship. They need to seek support from benefits, the Job Centre, food banks and other forms of support whilst they look for work. This can be a devastating situation. International workers have only 60 days to find a new sponsored job if they lose their current one or their employer loses their licence. If they don't find another sponsor in 60 days, they will have to leave the UK. They will have no recourse to public funds in that time – meaning they can't claim benefits and could face destitution.

This situation does not support someone trying to enforce their rights via ACAS and potentially an Employment Tribunal. It makes it difficult for employees to enforce their rights.

It is important to support displaced and exploited workers to find work with ethical employers. The Government must consider alternative forms of support as well. Could the Government change some details of the visa system to make access to justice more workable in these situations (we previously mentioned Australia's Workplace Justice Visa)? Workers seek new jobs to avoid mistreatment but rarely challenge their previous employers.

Proactive enforcement from agencies can provoke fears of immigration enforcement if workers exploiters lie about, or cast doubt on, their immigration status – even where workers hold visas or in situations which clearly have features of modern slavery. The Government must ensure there are clear and consistent policies and communications to ensure exploited workers, who have done their best to comply with visa requirements themselves, have confidence that enforcement intervention will not further worsen their situation.

#### Data and intelligence sharing

Current data systems appear inadequate. There is no intelligent management of supply and demand for careworkers. This means the international recruitment tap is either switched on or off, with no room for targeted recruitment.

There is no database allowing identification of employers with a sponsorship licence in a given sector or location. The Home Office apparently struggled to link visa numbers with sponsorship licence numbers. For months, local authorities did not know which providers had sponsorship licences or how many international workers they employed.

Initially, the Home Office did not check with the CQC about whether a provider was registered or when they registered. Nor did they check with HMRC about how many employees they already had before issuing licences.

There are no robust and efficient systems for redeploying displaced sponsored workers.

***Will the proposed trade union reforms improve working relationships between workers and businesses, and hence, productivity and enable voice at work?***

The Resolution Foundation has estimated that union membership amongst the private sector care workforce is as low as 15%[[33]](#footnote-34) (20% including public sector workers). Employers in the independent sector believe it is only about 5-10%. Measures in the Employment Rights Bill, including the Fair Pay negotiations, may lead to increased membership. However, the measures are unlikely to have an immediate effect on much of the homecare sector.

A key problem in social care negotiations is that employers have less control over prices than those in other industries. For this reason, the sector needs genuine tri-partite discussions about work organisation involving providers, commissioners and workers.

## Economic growth and wealth creation

***How will the Plan to Make Work Pay impact:  Economic growth? Productivity levels? Rates of investment? Business start-up rates?***

Demand for social care is increasing. It should be a natural growth sector as the population ages, but it needs coordinated government action to support the sector.

We urge the Government to prioritise quality and not just price to enable growth. If the business start-up rate is high but they cannot comply with legislation at the prices that they are working for, they will disrupt people's care. This risks a higher churn of providers in the market. New entrants could undercut existing providers in a race to the bottom. The Government must maintain basic standards; and this requires proactive action on funding, commissioning, purchasing and regulation of care.

The Government should assess care sector productivity based on how well services help people live fulfilling lives. The measuring of productivity by the minute of care delivered is ineffective and has been driving the use of zero-hours contracts. Changing how the Government and commissioners view productivity in care and support to a user-led, outcomes-based model is absolutely vital. Reduced use of zero-hours contracts will increase the per-hour cost of care, but productivity in care is not really about minutes. There is potential for bigger changes here, but Local Authorities, the NHS and the Government must work with providers to achieve that change.

***How will the Plan to Make Work Pay impact: Supply of labour? Employment levels? Incomes?***

Incomes for entry-level careworkers are likely to increase because of the Fair Pay Agreement, Sick Pay measures and more. However, unless there is proportionate additional funding, this could be at the expense of career progression prospects, as employers may have to fund this by freezing or reducing senior careworkers', supervisors' and managers' pay. This could also mean that we see retention in the sector reducing as the prospects of progressing within the sector become ever diminished.

Unless social care employers can offer wages that are competitive compared to other parts of the services sector (such as retail and hospitality) we are likely to see difficulties recruiting workers who are already in the UK. This could further increase the reliance on international recruitment. In the longer term, automation and artificial intelligence could reduce jobs in other sectors. This may benefit the care sector.

***How will the Plan to Make Work Pay impact: Household wealth?***

The Plan to Make Work Pay will increase costs for people paying for their own care. Labour decided not to proceed with the Care Cost Cap, proposed by several previous governments. This set a limit on lifetime costs of care for an individual to prevent a catastrophic financial impact. We are all just one accident or illness away from needing care. No one can foresee this with certainty.

We urge the Government to review the funding of care with urgency.

***What solutions or actions are required by Government, businesses and workers to effectively support the labour market while boosting productivity and protecting workers' rights?***

We recommend that the Government:

* Introduces a National Contract for Care Services that:
  + Legally specifies a minimum price for care.
  + Focuses on outcomes rather than time and task.
  + Legislates to commission for shifts rather than minutes or hours on a zero-hours basis. This will mean fully modelling, costing and funding the change in working practices.
  + Pays on planned rather than on actual – to allow providers to cover cancelled shifts, etc.
* Reforms the approach to commissioning and procurement of care. It could explore the consumer-led approach adopted by Australia. There, the money follows the person needing care, not the providers. This means everyone can act as if they were a self-funder. This removes the need for public sector commissioning and procurement processes. These are expensive, resource intensive and frustrating for all parties.
* Ensures the CQC pays closer attention to the quality assurance used by local authorities in commissioning processes.
* Provides £1.8 billion for homecare to cover the cost measures implicit in previous deficits and the UK Budget.
* Exempts homecare providers from changes to the employers' National Insurance Contributions.
* Ensures a multiyear funding settlement for social care to meet future demand and cover the full cost of care (estimated £18.4 billion by 2032/33[[34]](#footnote-35))
* Fully resources labour enforcement mechanisms (including the new Fair Work Agency) compared to international standards.
* Provides a mechanism for international recruits to raise concerns without facing deportation or destitution.

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