Mr Joseph 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: lpc@lowpay.gov.uk

5 June 2019

Dear Joe,

Low Pay Commission Consultation 2019

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 provide on behalf of United Kingdom Homecare Association (UKHCA).

United Kingdom Homecare Association 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

United Kingdom Homecare Association (UKHCA) Response

United Kingdom Homecare Association (UKHCA) Response to the Low Pay Commission consultation questions 2019

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 2,013 locations across all four UK administrations.

In England there are around 9,000 registered locations, regulated by the Care Quality Commission, which employ an estimated 515,000 people, 50% of whom are on zero hours contracts. Careworkers can achieve an hourly rate of £8.90 per hour and senior care workers £9.18 per hour.[1]

Careworkers in Scotland and Wales have similar hourly rates but those in Northern Ireland tend to be offered lower rates.

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

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[1] Skills for Care Workforce Intelligence Summary **Domiciliary care services in the adult social care sector 2017/18.**

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.

Annually, UKHCA presents written and oral evidence to the Low Pay Commission. We also provide evidence to Parliamentary Committees, for example, on 29 January 2019, the House of Lords Select Committee on Economic Affairs.[2]

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 2020?

In March 2019, the Office for Budgetary Responsibility (OBR) said that economic growth had slowed since the Budget of October 2018, in part reflecting heightened uncertainty related to Brexit. Its forecast for GDP was revised down to 1.2%.[3]

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[2] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/economic-affairs-committee/social-care-funding-in-england/oral/95992.html

[3] Office for Budgetary Responsibility **Economic and Fiscal Outlook-March 2019** https://obr.uk/efo/economic-fiscal-outlook-march-2019/

In its Labour Market Overview, published on 14 May 2019, the Office for National Statistics (ONS) said that the UK unemployment rate was estimated at 3.9%, the lowest level since the period between November 1974 and January 1975.[4]

This combination of low unemployment, competition for workers and wage pressures has continued unabated since the evidence UKHCA submitted to the Commission last year.

On the basis of current forecasts we therefore see no reason to believe that the employment outlook for the homecare sector will change markedly in the period up to April 2020.

A major influence on the adult social care sector will be the volume of homecare services purchased, particularly by the statutory commissioners, that is, Local Authorities, the NHS and the Health and Social Care Trusts in Northern Ireland.

Local Authorities and to a more limited extent, Clinical Commissioning Groups are the major statutory purchasers of homecare and through their purchasing decisions and particularly the fees they pay to providers, have a major impact on careworkers' employment prospects and the viability of organisations employing them.

In March 2018 UKHCA submitted a Freedom of Information request to all UK Local Authorities and the Health and Social Care Trusts in Northern Ireland with responsibility for funding adult social care. We identified that fewer than 40% had carried out any meaningful cost of care analysis with their local provider organisations.[5]

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[4] Office for National Statistics **Labour Market Overview, UK: May 2019** https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/may2019

[5] Angel, C (2018) **The Homecare Deficit 2018** Third Edition October 2018

A subsequent request asked for commissioners to provide a breakdown of the fees paid to homecare providers. We shall cover the results of the Freedom of Information requests and the subsequent analysis of the responses later in this paper.

Councils often only pay for 'contact time' that is, the time spent delivering care in the service user's home, meaning that travel times between service users are not factored into fees paid by the council. In addition, pressures are placed on careworkers to limit the time between calls or cut visits short. In areas such as London, with good public transport links, such 'call clipping' may seem viable but in rural areas, with greater distances between calls the impact will be greater and may result in sub-standard care for people with care and support needs.

As described on Page 3, the OBR has highlighted heightened uncertainty around the impact of Brexit. The impact on the homecare sector is still unknown, but is likely to be negative.

The proportion of non-British nationals, employed in the homecare sector, varies across the UK but ranges from about 6% to 8% overall.

The figures for England are illustrated in Figure 1, below.

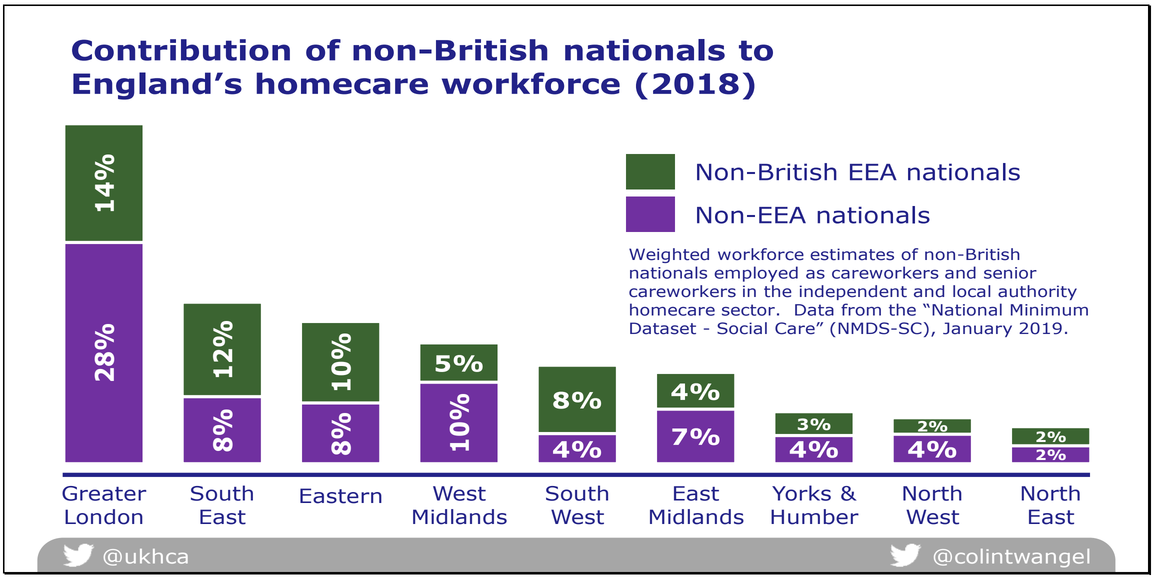

Figure 1. Contribution of non-British Nationals to England's Homecare Workforce (2018).

From Figure 1 it is clear that a higher proportion of non-British nationals are employed in London and the South than in the North. In the event of the UK's withdrawal from the EU, employers in London and the South may experience the loss of this workforce and will, potentially, be more sensitive to the terms of the Government's draft Brexit immigration policy, particularly its proposed £30,000 earnings limit. The earnings limit may deter migrant workers from seeking employment in the UK, given the low rates of pay, as identified in Section 1, above. These rates would not bring migrant careworkers earnings to above the Government's proposed earnings limit.

Loss of the existing migrant workforce would, in turn, increase the pressure on local employment markets that we referred to earlier in this paper and within which, potential candidates do not, at present, see the homecare sector as an attractive prospect. The attractiveness of the homecare sector to indigenous workers was highlighted in the Migration Advisory Committee's (MAC) report on EEA migration which we shall consider on Pages 6 and 7 of this paper.

This picture is likely to be repeated across the UK. Scotland's First Minister recently wrote to EA citizens living in Scotland encouraging them to remain in the country.[6]

Although migrant workers applying for settled status would retain their rights to remain and work in the UK, it is not clear what proportion and what negative impact this would have on employment figures.

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[6] https://www.gov.scot/publications/first-ministers-letter-to-eu-citizens-in-scotland/

By the end of April 2019, for the UK as a whole, out of 3.6million migrant workers eligible to register under the EU Settlement Scheme, 750,000 had actually registered.[7]

In some sectors, particularly agriculture, schemes exist that allow for recruitment of seasonal workers. In September 2018, the Migration Advisory Service published a report: *EEA migration*.[8] Whilst recognising that migrant workers, particularly non-EEA, but increasingly those from the EU, contributed significantly to the social care workforce the Committee pointed out that social care wages are low, which makes this an unattractive industry for UK-born workers to work in leading to a dependence on migrant workers who may have fewer better work opportunities.

With an aging and expanding population, social care needs will grow in the UK. The sector's problems are not primarily migration-related according to the Committee.

The Committee further recommended that a sustainable funding model, paying competitive wages to UK residents, would alleviate many of the recruitment and retention issues.

The Committee concluded that unless working in social care becomes more desirable to UK workers, chiefly through higher wages, migrant workers will be necessary to continue delivering these services.

The Committee ruled out introducing out a scheme to make it easier to hire migrant workers into social care, such is the case for rural workers,

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[7] Home Office **EU Settlement Scheme Statistics April 2019** published 30 May 2019

[8] Migration Advisory Committee (MAC) report: **EEA Migration** published 18 September 2018

employed on a seasonal basis, as such a scheme would not necessarily make it easier to retain them in the sector.

The factors that make working in social care unattractive for UK residents, particularly low wages, are also likely to make it unattractive to migrant workers who may look to change sector at the first opportunity even if hired to work in social care.

The absence of the Government's promised Green Paper on social care means that no proposals for a sustainable funding system have yet been put forward.

In the current political climate, with Brexit uncertainty and the impact of leadership changes on the Conservative Party, the likelihood of the Green Paper being published before the anticipated spending review, in autumn 2019, seems remote.

Local Authorities continue to underfund the costs of care and the outlook for the sector in the coming year remains challenging. From our data it is clear that although they recognise the pressures in the homecare sector they have not acted upon them by way of paying fees which cover providers' actual costs and the increasing competition for workers in the local labour market.

3. What are your views on the current state of the labour market? Has the labour market tightened over the past year? If you are an employer what has been your experience of filling vacancies?

UKHCA's members report continuing challenges around the recruitment and retention of staff.

Notwithstanding the market pressures outlined made Section 2, above, the staff turnover rate in the homecare sector in 2017/18 was 37.4%, higher that the average across all adult social care sectors (30.7%).[9] This equates to an estimated 180,000 workers leaving their role in the previous 12 months.

The turnover rate for independent and voluntary homecare providers, who provide 97% of jobs in the adult social care sector, was higher (38%) compared with local authority run providers (14%). The latter figure is indicative of the better pay and benefits enjoyed by homecare workers directly employed by local authorities where careworkers can earn between £10.55 and £12.51 per hour compared with £8.90 to £9.18 in the independent sector, as highlighted in Section 1, above.

These figures compare with an average UK staff turnover rate of 15% across all industry sectors and rates of 25% in retail and wholesale and 46% in catering and hospitality.[10]

Skills for Care estimates that the overall vacancy rate in homecare was 10.0% equating to an estimated 53,000 vacant positions. This was higher than the average for all adult social care services (8.0%), care home services with nursing (8.9%) and care home services without nursing (5.3%).

In their *State of the Adult Social Care Sector and Workforce in England* review, published in September 2018, Skills for Care reported that homecare services had the highest proportion of workers on zero hours contracts (49%), especially among care workers (58%). The percentage of workers on zero-hours contracts remained relatively stable between 2012/13 and 2017/18, going down by one percentage point over the period.

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[9] Skills for Care **The state of the adult social care sector and workforce in England** September 2018 https://www.skillsforcare.org.uk/NMDS-SC-intelligence/Workforce-intelligence/publications/The-state-of-the-adult-social-care-sector-and-workforce-in-England.aspx

[10] XpertHR (2017) **Labour Turnover Rates 2016**

With respect to recruitment and retention, Skills for Care estimated that the staff turnover rate of directly employed staff working in the adult social care sector was 30.7%. This equates to approximately 390,000 people leaving jobs over the year.

Turnover rates in adult social care have increased steadily, by a total of 7.6 percentage points, between 2012/13 and 2017/18. This level of turnover and churn indicates that employers are struggling to find, recruit and retain suitable people to the sector. A large proportion of staff turnover is a result of people leaving jobs soon after joining.

A longitudinal analysis of turnover by Skills for Care of showed that care workers under 30 years old were more likely to leave their jobs, as were those with relatively lower rates of pay.[11]

As described in Section 2, there is continued concern about the Government's immigration policy after the UK leaves the European Union, which may lead to staff shortages, particularly in areas such as London where there are higher proportions of migrant workers, as was outlined in Figure 1, above. However, some providers of live-in care services are more reliant on short-term migrant workers from Eastern Europe. The ending of free movement and rights to work that would follow the UK's exit from Europe would have a greater negative impact on these businesses as the migrant workers would not qualify for settled status due the peripatetic nature of their employment pattern and would fail to meet the £30,000 earnings' limit proposed by the Government.

As highlighted in Section 2, Page 6, the Migration Advisory Committee concluded, in 2018, that adult social care workers should not be subject to any scheme to recruit workers from outside the UK but that the terms and

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[11] Skills for Care **The state of the adult social care sector and workforce in England** September 2018

conditions, particularly wages, must be made more attractive to UK-born workers.

4. 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 Office for Budgetary Responsibility (OBR) estimated, in March 2019 that, excluding bonuses, average weekly earnings for employees in Great Britain increased by 3.4% before adjusting for inflation and 1.5% after adjusting for inflation, compared with a year earlier.

However, the majority of homecare services (70%) are purchased by councils. Many councils are reporting shortfalls in their budgets as the costs of providing social care services increase and as do the demands for those services.

The fees that councils pay are therefore influenced by local or regional budgetary constraints and as previously outlined, fee rates are not always based on any real cost of care exercises. This means that employers who are responsible for paying careworkers must consider the pay levels they can afford, within the rates paid by councils, should they be reliant on council funding, or whether to concentrate on the private, self-funded market where rates are higher and a more comprehensive, outcomes-based service can be provided to service users.

Providers who provide services to self-funding clients can charge higher rates and are therefore more likely to be able to offer higher rates of pay to their careworkers.

From UKHCA’s analysis of the actual fees paid by councils across the UK and covered later in this paper, there has been little evidence of them addressing the true costs of delivering care meaning homecare providers carry the burden of ensuring that workers are paid at least the NMW/NLW.[12]

UKHCA has calculated that it costs at least £18.93 per hour to provide sustainable homecare and meet statutory responsibilities. However, from our analysis of the Freedom of Information requests, submitted in 2018, councils in the UK were paying, on average, just £16.12 per hour, with some regional variation.

From Figure 2, below, it can be seen that almost 75% of a homecare provider's costs are related to staff wages and associated costs.

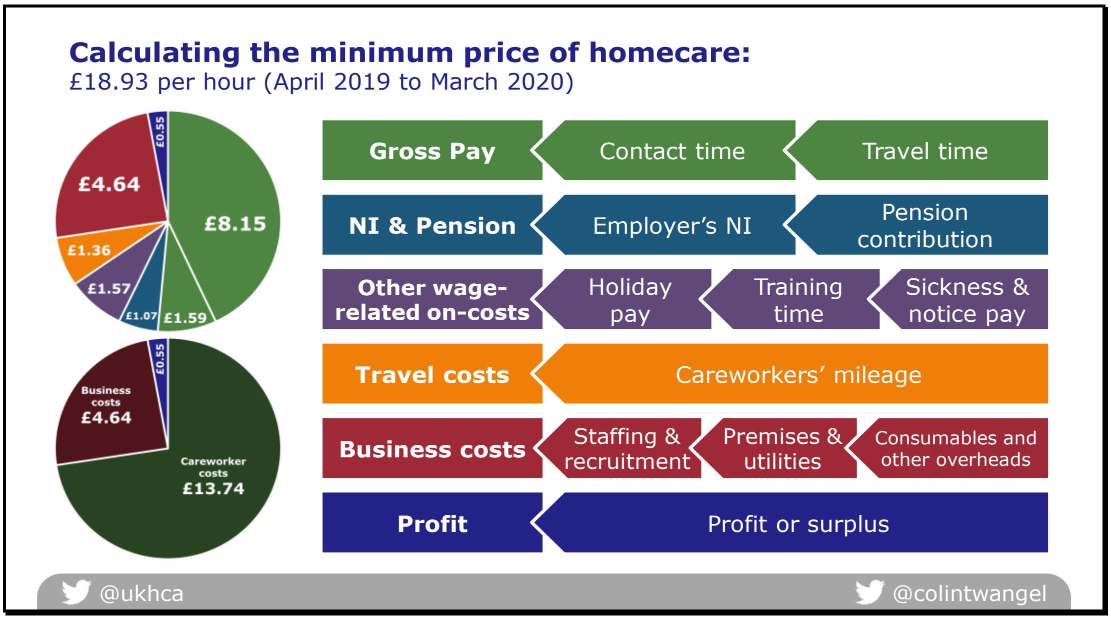

Figure 2: Calculating the minimum price for homecare

[12] Angel, C (2018) **A Minimum Price for Homecare** Version – 6.0

Impact of the National Living Wage and National Minimum Wage

5. What has been the impact of the NLW since April 2016? The rate is currently £7.83 and will rise to £8.21 in April 2019.

- **Our critical interest is in views or data on the NLW's effects on employment, hours and earnings**
- **We are also very interested in evidence on pay structures, differentials, and benefits (including premium pay and impacts on parts of the workforce above the NLW) outsourcing, progression, job moves, training, contract type, business models, productivity (and the different ways in which productivity improvements can be achieved), 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. For providers in the statutory homecare sector there is a continuous pressure exerted by Local Authorities on providers to reduce costs and to make efficiency savings. This has not abated since our previous response to the Commission.

From UKHCA's analysis, Local Authorities continue to pay rates well below the actual costs of providing care.

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.

UKHCA's analysis of fee rates paid by Local Authorities in 2018

In 2018 UKHCA submitted a Freedom of Information request to over two hundred Local Authorities in Great Britain and the Health and Social Care Trusts in Northern Ireland requesting the fee rates paid by local authorities for the financial year 2018-2019. The results were published as The Homecare Deficit 2018.[13]

The actual fees paid by councils were benchmarked against UKHCA's Minimum Price and the results, in Figure 3, below, showed a small increase over the levels identified in our previous analysis, published in 2016.[14]

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[13] Angel C (2018), **The Homecare Deficit 2018** Third Edition October 2018

[14] Angel C (2016), **The Homecare Deficit 2016** Version 1 October 2016

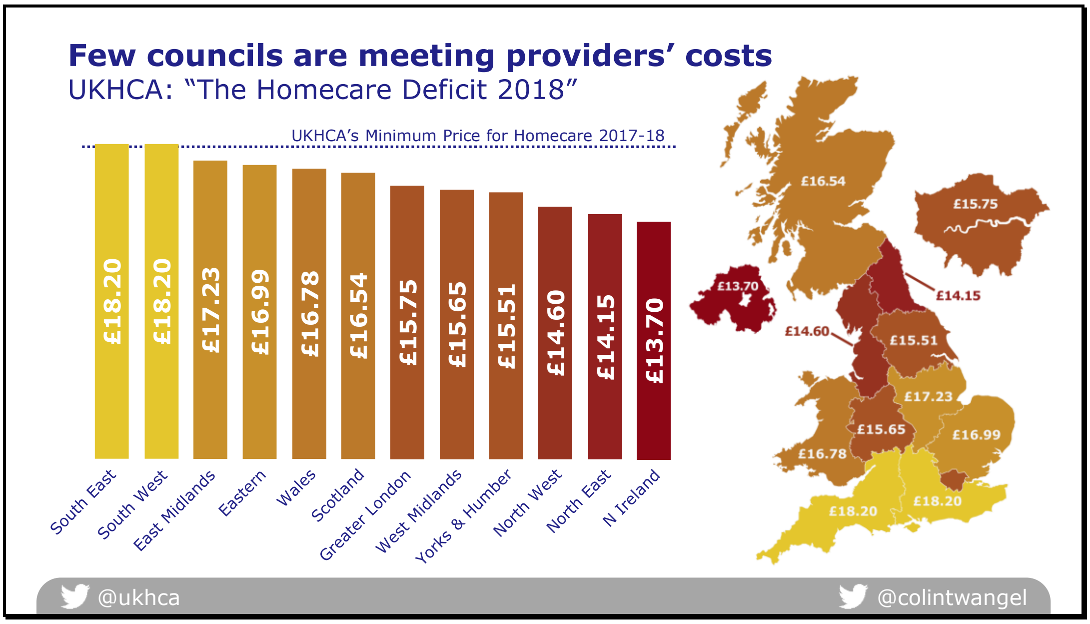

Figure 3: Local Authority Prices Paid for one Hour of homecare, in April 2018. UKHCA calculated that from April 2019 it would cost £18.93 to provide an hour of care to guarantee compliance with legal requirements to pay the National Minimum Wage at the time

As was the case in our previous analysis, published in 2016 and referenced in our evidence to the LPC last year, variation continues across the UK, markedly in Northern Ireland, with regional variation across England.

The picture is broadly similar to our previous assessment in 2016 and 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.

London shows relatively low fee rates compared with other council areas in the south of England, reflecting, perhaps, the greater proportion of migrant workers as shown in Figure 1, above. This, combined with the possible sensitivity to changes in migrant workforce may make the London market more susceptible to market instability or failure following the UK's exit from the EU.

UKHCA has confirmed 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 oblivious to the market signals that may demonstrate a potential for market failure.

UKHCA's Minimum Price for Homecare

As highlighted earlier in this paper, UKHCA calculated that the minimum price needed to cover the entire costs of homecare was £18.01 per hour as of October 2018. This increased to £18.93, from April 2019, to reflect increases in the NLW/NMW and employers' minimum contribution to workplace pensions. However, councils in the UK were paying, on average, just £16.12 per hour, with some regional variation, as illustrated in Figure 3, above.

UKHCA calculated, on the basis of the October 2018 figures, that the homecare sector would need, at least, an additional £402million per year to ensure that workers received the statutory National Living Wage, while also ensuring that providers could meet their statutory obligations.

However, the size of the deficit would be £921million if national governments were to commit to raising the status of homecare workers to the independently calculated Real Living Wage.

Intelligence gained from the 2018 UKHCA Freedom of Information request identified that only 37% of councils based their fee rates on any form of cost of care exercise with providers.

Impact of increases to NLW and pension contributions

As part of UKHCA's calculation of the minimum Price for Homecare (See Figure 2) we made an analysis of the impact of the 38p increase in NLW and the associated 1% increase in pension contributions.

Figure 4, below shows how our assessment was broken down.

From our calculation, we identified that, against an inflation rate (CPI) of 2.2%, the changes in NLW and pension contributions added an estimated 5.11% increase to providers' costs of delivering homecare.

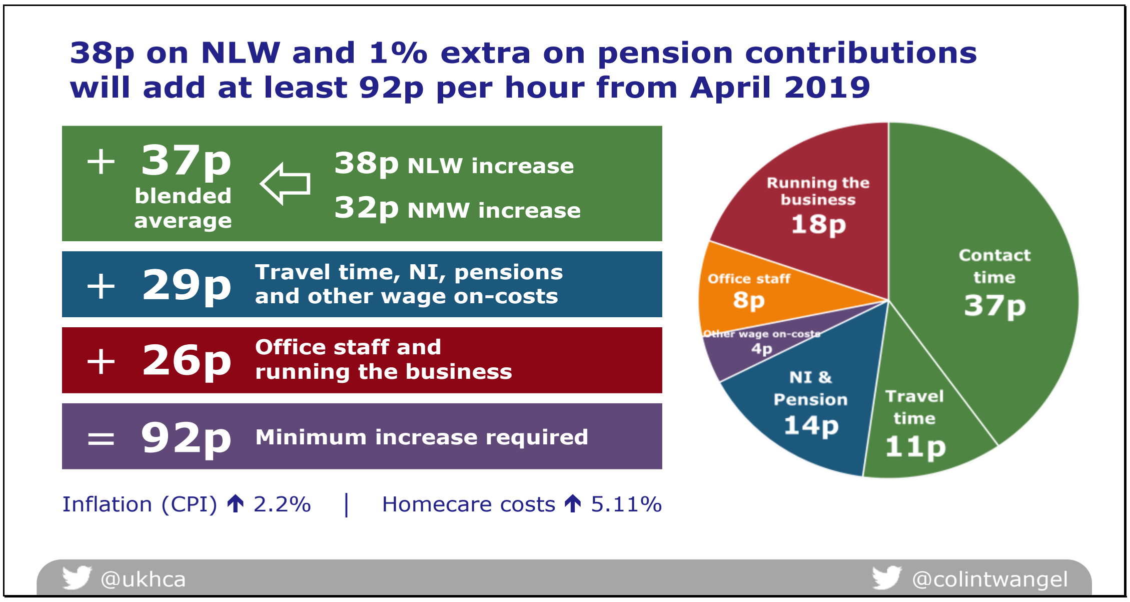

Figure 4: Impact of 38p increase on NLW and 1% increase in pension contributions

As wage-related costs and the reimbursement of travel costs form around 75% of the homecare providers' costs, even relatively small increases to the statutory costs can have an impact on the costs of delivery which, are rarely taken fully into account by Local Authority commissioners and may increase existing pressures in the homecare marketplace.

Without increased investment, the pay and conditions in the homecare sector will not make it more attractive to the UK domestic workforce which the MAC argued (See Section 2) should make up any shortfall resulting from loss of the migrant workforce following Brexit.

6. 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)?

Larger homecare providers tend to be highly dependent on Local Authority-funded care packages. Councils, as we described throughout this paper have, as a result of central Government policies, seen their budgets constrained over the last few years. In most cases they have not carried out meaningful cost of care exercise to set fee rates based the true costs of delivering care but have set rates, based on local circumstances and what the council considers that it can afford to pay. Such low fee rates are likely to make it more difficult for providers to meet NLW. 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 3) and their failure to increase fees, even greater pressure will be placed on independent providers and more workers are likely see their wages falling below the statutory levels.

Further increases in NLW coupled with continuing constraints on public sector funding could see more providers being unable to meet the costs of NLW resulting in increased non-compliance rates or withdrawal of businesses from the council-funded market which would, potentially also affect the employment prospects of workers in the local area and increased challenges to the delivery of services to people with care and support needs.

Figure 5, below, demonstrates the numbers of people affected by market failures in 2017 and 2018.

In terms of the stability of the homecare sector, Figure 5 shows that although there were fewer financial failures in 2018, as compared with 2017, more care packages were handed back reflecting the cost constraints associated with council-funded care already highlighted in Section 2 of this paper.

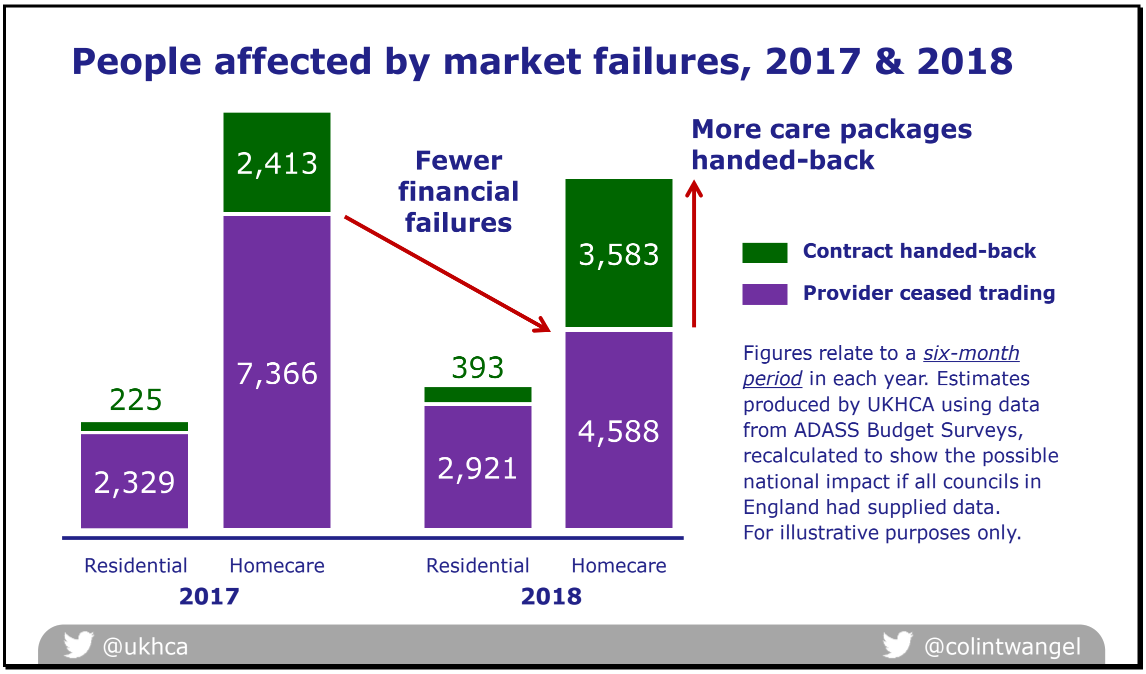

Figure 5: Relative impact of provider withdrawal.

April 2020 rates of the NLW and other minimum wage rates

7. Under our latest forecasts, the target April 2020 rate for the NLW would be £8.67. Do you agree that the LPC should seek to meet this target?

On the basis of our previous analysis (See Figure 3), a 37p increase in NLW resulted in a 5% increase in providers' operating costs. In the absence of a sustainable funding system, with significant extra income, it is likely that further increases in NLW would put greater strain on a fragile market and may lead to the withdrawal of care from some individuals or the withdrawal from the market of providers heavily reliant on council-funded care packages as has been shown in Figure 5, above.

8. What do you predict would be the effects of a rate of £8.67 in 2020 (earnings, employment, competitiveness)?

People who purchase their own care will, largely, absorb any increase in staff's wage costs in the fees they pay for their care. However, for council-funded care, homecare providers would need to absorb the increased wage costs within their operating costs.

Since many councils, currently, do not base their fee rates on the real costs of delivering care, a further increase is likely to result in the potential for higher levels on non-compliance with NMW/NLW, greater market instability and the removal of care and support from individuals needing care and support.

Unless a properly costed and sustainable funding model is introduced for the state-funded sector which is statistically larger by number of service users and employees, coupled with significant investment to balance the system there are unlikely to be any positive effects, within the homecare sector, from an increase in the rate to £8.67.

9. At what level should the 21-24 Year Old Rate be set in April 2020?

Our impression from employers is that very few younger workers receive a lower rate of NMW. Most receive the NMW for workers of 25 years over. The 21-24 year old rate would therefore not be applicable to homecare workers and employees in the 21-24 year age range would most likely be paid at the proposed £8.67 rate.

10. 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 we have stated in our answer to the questions above, we have no evidence that the wages of workers in the homecare sector are set according to the age of the worker.

11. What, if any, are the barriers to larger increases in the 21-24 Year Old rate, 18-20 Year Old Rate, 16-17 Year Old Rate and Apprentice Rate?

For the statutory homecare sector the major barrier continues to be the unsustainable fee levels paid by local authorities, the lack of investment and the absence of a sustainable funding model for the sector. This pattern is repeated across the UK. (See Figure 3)

Providers who supply services to self-funding clients would be more likely to be able to absorb higher rates of pay for staff by passing on the costs to their clients.

The minimum wage beyond 2020

12. Reflecting on your experience of the NLW since its introduction in 2016, what lessons do you think should be learned for the period after 2020?

As in previous years, we recognise that a national pay policy benefits the lowest paid members of the entire workforce.

However, from the point of view of homecare employers in the state-funded sector, further NLW increases will place additional pressure on the providers' viability and ability to comply with NLW because of councils' purchasing decisions.

Aspirations to increase pay levels must be matched by increased investment in the sector by central Government and the NHS.

We appreciate the repeated concerns that the LPC has expressed on the commissioning of social care services by the statutory sector. There is a need to continue, as, in our view, Government has not acted on the Commission's previous recommendations.

13. Given the Chancellor’s statements in the 2018 budget, what are your views on the future trajectory of the NLW and other NMW rates after 2020? What considerations should inform this?

As in our answers to the questions above, increases in NLW and other NMW rates need to be matched by a sustainable funding system which will require increased fees to be paid to homecare providers, particularly those reliant on funding from the State .

The absence of a Green Paper and continued pressures on Local Authority budgets makes it increasingly unlikely that the Chancellor’s aspirations will be fully achievable within the homecare sector, particularly the council-funded services.

The Chartered Institute of Public Finance and Accountancy (CIPFA), in their report *Measured Resilience in English Authorities*, published in December 2018, highlighted that 10-15% of councils in England showed some signs of potential risk to their financial stability.[15]

It is likely that as demand for services continues to increase and the needs of service users become more complex, more councils will experience further financial difficulties which will impact on the stability and sustainability of publicly funded homecare provision.

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[15] CIPFA (2018) Measured Resilience in English Authorities Published December 2018 https://www.cipfa.org/policy-and-guidance/reports/measured-resilience-in-english-authorities

21-24 year olds

14. 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 had on their employment prospects?

The adult social care sector does not employ a significant proportion of workers in this age range, according to Skills for Care in their *State of the Adult Social Care Sector and Workforce in England* review, published in September 2018. In fact, around 12% of the homecare workforce in England is under 25. There are no published data to suggest that the demographics vary considerably in Scotland, Wales or Northern Ireland.

Around 84% of workers in domiciliary care services were female and the average worker was 43 years old.

A quarter were over 55 years old (320,000 jobs) and therefore, from a workforce planning perspective, this group could retire within the next ten years. The age distribution of the workforce has remained very similar over the past six years, so there is little evidence of the workforce aging significantly.

Without a coherent and sustainable policy to encourage more workers into the sector through better pay and conditions and addressing the potential shortfall in the number of migrant workers, the sector could experience a significant shortfall in workforce over the next few years as the older members retire.

Whilst rates of pay may vary by age in other sectors of the economy, those 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. Although, as was identified in Section 2, workers under 30 were more likely to leave their jobs within adult social care reflecting low overall unemployment and a competitive job market.

Given that the ONS has previously 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 current age profile of the adult social care sector. This would, in turn, potentially encourage more recruitment from this demographic group. [16]

We have little evidence that rates currently paid to workers in the homecare sector show any variation based on the age of the worker.

15. To what extent are firms using the 21-24 Year Old Rate (set at £7.38 since April 2018 and rising to £7.70 in April 2019)?

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

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

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

As highlighted earlier (See our responses to Questions 1 and 3), rates of pay in the independent homecare sector are still not such that they would be likely to attract younger workers when compared with the pay and conditions available in, for example, retail and hospitality sectors and the competition they present for the available local workforce.

17. What has been the effect of the Apprentice Rate on the pay, provision and take-up of apprenticeship places, and training volume and quality?

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.

18. What are your views on the Apprentice Rate given the substantial policy changes to apprenticeships in England? Should the design of the Apprentice Rate change in response? If so, how?

Consistent with our response to Question 17, we have not seen wide use of apprenticeships in the front-line homecare workforce.

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, effectively, a tax on the largest employers in our sector, unless they can find a way to use apprenticeships effectively. The 20% out-of-workplace requirement on apprenticeships is reported by UKHCA members as a particular barrier to their use in the homecare sector.

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, revised and updated in April 2019 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.[17]

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 interpret the Regulations.

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[17] UKHCA 2019 **National Minimum Wage Toolkit (Revised April 2019)** https://www.ukhca.co.uk/downloads.aspx?ID=422#bk1

This was highlighted by the cases of Royal Mencap Society v Tomlinson-Blake and Shannon v Rampersad (t/a Clifton House Residential Home).

HMRC had taken enforcement action against providers arguing that all hours, not just those when a careworker was awake and working, counted towards NMW.

This would have resulted in substantial claims for back pay from current and previous employees. These were estimated at £400million: a large sum unlikely to be reimbursed by Government and not factored in to local authority fee rates.

Following a hearing by the Court of Appeal in 2018, current case law is that only the hours when a person is awake and working count for the purposes of NLW.

However, this ruling is subject to appeal and the Supreme Court is due to rule on the matter. We do not expect this to occur before October 2019.

A change in the case law, resulting from the Supreme Court's judgement, could burden homecare providers with significant costs which, at present, neither Government nor statutory commissioners of homecare have signalled that they will meet.

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

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.

It is of concern that, according to UKHCA's analysis of data obtained from councils, fewer than 40% have carried out any meaningful form of cost of care exercises with their local providers in the previous three years, relying on their monopsony position and competitive tendering to keep fees paid at levels that are not sustainable.

While homecare providers are subject to an inspection regime the commissioners of care are not.

In our evidence to the Commission last year, UKHCA strongly recommended that LPC include a recommendation to Government for commissioners of social care to be subject to oversight from the relevant regulatory authorities.

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 again urge LPC to recommend that a system to improve oversight is introduced with a request that councils are required to demonstrate how they have established the true costs of the care they commission.

23. What are your views on the Accommodation Offset and the extent to which it is protecting low-paid workers? What difference, if any, have the increases 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.

Additional UKHCA Observations

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, particularly over the last year.

In 2016, the statutory regulator in England, the 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 its State of Care Report, published in October 2018 the Care Quality Commission (CQC) reported that, as unmet need continues to rise, the 'tipping point' had already been reached for some people who are not getting the care they need. While recognising that the government HAD made a welcome NHS funding announcement in June 2018, CQC argued that the impact of this funding – along with the recent short-term crisis funding announced for adult social care – risked being undermined by the lack of a similar long-term funding solution for social care.[18]

The Commission further observed that the adult social care market remains fragile, with providers continuing to close or cease to trade and with contracts being handed back to local authorities. Unmet need continues to rise, with some people not getting the care they need. While the government made a welcome NHS funding announcement in June 2018, the impact of this funding – along with the provision of short-term crisis funding to address winter pressures risked being undermined by the lack of a similar long-term funding solution for social care.

The long-term solution was to be part of the Government's Green Paper. This has been delayed several times over the last year and has still not been published.

[18] Care Quality Commission **State of Care** https://www.cqc.org.uk/publications/major-report/state-care

UKHCA's 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, organisation and training to meet quality and safety requirements;
- Ensure businesses receive a profit/surplus to maintain market stability and reinvest in services.

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.

Ultimately, vulnerable service users are impacted by market instability.

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 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.