
March 2016



Calling time on illegal wages in the healthcare sector

**A UNISON report on the escalating
crisis in our homecare system**



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Introduction

There is an escalating crisis in our homecare system. Homecare workers continue to battle against a social care system starved of funding that is denying them the time they need to deliver dignified care. On top of this many homecare workers are not being paid for significant parts of their working day – the time it takes them to travel to and from the homes of the people they care for. This results in many not being paid the national minimum wage (NMW).

This report shows that the vast majority of councils in England and Wales are still failing to take proper steps to ensure that homecare workers looking after the elderly and disabled are being paid at least the minimum wage.

Background

Last August UNISON submitted a series of freedom of information (FOI) requests (see appendix 1) to all the local authorities in England and Wales that have a responsibility for social care. The findings show that less than a quarter (21 per cent) of councils make it a contractual condition for care providers to pay for workers' travel time.

Only 36 English councils out of the 152 responsible for social care – and just 2 out of 22 councils in Wales – stipulated in their contracts that homecare providers 'must pay' for workers' travel time.

The figures represent a modest improvement on a year ago, when a similar UNISON investigation found [that only six per cent of councils made it a contractual obligation for homecare providers to pay for their employees' travel time](#). However, in that time the new Care Act in England has come into force. It contains statutory guidance that makes a clear reference to the need for homecare workers to be paid for their travel time. The guidance says:

“When commissioning services, local authorities should assure themselves and have evidence that service providers deliver services through staff remunerated so as to retain an effective workforce. Remuneration must be at least sufficient to comply with the national minimum wage legislation for hourly pay or equivalent salary. This will include appropriate remuneration for any time spent travelling between appointments.”

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This explicit reference is aimed at ensuring that care workers are paid for any time spent travelling between appointments. Yet the majority of councils are still refusing to stipulate that their providers do this, despite having the power to do so.

Non-payment of the NMW is endemic in the care sector. The National Audit Office has reported that up to 220,000 care workers in England are being illegally paid below the minimum wage^[1]. One of the main reasons is the failure to pay care workers for their travel time between visits. Illegal low pay for care workers plunges them into poverty, causes high staff turnover rates (30 per cent annually in homecare) and has a detrimental impact on care standards. It means that many good and experienced care workers simply cannot afford to stay in the sector, and seek higher paid jobs elsewhere.

Last autumn the National Institute for Health and Care Excellence issued clinical guidance stating good homecare provision should:

“Ensure service contracts allow home care workers enough time to provide a good quality service, including having enough time to talk to the person and their carer, and to have sufficient travel time between appointments. They should ensure that workers have time to do their job without being rushed or compromising the dignity or wellbeing of the person who uses services.”

Investigations of care providers between 2011 and 2015 by Her Majesty’s Revenue and Customs (HMRC) – which is responsible for ensuring compliance with the NMW – found that 41 per cent were guilty of paying illegal wages^[2]. However, HMRC identified just £1.7m of arrears for 8,698 care workers who have been paid below the NMW over the four years. This is an average of £201 per worker^[2]. This is in contrast to the £130m that think tank the Resolution Foundation estimates 160,000 care workers are collectively cheated of annually. Its conservative analysis estimates that the average rate of arrears owed to care workers is around £815 per year^[3]. For example, earlier this year it was announced that as a result of UNISON campaigning, 100 homecare workers in South Wales are in line for payments of up to £2,500^[4]. All are employed by MiHomecare and weren’t being paid for their travel time.

UNISON’s FoI also asked the 152 social care local authorities in England what additional steps they had taken to ensure that their homecare providers were NMW compliant in light of the Care Act.

Forty two councils replied along the lines quoted below that their providers were simply bound by NMW legislation and gave no evidence that they had taken steps beyond this to ensure compliance:

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“The national minimum wage is a statutory requirement therefore expectation that providers will pay the national minimum wage has always been in place.”

This suggests that many councils are trusting homecare providers to pay their staff for their travel time. However, as the responses to the FOI requests demonstrate, there is a serious ongoing problem. Because of the government’s continuing squeeze on councils’ budgets, providers are having to contend with yet more cuts to the hourly rates that councils are prepared to pay. A recent report by the UK Homecare Association showed that only a handful of councils are paying providers an hourly rate that they believe allows them to be compliant with the national minimum wage.

Two councils failed to show even a basic understanding concerning the enforcement of the minimum wage. When asked to list the steps they had taken to ensure their providers were NMW compliant, one council stated:

“The responsibility to enforce the relevant legislation rests with the Department of Work and Pensions.”

The other believed that minimum wage compliance was monitored by the Care Quality Commission (CQC):

“This is a legal requirement that forms part of the CQC registration and is monitored by CQC.”

In actual fact, HMRC enforces minimum wage laws under the auspices of the Department for Business, Innovation and Skills – not the Department for Work and Pensions or the CQC.

A number of councils seem to have disregarded the statutory guidance to the Care Act and stated that it was solely the responsibility of the provider to ensure NMW compliance:

“Providers are contractually obliged to work in line with any relevant legislation. Therefore, providers should ensure that they pay their staff in line with national minimum wage HMRC requirements.”

“Providers are legally required to pay the national minimum wage and each provider sets their own pay rates for staff.”

“The national minimum wage is a statutory requirement therefore expectation that providers will pay the national minimum wage has always been in place.”

“The local authority has consulted with all providers asking for confirmation that all providers are paying at least the minimum wage. We can report a 100 per cent compliance.”

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All these answers fail to recognise the problems of endemic levels of non-payment of the NMW in the homecare sector and the responsibility placed upon councils by the new Care Act.

However, some good practice does exist. This is reflected in the increase in councils ensuring that travel time becomes a contractual condition.

UNISON's [Ethical Care Charter](#), outlines commitments for councils to help ensure the health, safety, and dignity of the UK's most vulnerable people, including a requirement for all homecare workers to be paid for their travel time.

Thirteen councils have adopted the Charter and as a consequence are now ensuring that travel time is paid for, or that changes to that effect will be made in the coming months:

“The council has identified the homecare sector as a further area where we want to make improvements to working practices across our suppliers’ workforces. We signed up to the UNISON’s Ethical Care Charter in November 2014 and will be applying the London living wage element of the Charter to our homecare contracts in February (2016).”

“The council has endorsed UNISON’s ethical commissioning for domiciliary care principals including minimum wage and travel time payments. We have linked annual uplifts to staff pay awards and supported a UNISON provider survey to look at pay and conditions in the independent sector. New commissioned services will ensure travel and national living wage is paid in full.”

In order to help end breaches of the NMW in the homecare sector, UNISON is calling on all councils to sign its [Ethical Care Charter](#). The Charter is included in this report (see appendix 2).

UNISON would like councils to survey their homecare workforces regularly, to ensure that their travel time is being paid for and that other elements of its Charter are being upheld.

UNISON is also asking the Westminster and Cardiff governments to instruct councils, in statutory guidance, that they must ensure all their homecare providers are paying workers for their travel time.

UNISON also believes that additional steps should be taken to ensure that councils commission care in a responsible manner that ensures NMW compliance. These steps should include:

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- The CQC to be given the power to inspect how local authorities commission care services in order to help eradicate poor commissioning practices.
- Transparency around the rates local authorities pay their providers, including the publication by each council of a breakdown showing how the fees paid cover pay, travel time, sleep-ins, other conditions, overheads and assumed profit margins.
- Spot inspections of provider payroll records, provision of clear and understandable payslips and time sheets to staff, and measures to ensure providers allow union representatives to consult staff to ensure the law is being complied with.
- Regular anonymous surveys of staff working for commissioned providers.

[1] Adult Social Care in England: Overview, National Audit Office March 2014

<https://www.nao.org.uk/wp-content/uploads/2015/03/Adult-social-care-in-England-overview.pdf>

[2] National Minimum Wage Low Pay Commission Report Spring 2016, The Low Pay Commission, March 2016

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507455/10493-TSO-Low_Pay-ACCESSIBLE_05.pdf

[3] The scale of minimum wage underpayment in social care, Resolution Foundation, Feb 2015,

<http://www.resolutionfoundation.org/publications/the-scale-of-minimum-wage-underpayment-in-social-care/>

[4] MiHomeCare's staff £2,500 back pay for travel time, BBC, 8 January 2016,

<http://www.bbc.co.uk/news/uk-wales-south-west-wales-35260953>

Appendix 1: Questions asked in the FOI request

This report is based upon responses from councils in England and Wales to Freedom of Information requests submitted by UNISON last summer.

The following questions were sent on 21 August 2015 to all 152 councils* in England that commission homecare services. All responded.

The Statutory Guidance for the 2014 Care Act states:

“When commissioning services, local authorities should assure themselves and have evidence that service providers deliver services through staff remunerated so as to retain an effective workforce. Remuneration must be at least sufficient to comply with the national minimum wage legislation for hourly pay or equivalent salary. This will include appropriate remuneration for any time spent travelling between appointments.”

Please can you therefore answer the following questions?

- a) Has your council taken steps to ensure that your homecare service providers are paying care workers at least the national minimum wage now that the Care Act has come into force?
- b) Please list the steps that your council has taken to ensure that your service providers are paying care workers at least the national minimum wage now that the Care Act has come into force.
- c) Following the Care Act coming into force, do you now make it a contractual condition that your homecare providers pay their care workers for their travel time?

As the Care Act does not apply to Wales, the following question was sent to all 22 Welsh local authorities on 2 September 2015. Again all sent responses.

Do you now make it a contractual condition that your homecare providers pay their care workers for their travel time?

*In Torbay and North East Lincolnshire homecare services are commissioned by the local Clinical Commissioning Groups in the NHS instead of the local council.

Appendix 2: UNISON's Ethical Care Charter

Stage 1

- The starting point for commissioning of visits will be client need and not minutes or tasks. Workers will have the freedom to provide appropriate care and will be given time to talk to their clients.
- The time allocated to visits will match the needs of the clients. In general, 15-minute visits will not be used, as they undermine the dignity of the clients.
- Homecare workers will be paid for their travel time, their travel costs and other necessary expenses such as mobile phones.
- Visits will be scheduled so that homecare workers are not forced to rush their time with clients or leave their clients early to get to the next one on time.
- Those homecare workers who are eligible must be paid statutory sick pay.

Stage 2

- Clients will be allocated the same homecare worker(s) wherever possible.
- Zero hour contracts will not be used in place of permanent ones.
- Providers will have a clear and accountable procedure for following up staff concerns about their clients' well-being.
- All homecare workers will be regularly trained to the necessary standard to provide a good service (at no cost to themselves and in work time).
- Homecare workers will be given the opportunity to regularly meet co-workers to share best practice and limit their isolation.

Stage 3

- All homecare workers will be paid at least the living wage (currently £8.25 an hour for the whole of the UK apart from London, where it is £9.40 an hour). There will be a new living wage calculated in November 2016 and each subsequent November. If council-employed homecare workers paid above this rate are outsourced, it should be on the basis that the provider is required, and is funded, to maintain these pay levels throughout the lifetime of contract.

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- All homecare workers will be covered by an occupational sick pay scheme to ensure that staff do not feel pressurised to work when they are ill in order to protect the welfare of their vulnerable clients.

When homecare services are well run they can help to ensure that people are able to live with dignity and in comfort. But when services are delivered poorly, there can be a devastating impact on the lives of care recipients and their families.

The over-riding objective behind the Charter is to establish a minimum baseline for the safety, quality and dignity of care by ensuring employment conditions which a) do not routinely short-change clients and b) ensure the recruitment and retention of a more stable workforce through more sustainable pay, conditions and training levels.