Homecare Association

Homecare Association's response to the consultation on holiday pay compliance and enforcement

We developed our response to this consultation with the input of members involved in our Employment Rights Special Interest Group and would like to thank all those involved. We respond on a UK-wide basis, drawing on data from across the United Kingdom. The proposed reforms extend to England, Wales and Scotland only, as employment law is devolved in Northern Ireland; we cite Northern Ireland and Health and Social Care Trust figures for context, not to suggest the legislation applies there. Our answers to Questions 10, 21 and 23 also respond to the Department's invitation, on page 18 of the consultation document, for evidence on the scale, nature and drivers of holiday pay non-compliance, and we would welcome the opportunity to discuss that evidence with the Department and the Fair Work Agency.

Executive summary

The Homecare Association supports statutory holiday pay compliance and effective enforcement against exploitative practices. However, the proposed Fair Work Agency (FWA) framework must recognise the exceptional complexity of homecare employment and commissioning, and the ways these can undermine employers' compliance in our sector. Inadequate public commissioning does not excuse non-compliance with employment law, but it is the principal reason why compliance risk is concentrated in homecare, and an enforcement framework that ignores it will not achieve its aims.

Homecare providers manage irregular hours, visit-based rostering, multiple pay elements, travel and waiting time, sickness-related payments, retrospective adjustments, and often bespoke payroll systems. These factors make genuine, inadvertent errors difficult to avoid and detect, even where employers make good-faith efforts to comply. We therefore urge Government to prioritise support, sector-specific guidance, worked examples, technical training for inspectors, and an 'audit and correct' approach before penalties apply.

We oppose extending public naming to holiday pay except in clear cases of deliberate or systemic non-compliance. We also consider the proposed default 200% penalty disproportionate. We propose a default of 100% of arrears, retaining the prompt-payment reduction, with no penalty for genuine errors that are self-reported or promptly corrected. We propose a two-year claim period for FWA enforcement, aligned with the existing two-year backstop for unlawful deduction claims, and in any event no enforcement in respect of any period before the statutory record-keeping duty took effect on 6 April 2026. Above all, enforcement must not ignore the root cause of compliance risk: public commissioners frequently pay rates below the estimated cost of delivering care legally and safely. Without sustainable funding, new enforcement powers could destabilise responsible providers and harm people who rely on homecare to live independently.

Our response asks Government to design holiday pay enforcement so that it protects workers while recognising the operational realities of homecare. The FWA should focus on deliberate or systemic non-compliance, support responsible employers to audit and correct genuine errors, without penalty, and ensure its approach does not worsen the financial fragility created by inadequate commissioning rates and funding.

Our key asks

1. Formalise an ‘audit and correct’ remediation framework, with published criteria covering self-reporting, cooperation, prompt repayment, repeat non-compliance and deliberate conduct, and no civil penalty for genuine errors that are self-reported or corrected within a reasonable period.

2. Set the default civil penalty at 100% of arrears rather than 200%, retaining the prompt-payment reduction, reserve the full penalty for deliberate or repeated underpayment, and assess penalties by their aggregate effect on a workforce, not only per worker.

3. Set the FWA claim period at two years, aligned with the existing backstop for unlawful deduction claims, and in any event limit enforcement to non-compliance arising on or after 6 April 2026, when the statutory record-keeping duty took effect.

4. Do not extend public naming to holiday pay; if it is extended, reserve it for deliberate or systemic non-compliance, apply a de minimis threshold and give

employers the opportunity to make representations, and a right of appeal, before naming.

5. Publish statutory, sector-specific guidance developed with the homecare sector, covering multi-element pay, rolled-up holiday pay and the evidencing of leave taken by irregular-hours workers, and work with payroll and rostering software suppliers so that compliant calculation is built into the systems providers use.

6. Train FWA inspectors on the homecare operating model before enforcement begins in 2027 and ensure consistency of approach between inspectors.

7. Address the root cause: public commissioners must pay fee rates that cover the cost of lawful employment, and the FWA should report to the Department for Business and Trade and the Department of Health and Social Care where under-priced commissioning is found to be a factor in non-compliance.

About you

Respondent type

Question 1: Please indicate whether you are responding as:

- An individual
- An employer
- A legal representative
- A business representative organisation (please specify): Homecare Association; we are the UK's membership body for homecare providers.
- A trade union or staff association (please specify)
- A charity or interest group
- An academic, or on behalf of an academic or research organisation
- Other – please specify [free text]

Questions 2 – 4 concern those responding as an individual or as an employer (type and size) and are not applicable.

Question 5: If responding as business representative or trade union, how many members does your organisation have?

2,100 member organisations

Question 6: Where are you located? Please tick boxes for your main locations.

- North East
- North West
- Yorkshire and The Humber
- East Midlands
- West Midlands
- East of England
- London
- South East
- South West
- Wales
- Scotland
- Northern Ireland
- Other – please specify [free text]

Question 7: What sector are you based in?

- Accommodation and food service activities
- Activities of households as employers; undifferentiated goods and services
- producing activities of households for own use
- Administrative and support service activities
- Arts, entertainment and recreation
- Agriculture, forestry and fishing
- Construction
- Education
- Electricity, gas, steam and air conditioning supply
- Financial and insurance activities
- Human Health and social work activities
- Information and communication
- Manufacturing
- Mining and quarrying
- Production
- Professional, scientific and technical activities

- Public administration and defence; compulsory social security
- Real estate activities
- Services Sector
- Transportation and storage
- Water supply; sewerage, waste management and remediation activities
- Wholesale and retail trade; repair of motor vehicles and motorcycles
- Other service activities
- Other – please specify [free text]

Questions 8 and 9 concern the experiences of individual workers (of past underpayments and where to go for advice) and are not applicable.

Question 10: As an employer, how easy or difficult do you find it to comply with your obligations in relation to holiday pay?

- Very easy
- Somewhat easy
- Neither easy nor difficult
- Somewhat difficult
- Very difficult (please see explanation below)
- Don't know
- Not applicable

Homecare employers find holiday pay compliance very difficult. The degree of difficulty depends on the complexity of their workforce and the payroll and rostering systems they use. We answer this question as a representative body, drawing on the experience of our members. Our members consistently describe statutory holiday pay compliance as one of the most complicated areas of employment law they manage. The homecare operating model drives this complexity because providers must respond both to the needs of people receiving care and to the way public authorities commission homecare. Homecare helps people to live independently at home and delivery is by visits, with daily staff rosters changing frequently in response to people's needs. Pay structures also complicate holiday pay and entitlement. Workers' pay may include contact time, non-contact time, travel time, waiting time, sleep-ins, and sick pay. Public authorities - councils and the NHS - commonly purchase homecare by the minute or the hour, through dynamic purchasing systems and frameworks that do not guarantee providers a specific volume of work. As a result, most employers have little choice but to engage careworkers on zero-hours contracts, rather than paying them a fixed wage or guaranteeing hours. England has an estimated 595,000[1] homecare workers, 35%[2] of whom are on zero-hours contracts and work irregular and often changing hours. The homecare operating model that results from this type of commissioning means:

There are multiple, disconnected pay elements: Careworkers' pay may include contact time, non-contact time, travel time, waiting time, sleep-ins, and sick pay, often calculated in separate systems or spreadsheets that do not automatically feed into holiday accrual. Our members describe this reconciliation between systems as "incredibly complex," with holiday pay for sickness absence in particular routinely requiring separate, manual calculation.

Retrospective pay adjustments may be easily missed, due to software design issues: Where a worker's pay is topped up after the event (for example, to maintain National Minimum Wage (NMW) compliance, or for training/e-learning attendance), many payroll and rostering software systems do not automatically carry that adjustment through into the holiday accrual calculation, since the top-up happens after the system has already processed accrual. This means that inadvertent underpayments are only found on review.

Irregular hours and the difficulty of identifying when workers are on leave: For rolled-up holiday pay specifically, the calculation itself (the 12.07% uplift) is comparatively manageable provided it is applied consistently to the worker's pay in each pay period, with separate treatment of periods of sickness absence and statutory family leave. The harder problem is evidencing whether a day not worked by an irregular-hours worker was actually taken as leave or was simply a day off. Current software systems are generally better at calculating what is owed, than evidencing when leave has genuinely been taken.

Franchise and multi-site operations compound the risk: Larger and franchised providers are concerned that a single system error can replicate across multiple offices or franchisees before it is discovered, increasing the scale of any resulting liability.

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[1] Skills for Care (2025). Domiciliary care services in the adult social care sector 2024/25.
[2] Skills for Care (2015). Domiciliary care services in the adult social care sector 2024/25.

Inadvertent errors are difficult to eliminate across a large workforce: This is the case however diligently a provider tries to comply. The current enforcement proposals (with a default 200% penalty) risk penalising this structural complexity as though it were deliberate wrongdoing. Implementing the proposed framework without change could destabilise homecare providers financially, to the detriment of approximately 915,100 people across the UK who rely on homecare and supported living services to live independently.[3]

Underpayment of homecare rates by public commissioners: The above issues are compounded by the rates that public commissioners pay for homecare, which are frequently below cost, meaning providers have to absorb costs, shed staff, slip into non-compliant employment practices, abandon investment, or close if faced with rising or unexpected costs. The Government is legislating, via the ERA, for fair pay, guaranteed hours, and increased holiday pay enforcement, without allocating sufficient funding. This creates legal exposure and market instability. A stable future requires a clearer and stronger link between policy decisions, social care budgets, and fee rates. None of this excuses non-compliance, but it explains why compliance risk is concentrated in homecare and why enforcement alone will not remove it. Our calculations show:

- The Minimum Price for Homecare for 2026-27 is £34.42 per hour - this is the Homecare Association's estimate of the minimum cost to deliver care legally and safely in England (Figure 1)[4].
- Some councils pay as little as £18 per hour; the Association of Directors of Adult Social Services (ADASS) report that their average rate for 2026/27 stands at £25 per hour[5]. £25 is not enough to cover even direct careworker employment costs at the National Living Wage, which we calculate at an average of £26.17 per hour, made up as follows:
    - Hourly rate for contact time: £12.71
    - Travel time: £2.93
    - Wait time: £2.19
    - Travel reimbursement: £2.38

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[3] LaingBuisson (2026). Homecare and Supported Living UK Market Report 7th Edition.

[4] Homecare Association (2025). Minimum Price for Homecare 2026-2027 (England).
[5] Association of Directors of Adult Social Services (ADASS). Spring Survey 2026.

- Training time: £0.45
- Sick, maternity and paternity pay: £0.42
- Notice and Suspension pay: £0.02
- Holiday pay: £2.30
- Employer's National Insurance: £2.34
- Pension contribution: £0.43
- **Total: £26.17**

This excludes other operating costs, including management and supervisors, other office staff, recruitment, training, insurance, Care Quality Commission (CQC) fees, PPE, telephony, IT, governance, rent, rates, utilities, and a small surplus for resilience and investment (Figure 1).

Figure 1: Operating costs per hour for regulated homecare - the 2026/27 Minimum Price for Homecare at the National Living Wage (England)

If realistic minimum compliant costs are £34.42 and providers receive on average only £25 - this is only 73% of actual delivery costs of a safe, compliant, sustainable service. Across the UK, average fee rates paid by local authorities vary by more than £10 per hour, meaning providers can receive 50% more in some areas than in others. However, even the higher rates barely cover costs at minimum wage. This underfunding poses risks of non-compliance by employers, including with holiday pay requirements.

Unfunded costs of implementing Employment Rights Act 2025 (ERA) provisions: In our response to the Government's consultation on zero hours contracts[6], we have pointed out that the ERA has increased, and will significantly increase as provisions are implemented, costs for the homecare sector. This goes far beyond simple administration costs. We have called on Government to undertake further research to understand the actual costs of implementing Statutory Sick Pay, guaranteed hours contracts, cancellation, movement and curtailment fees and trade union access provisions. We estimate these four cost elements alone could cost the sector anywhere between £163 million and £1.6 billion[7]. Although the Government has published impact assessments and economic analysis for the ERA, we consider these documents do not provide sufficiently granular estimates of the cumulative implementation costs for homecare providers, particularly in relation to the interaction between measures. Homecare cannot simply absorb these costs. To this list we add the cost of compliance with the proposed holiday pay enforcement provisions, which the Government also needs to estimate accurately.

Compounding effect of multiple demands: As demonstrated above, homecare providers are struggling to meet direct employment costs and correctly comply with holiday pay obligations, in a complex operating environment, where systemic, commissioning and legal requirements are placing considerable demands on even the best employers.

Question 11: As a worker or employer have you ever used the Advisory, Conciliation and Arbitration Service (Acas) in relation to holiday entitlement or holiday pay? Please select all that apply.

- Yes, for advice via the Acas helpline
- Yes, for Acas training and/or workplace support
- Yes, for Early Conciliation on a holiday pay dispute
- Yes, for another reason [free text]

[6] Homecare Association response to zero hours consultation, 2026.
[7] Homecare Association Autumn Budget Representation 2026, p25.

As a business representative organisation, we sometimes receive queries from member organisations about holiday entitlement and holiday pay calculations. We refer them to our bespoke Holiday Rights Toolkit, drafted by our legal partners, and to Acas and GOV.UK guidance. We also promote selected Acas training and webinars on employment-related matters to our members. From time to time, individual workers contact us about their employment rights. These queries fall outside the remit of our employer-focused helpline, so we refer callers to appropriate public sources of advice like the Acas Helpline and Citizens Advice.

- No
- Don't know
- Not applicable

Questions 11 a. (if answer 'No' above) is not applicable.

Question 12: What are your views on the proposed approach for the Fair Work Agency to support holiday pay compliance?

The Homecare Association wants to see a valued care workforce with fair pay and working conditions. We support statutory holiday pay compliance and effective enforcement against exploitative practices that leave individuals out of pocket and undercut responsible businesses. We recognise employers' health and safety duties to protect workers from workplace risks, including fatigue, as well as their obligations under the Working Time Regulations 1998.

We note the proposed holiday pay enforcement measures would give the FWA powers to enforce compliance regardless of whether an individual brings a claim before an Employment Tribunal. This represents a considerable extension of existing provisions, potentially affecting whole workforces and franchise groups if non-compliance is found. We also note that the FWA would have power to go back six years (rather than the two-year backstop that currently applies to unlawful deduction claims in the Employment Tribunal) in respect of non-compliance occurring on or after 18 December 2025, when the Employment Rights Act 2025 became law. If penalties are levied for non-compliance, a 50% early payment reduction would lower these from 200% to 100% of arrears, mirroring NMW provisions. We also note that the FWA will enforce only statutory holiday pay, not contractual entitlement above the statutory minimum, and that a holiday pay inspection may be combined with an inspection of NMW compliance. For homecare, where NMW compliance already turns on the correct treatment of travel and waiting time, this combined approach materially increases the exposure arising from any single inspection.

We welcome the Government's acknowledgement, in the consultation document, that calculating holiday pay entitlement can be complex and can lead to accidental non-compliance and underpayment. We also welcome the FWA's intention to work with employers to ensure they understand their obligations, and to give employers opportunities to correct underpayments before it moves to punitive enforcement action. We note that FWA holiday pay enforcement is planned to commence in 2027 and that the FWA intends to use the first months of implementation to gather data and evaluate its interventions. We ask that this initial period be treated explicitly as a compliance-support phase for sectors with complex pay structures, such as homecare, with penalties applied only in cases of deliberate or systemic underpayment until sector-specific guidance has been published and inspectors have been trained.

These reforms, however, represent a very considerable step-change in enforcement, if implemented as proposed, and pose substantial financial risks for homecare providers. As explained above, our sector already has to face the compounding demands of:

- Multiple, disconnected pay elements
- Retrospective pay adjustments that are easily missed due to software design issues
- Irregular hours and the difficulty of identifying when workers are on leave, to ensure they take leave and for pay purposes
- Franchise and multi-site operations which compound the risk
- Inadvertent errors that are difficult to eliminate across a large workforce
- Underpayment of homecare rates by public commissioners, which mean employers have difficulty meeting direct employment costs
- Unfunded costs for employers of implementing ERA provisions

We agree the FWA should prioritise supporting employers to comply with holiday rights enforcement measures, with enforcement reserved for cases involving genuinely exploitative practices. However, our members have significant reservations about whether this will work in practice for homecare.

Homecare holiday pay calculations are exceptionally complex, reflecting irregular hours, rolled-up holiday pay, sick leave, travel time, and bespoke payroll and rostering systems. Members report that inadvertent errors are easy to make and hard to detect, even where providers act entirely in good faith. They also report that explaining bespoke, coded payroll logic to a FWA inspector without specialist software or technical knowledge would itself be a significant undertaking.

We are encouraged that senior FWA staff have relevant enforcement experience from NMW compliance work, but this is not the same as understanding the specific operating model of homecare and its issues with holiday pay. We would like reassurance that the FWA will invest in sector-specific and technical/IT training for its inspectors before enforcement powers commence, and that it will engage with the Homecare Association and its members directly to build this understanding. Our members have experience of inconsistent standards and understanding across other inspection regimes (such as CQC, HMRC, and Home Office sponsorship compliance) and ask that the FWA learn from this to ensure consistency of approach between inspectors.

Question 13: Are there any other compliance activities you think the Fair Work Agency should do to support employers to comply with holiday pay law?

In addition to the calculator, worked examples, webinars and consolidated guidance already proposed (see Question 18 below), we would ask the FWA to consider:

- Formalising an ‘audit and correct’ approach, so that employers found to have made genuine, inadvertent errors are given a clear opportunity and reasonable timeframe to correct them before any penalty is considered.
- Publishing statutory guidance, developed with sector input, which goes beyond calculation of pay and addresses the practical difficulty of evidencing and recording when a day off for an irregular-hours worker is holiday rather than simply a day not worked. Members regard this as at least as significant a compliance risk as the pay calculation itself, given employers’ duty to provide workers with a genuine opportunity to take statutory leave, and to avoid fatigue, as a health and safety matter.
- Providing homecare-specific worked examples, checklists and self-audit tools within the existing law, covering multi-element pay, retrospective pay adjustments, rolled-up holiday pay and the recording of leave taken by irregular-hours workers.
- Ensuring FWA inspectors and any support tools (calculator, chatbot, guidance) reflect the realities of the homecare operating model, including pay structures that comprise contact and non-contact time, travel time and travel pay, and

rolled-up holiday pay, rather than being designed around simpler, salaried employment relationships.

- Engaging directly with the payroll and rostering software suppliers used in homecare, so that compliant accrual and calculation logic, including the treatment of retrospective pay adjustments and the recording of leave taken, is built into the systems on which providers rely. Several of the errors our members describe originate in software design rather than employer intent, and the FWA can influence a small number of suppliers far more efficiently than it can inspect thousands of providers.
- Publishing the criteria the FWA will apply when deciding whether to impose a penalty, covering self-reporting, cooperation with the investigation, prompt repayment, repeat non-compliance and deliberate conduct, in the same way that HMRC publishes its NMW enforcement policy, so that employers can see in advance how the FWA will exercise its discretion. The policy should also state when an FWA investigation is treated as having started, since this determines whether prompt repayment can prevent a notice of underpayment and penalty.
- Publishing anonymised case studies showing how common errors are identified and corrected, and guidance on the records employers should keep to show both that holiday pay has been paid correctly and that workers have had a genuine opportunity to take statutory leave.
- Offering a voluntary disclosure route, under which an employer that identifies a possible underpayment can notify the FWA, correct it within an agreed period and be treated as having repaid arrears before the start of an investigation.

We recognise that this consultation does not cover changes to the way holiday pay is calculated. We nonetheless ask the Government to keep the complexity of the current rules under review, since much inadvertent non-compliance arises from the rules themselves rather than from any lack of effort by employers.

Question 14: Are there any other enforcement activities you think the Fair Work Agency should do to enforce holiday pay?

We would ask the FWA to:

- Distinguish clearly, in both policy and practice, between employers who have made genuine, inadvertent errors despite good-faith efforts at compliance, and employers who are deliberately or systematically underpaying or exploiting staff. Enforcement action, and particularly civil penalties, should be proportionate to culpability, not simply to the fact of underpayment having occurred.

- Target enforcement activity primarily on the basis of evidence or credible indications of likely non-compliance (for example, from complaints or patterns identified through other data), rather than blanket sector-wide sweeps or selection by geography alone (see also Question 23).
- Be mindful that a holiday pay investigation may expose wider NMW or wage-structure issues and ensure that where multiple issues are found arising from the same underlying systems error, penalties are considered cumulatively and proportionately rather than compounded without regard to overall impact on the business.
- Apply a consistent standard across inspectors, recognising members' experience that outcomes from other inspection regimes can vary considerably depending on which individual inspector attends.
- Coordinate with local authorities where an investigation concerns a regulated care provider, so that enforcement action does not interrupt care to people who depend on it. Local authorities have continuity of care duties under section 48 of the Care Act 2014 where a provider fails, and the FWA should understand the consequences for people receiving care before it takes action that could make a provider unviable.
- Report to the Department for Business and Trade and the Department of Health and Social Care where inspections find that the fee rates a provider receives from public commissioners are below the cost of lawful employment. Enforcement against providers will not resolve non-compliance whose root cause lies in public procurement.

Question 15: Do you think the policy of naming businesses for underpayment of the minimum wage should also be extended to naming for underpayment of holiday pay?

- Yes
- No
- Not sure

Question 15.a: Please explain your answer.

Most of our members who discussed this proposal strongly opposed extending public naming to holiday pay underpayment for several reasons.

First, given the acknowledged complexity of holiday pay calculation in homecare, and the prevalence of genuine, inadvertent errors even among well-run providers, naming risks publicly punishing responsible employers for good-faith mistakes rather than deliberate wrongdoing. Our members felt this would be disproportionate and unfair, particularly for smaller providers who may fall foul of a single system error affecting a modest number of workers.

Second, our members questioned the deterrent value of naming. They argued that employers who are genuinely and deliberately exploiting staff are the least likely to be deterred by appearing on a website and may simply close and re-form under a new company name, while naming would disproportionately harm legitimate businesses trying to do the right thing.

If naming is nonetheless retained or extended, we would ask that it is reserved for cases of deliberate or systemic non-compliance, that first-time inadvertent errors corrected in good faith be excluded, and that consideration be given to a de-minimis threshold (for example, expressed as a proportion of total pay costs) below which naming would not apply. We also ask that employers have the opportunity to make representations, and a right of appeal, before any naming takes place, and that naming should normally follow the conclusion of any appeal or review, so that employers are not named on the basis of a disputed calculation that is later overturned. Members also asked whether equivalent transparency could be applied to public commissioners whose fee rates fall below the cost of lawful employment, given that these rates are a root cause of compliance risk in the sector (see Questions 21 and 23). We would support the Government publishing commissioning rate data alongside any naming of employers.

Question 16: Are you aware of the existing holiday pay and entitlement guidance on GOV.UK?

- Yes
- No

Question 17: Have you previously used the existing holiday pay and entitlement guidance on GOV.UK?

- Yes
- No
- No, was not aware of such guidance

Question 18: In addition to the existing guidance, is there any specific support and guidance the Fair Work Agency can provide to better support you to understand your rights and obligations?

- Yes
- No

Question 18.a: If yes, what additional support and guidance, specifically, would you find useful? Please select all that apply.

- Specific scenarios and worked examples to help understand how holiday pay law could apply in specific circumstances
- Webinars provided by the Fair Work Agency
- More consolidated and centralised guidance on the Fair Work Agency and/or Acas websites
- A more detailed calculator or self-assessment tool to work out holiday entitlement and pay
- A chatbot to provide user support when interacting with the Fair Work Agency in relation to holiday pay
- Other: statutory guidance, developed with homecare sector input, including on evidencing and recording whether a non-work day for an irregular-hours worker constitutes taken holiday or simply a day off; and homecare-specific checklists and self-audit tools within the existing law.

Question 19: What do you think of a six-year claim period for holiday pay compliance and enforcement (noting the legislation does not allow for a claim period longer than six years)?

- Sufficient
- Too long

Question 19.a: Please explain your answer.

Employers' statutory duty to keep annual leave and holiday pay records and retain them for six years (from when they were made) took effect from 6 April 2026. The FWA's enforcement powers are proposed to be limited to non-compliance that takes place on or after 18 December 2025, when the relevant Employment Rights Act 2025 provisions came into force. We propose that the claim period for FWA enforcement be set at two years rather than six. The Act permits a shorter period to be set by regulations, and two years aligns with the existing two-year backstop on unlawful deduction claims in the Employment Tribunal, which employers and workers already understand. A two-year period would remain materially longer than the time limit for bringing a tribunal claim, and would focus FWA resources on current non-compliance, where correction most benefits workers. Whatever period is chosen, we suggest that the earliest date from which the FWA may enforce should be 6 April 2026, when the record-keeping duty took effect, rather than 18 December 2025. Enforcing in respect of the period between Royal Assent and the start of the record-keeping duty would require employers to evidence compliance for a period during which they had no legal duty to keep the relevant records. If the Government retains six years, it should make clear that employers will face no adverse inference or penalty because records from the period before 6 April 2026 do not meet a duty that had not yet commenced, and that the FWA will apply the law in force at the time each payment fell due.

Our understanding is that there is no intended provision for reach back before 18 December 2025. This is equitable as employers did not have to hold six years of records before then, and the law on holiday entitlement was in a state of flux. Holiday pay calculation methods have changed over time. In Harpur Trust v Brazel (2022), the Supreme Court held that the commonly used 12.07% method (advocated on the GOV.UK website) could not be used to calculate statutory holiday entitlement for part-year workers, confirming instead that such workers were entitled to the full statutory holiday entitlement, and requiring holiday pay to be calculated by a reference to average weekly remuneration over a 52-week reference period. Subsequently, for leave years beginning on or after 1 April 2024 legislative reforms were introduced and a statutory 12.07% accrual mechanism was confirmed for eligible irregular-hours and part-year workers, alongside the option of rolled-up holiday pay. In the context of the current consultation, employers should not be judged retrospectively against a legal position that has itself been unsettled and has changed more than once during a claim period.

Question 20: What do you think of a 200% penalty for holiday pay underpayment?

- Sufficient
- Too high
- Too low

Question 20.a: Please indicate if you propose an alternative penalty amount and why?

We consider that a flat 200% penalty is disproportionate in the context of holiday pay, particularly given the recognised complexity of holiday pay calculations and the possibility of genuine, inadvertent errors. We therefore propose a default penalty of 100% of the arrears, rather than 200%, using the power in section 107 of the Employment Rights Act 2025 to substitute a different percentage. This would retain the existing 50% reduction for prompt payment, so that employers which promptly pay the arrears and the applicable reduced penalty would have a clear incentive to remedy errors quickly.

We also support using the power in section 108 to specify circumstances in which no penalty would be imposed, including where an employer has made a genuine, inadvertent error, self-reports the error and promptly pays all arrears. This would be consistent with the Government's stated intention that the Fair Work Agency should support employers to correct accidental non-compliance and should ordinarily not impose a penalty where all holiday pay arrears have been repaid before an investigation begins. A higher penalty, including the proposed 200% level, could be retained for more serious cases, such as deliberate or repeated underpayment, if the legislative framework permits sufficiently clear differentiation between those circumstances.

The key principle should be that the penalty is proportionate to the nature and circumstances of the non-compliance, while retaining a meaningful deterrent against deliberate or persistent underpayment.

We would also flag a specific concern raised by our members: under the proposals a penalty would not ordinarily be issued where arrears are repaid before an investigation starts, but an employer that contacts the FWA to ask whether it has a problem, before it has quantified and repaid any arrears, may trigger the very investigation that makes a penalty likely. Members are concerned that this could deter employers from seeking help from the FWA when they first suspect an error. We suggest that an employer which notifies the FWA of a possible underpayment before any investigation has begun, and corrects it within an agreed period, should be treated as having repaid arrears before the start of an investigation. Any framework should ensure that it does not inadvertently penalise transparency.

Question 21: What do you think of a maximum penalty of £20,000 per worker?

- Sufficient
- Too high
- Too low

Question 21.a: Please indicate if you propose an alternative maximum penalty and why?

Our members' central concern was less with the per-worker cap in isolation than with its cumulative effect across a workforce. Homecare providers typically operate on very low margins, often shaped by inadequate local authority commissioning rates, and hold limited cash reserves. Our Homecare Deficit 2025 report showed 29% of councils and Health and Social Care Trusts paid average rates below the direct employment cost of a careworker at the National Living Wage; only one council paid at or above the relevant Minimum Price[8]. This is not merely inadequate funding - it places providers at serious risk of non-compliance with employment and care regulations, however diligent they are. A civil penalty for holiday pay non-compliance, applied across even a modest number of workers on top of the arrears themselves, could therefore create serious cash-flow difficulties and, in our members' view, risks making otherwise compliant and responsible small and medium-sized providers unviable. We ask Government to consider any cap, and the overall penalty framework, in light of its aggregate impact on a whole workforce, not solely on a per-worker basis, and to apply the tiered, culpability-based approach proposed at Question 20 here too.

We acknowledge that the proposals include a 50% early payment reduction for holiday pay civil penalties, lowering them from 200% to 100% of arrears, which mirrors NMW settings. However, homecare providers may still lack the necessary cashflow to benefit from this. We therefore ask the FWA to allow a structured payment plan that preserves some or all of the prompt-payment reduction where payment within 14 days would create a demonstrable risk to payroll, service continuity or solvency. This would protect workers' recovery while avoiding avoidable provider failure.

Question 22: What do you think of a minimum penalty of £100 per case?

- Sufficient
- Too high
- Too low

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[8] Homecare Association (2025). The Homecare Deficit 2025.

Question 22.a: Please indicate if you propose an alternative minimum penalty and why?

Our members did not raise specific concerns about the proposed minimum penalty during discussion; our broader concerns about proportionality and the treatment of genuine, good-faith errors (set out at Questions 20 and 21) apply across the penalty framework as a whole.

Question 23: How do you think the Fair Work Agency could focus holiday pay enforcement on lower paid workers in more vulnerable/precarious employment? Please select all that apply.

- A cap on the maximum arrears a worker can receive from Fair Work Agency enforcement of holiday pay.
- The Fair Work Agency operationally triaging complaints about holiday pay underpayment to prioritise complaints from lower-paid workers.
- Targeting compliance and enforcement interventions at geographical regions where there are greater proportions of lower paid workers.
- Other [Free text]

We support risk-based triage of complaints that prioritises lower-paid workers and workers in vulnerable or precarious employment. We do not support a cap on the arrears a worker can recover through FWA enforcement: a cap would limit recovery for workers without improving targeting, and it is unnecessary because careworkers, who are among the lowest paid workers in the economy, will fall within the FWA's priority focus under any of the options proposed. Our members' preference was for enforcement to be targeted at employers where there is evidence or credible indication of likely non-compliance, rather than by geography alone. Several members felt geographical targeting was the wrong tool: it risks penalising responsible providers who happen to operate in areas where local authority commissioning rates are particularly low, and who are already struggling with thin margins as a direct result of those rates, while doing little to identify specific non-compliant employers wherever they are located.

If the Government nonetheless chooses geographical targeting, it would in practice direct the FWA towards areas where public commissioning rates are lowest. This would present an opportunity to expose poor commissioning rates as the underlying cause of non-compliance and risk among homecare providers. Our members agree that inadequate local authority fee rates and commissioning practices,[9] not irresponsible employers as such, drive underpayment risk in parts of the sector. We ask that the Government's consultation response records members' strong view that the Fair Work Agency's remit should not substitute for addressing unsustainable commissioning rates, and that any geographical targeting should sit alongside wider government engagement with commissioners on this point. Our preferred approach is risk-based targeting using multiple indicators: complaints and intelligence, repeat or unresolved breaches, sectors with high levels of irregular-hours work, and payroll patterns suggesting systematic underpayment.

Question 24: As an employer, do you use rolled-up holiday pay for your irregular hours / part year workers?

- Yes
- No
- Not applicable

Question 25: If yes, how easy or difficult do you find it to operate rolled-up holiday pay arrangements?

- Very easy
- Somewhat easy
- Neither easy nor difficult
- Somewhat difficult (see below)
- Very difficult
- Don't know
- Not applicable

Our members have found the administration of rolled-up holiday pay more straightforward since it was reintroduced for eligible irregular-hours and part-year workers for leave years beginning on or after 1 April 2024. However, as noted previously, although the calculation itself (the 12.07% uplift) is comparatively manageable provided employers apply it consistently to the worker's pay in each pay period, with separate treatment of periods of sickness absence and statutory family leave, the harder problem is evidencing whether a day not worked by an irregular-hours worker was actually taken as leave or was simply a day off. Current software

[9] Homecare Association (2026). Homecare commissioning is the key to quality, fair work, and better outcomes.

systems generally calculate what is owed, but do not evidence when leave has genuinely been taken. Rolled-up holiday pay does not remove the worker's entitlement to take annual leave, and the six-year record-keeping duty in force from 6 April 2026 makes evidencing leave taken particularly important.

A further issue is determining, before holiday entitlement or pay is calculated, whether the worker legally falls within the irregular hours or part-year worker categories introduced by the 2024 legislation. This is important, because if an employer gets this determination wrong, then all the following calculations are wrong, and there is potential non-compliance. Greater clarity on this issue would be welcome. In particular, we would welcome statutory guidance on how the 'wholly or mostly variable' test in the Working Time Regulations applies to careworkers on zero-hours contracts who nonetheless work relatively stable weekly patterns, and on the position of workers who move between regular and irregular patterns during a leave year, together with model record-keeping examples that meet the six-year record duty.

Question 26: As a worker, how clearly is rolled-up holiday pay shown or explained to you (for example on payslips or in contracts)?

- Very clearly
- Somewhat clearly
- Not clearly
- It is shown or explained
- Don't know
- Not applicable

Policy, Practice and Innovation Team, 21 September 2026.