

**House of Commons Business and Trade Select Committee
Inquiry: Make Work Pay: Employment Rights Bill
December 2024**

This submission draws on research carried out by academics at the ESRC-funded Centre for Care at The University of Sheffield, including:

- research on the organising, activism and trade union activity of paid adult social care workers in England by Dr Duncan U Fisher and Professor Liam Foster.
- research on the policy drivers of care workforce change by Dr Erika Kispeter and Dr Grace Whitfield.
- a critical comparative analysis of carers leave policies undertaken by Professor Kate Hamblin.

We have also incorporated the anonymised perspectives of a group of homecare workers, who are part of the [Homecare Workers Group](#), which is a peer support network. We believe it is essential to involve those who will be most affected by the Bill throughout the consultation, to understand the likely impact on some of our most precariously employed workers.

A). Protecting workers

1). Does the Employment Rights Bill adequately safeguard the workers it seeks to protect?

1.1 There are many positive aspects to this Bill, which signal the importance of employee rights to this Government. This is welcome after a long spell of deregulation and non-enforcement of existing regulations.

1.2 We welcome the creation of an Adult Social Care Negotiating Body. Sectoral bargaining is a model widely used in the coordinated market economies of continental Europe (e.g. Sweden, Germany, Denmark)^{1 2}, and where unions and workplaces are also involved in workforce planning and training. Scotland and Wales have more recently established 'Fair Work' forums and policies, although progress has been slow.³ The introduction of sectoral collective bargaining has the potential to lead to standardisation of working conditions, or higher minimum standards. Inequalities in conditions understandably lead to workers leaving for other care jobs to gain a small improvement in these areas,⁴ but this creates flux and has negative implications for care continuity, and thus often care quality. Improving the quality of care jobs through sectoral collective bargaining will likely contribute to improved quality of care.⁵

¹ European Commission (2016) [The role of social partners in the design and implementation of policies and reforms](#).

² Uni Europa (2021) [Collective Bargaining Systems in Europe](#).

³ Welsh Government (2024), [Social Care Fair Work Forum: annual progress update 2024](#)

⁴ Atkinson, C. and Crozier, S. (2020). [Fragmented time and domiciliary care quality](#). Employee Relations: The International Journal, 42(1), pp.35-51.

⁵ Burns, D. J., Hyde, P. J. and Killest, A. M. (2016). [How financial cutbacks affect the quality of jobs and care for the elderly](#). ILR Review, 69(4), pp.991-1016.

1.3 However, sectoral bargaining tends to work best in sectors where both employees and employers have strong organisations representing their interests. Currently in England:

- *Employees* - the social care sector has low levels of union membership, with the majority of workers not unionised. It is estimated that just 20% of care workers are union members, falling to 15% for workers in the private sector.⁶
- *Employers* - although there are some membership associations, there is no single body which would be the obvious representative of the diverse range of over 18,500 employers - as became clear during the pandemic. Employers of different sizes and offering different kinds of provision (e.g. homecare, care homes) may have competing interests.

1.4 It is imperative that the voices of smaller employers, smaller trade unions, and non-unionised workers are not lost in negotiations. Coordination among employers and a drive to increase union membership in the sector is likely to require additional resources in a sector which is often operating in survival mode.

1.5 The Government's own Impact Assessment refers to a Fair Pay Agreement (FPA) for adult social care as an institution that "provides a means to negotiate for better pay and conditions", along with "levers to ensure the negotiated outcome is honoured". However, it is not clear what these levers are.

1.6 While the new ASC Negotiating Body and FPA is established, immediate intervention to improve care worker pay is needed. The Skills for Care Workforce Strategy sets out some options based on discussion with key stakeholders, and includes a calculation of the likely cost.⁷ The FPA should take into account the work that has already gone into this Workforce Strategy, rather than starting from scratch.

1.7 We endorse the approach advocated by the Resolution Foundation, Nuffield Foundation and analysts at the King's Fund - to uplift the minimum wage for social care to match the NHS Agenda for Change Band 3, at an estimated annual cost of £6.3bn (offset to some extent by increased tax revenue). This would provide symbolic recognition of the status of care work in relation to the NHS. However, we also note concerns from care providers as to how this additional annual cost will be resourced, with potential provider collapse, which we address further in section 6.

1.8 The FPA should address problems with sleep-in shift pay, payment for travel time, and issues such as workers having to cover the costs of fuel, business insurance for their car, parking, uniform or work-necessary clothing. Homecare Workers Group members felt strongly that the concept of 'fair pay' must include all costs incurred as a result of work. This is related to the issue of zero-hours contracts (ZHCs) and the fact that many homecare workers are only paid for contact time on their shifts, and not for the waiting time in between visits. This creates particular issues for sponsored workers who need to meet visa requirements of a minimum salary threshold - and therefore frequently work extremely long hours. Some Group members told us that they typically work 7 days per week with detrimental consequences for their health and wellbeing, and a sense that they were not treated with dignity and respect.

⁶ Cominetti, N., (2023). [Who cares? The experience of social care workers, and the enforcement of employment rights in the sector](#). London: Resolution Foundation.

⁷ Skills for Care (2024) [A Workforce Strategy for Adult Social Care in England](#)

1.9 Longer term plans should include developing a national framework for job evaluation - a standardised system for assessing job roles and assigning pay bands. This should address the currently meagre levels of reward available for long service, or taking on new responsibilities and developing skills.

1.10 An underlying problem remains which is that the main form of redress for complaints from individual workers is the employment tribunal. Tribunals can take months, if not years, and at prohibitively high cost for those on low incomes. Currently the Bill does not address this.

1.11 Proposals to reform 'exploitative' ZHCs by offering guaranteed hours need to specify that this will include all working activities (e.g. travel time, waiting time). Homecare Workers Group members expressed concern that some employers may interpret this to mean only contact time. They also felt strongly that employers could find a loophole in the Bill's provision that payment must be offered for cancelled shifts - since a whole shift is rarely cancelled, but visits to individual clients are. This relates back to the issue that currently many workers are only paid for contact time (and therefore, might only receive payment for 5 hours worked out of an 8 hour shift, for example).

1.12 We welcome the fact that the Bill would provide entitlements to parental leave, sick pay and protection from unfair dismissal from day one. This is imperative in adult social care where conditions rarely exceed legal minimums, and with clear implications for tackling gender inequality in a sector where 79% of workers are women.⁸

1.13 We welcome proposals to strengthen statutory sick pay, which is long overdue for the ASC workforce:

- The pandemic highlighted that care workers are often forced to choose between going to work when they are sick and risking passing this to the people they support - or taking time off without being paid.⁹
- Homecare Workers Group members described the devastating impact on household finances when for example, two earners are off sick and neither has an entitlement to sick pay. They described pressure from employers "to come in, no matter what".
- Our research finds that sick pay has been an intense focus of recent care worker organising.^{10 11}

"Sometimes I saw the staff...complaining, working, I don't know, ten years in that place, and they are in pain in their knees, they need a knee replacement, things like that. But they have to use their holiday for absence, for sick absence. And I said that is not right, if you are sick, why are you here?", Care worker and union member

⁸ Skills for Care, 2024. [The state of the adult social care sector and workforce in England](#). Leeds: Skills for Care.

⁹ Hayes, L., Tarrant, A. and Walters, H., 2020. [Care and support workers' perceptions of health and safety issues in social care during the COVID-19 pandemic](#). Canterbury: University of Kent.

¹⁰ Hayes, L., 2020. Victory on government funding of sick pay for care workers: Some background and implications. Institute of Employment Rights. Available at: <<https://www.ier.org.uk/comments/victory-on-government-funding-of-sick-pay-for-care-workers-some-background-and-implications/>> [Accessed 03/12/24].

¹¹ GMB Union, 2024. GMB wins sick pay for 19,000 care workers. GMB Union. Available at: <<https://www.gmb.org.uk/news/gmb-wins-sick-pay-for-19,000-care-workers>> [Accessed 03 December 2024].

1.14 The way that ASC currently operates is a far cry from ‘flexible working’. Homecare Workers Group members described having very little flexibility over the timing of the shifts they are allocated, making having any kind of work-life balance an impossibility. Particularly for sponsored workers, “inflexible is an understatement” when people fear losing their visa, and need to repay debts they incurred to come to the UK.

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

2.1 We welcome the broad definition of ‘social care worker’ in the Bill, which includes those in non-regulated forms of care provision, such as Personal Assistants (PAs). Employers of PAs will require advice and guidance in order to understand the implications of the new regulations, as well as funding to cover any increased costs of hiring PAs.

2.2 The Bill should also take into account self-employment, which has increasingly become a form of precarious work.¹² An unintended consequence could be a rise in self-employment in social care - including forced self-employment, also known as ‘false’ or ‘bogus’ self employment.^{13 14} The new Enforcement Body should pay particular attention to this risk.

2.3 PAs may be particularly at risk of forced self-employment, due to financial pressures and the desire to reduce the administrative burden on individual employers, as the Homecare Association highlights:

“Most Personal Assistants were PAYE employees, with the person using the Personal Assistant taking on the role of the employer” but “some local authorities tried to circumvent this by saying Personal Assistants were ‘self-employed’.”¹⁵

2.4 As Cominetti recommends:

“In cases where PAs are fully or part-funded by the state through direct payments, the state’s support with care costs should come with the quid pro quo that such workers are offered a contract and a minimum set of employment standards.”¹⁶

2.5 This is also a potential loophole with PAs employed by those who fund their own care.

2.6 Another potential loophole is the shift towards informal employment (the grey economy). Live-in care workers are especially vulnerable, with significant barriers to enforcement of their rights. They may be self-employed, or employed via agencies. The EU identified the UK as a country where there is cause for concern.¹⁷

¹² D’Arcy, C. and Rahman, F. (2019) [Atypical approaches: Options to support workers with insecure incomes](#). Resolution Foundation.

¹³ Citizens Advice (2015) [Neither one thing nor the other: how reducing bogus self-employment could benefit workers, business and the Exchequer](#).

¹⁴ Resolution Foundation, Chancellor provides £326 billion boost to public services and investment, funded by the biggest tax rises on record and higher borrowing, 30th October 2024 - <https://www.resolutionfoundation.org/press-releases/chancellor-provides-326-billion-boost/>

¹⁵ Townson, J. (2023) Home Care Association. <https://www.homecareassociation.org.uk/resource/unregulated-homecare.html>

¹⁶ Cominetti, N., (2023). [Who cares? The experience of social care workers, and the enforcement of employment rights in the sector](#). London: Resolution Foundation.

¹⁷ Rogalewski, A and Florek, K. (2020), [The future of live-in care work in Europe](#). European Economic and Social Committee

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

3.1 We are concerned about the increasingly common use of care platforms^{18 19} and 'introductory agencies' which match people looking for care with those seeking work.²⁰ While CQC-regulated agencies have a range of legal responsibilities (including recruiting suitable workers; providing induction, training, support and supervision; monitoring and improving quality and safety), introductory agencies are not required to register with the CQC because they do not play an ongoing role in the care provided after introducing the worker.²¹ As well as a lack of regulation of the quality of care, there is a lack of employment regulation since those using the platform are categorised as self-employed.

3.3 We are concerned that the gaps in care funded by the state are filled by precarious workers on these platforms, with high potential for discrimination and wage inequalities according to gender, race and class. Our research has found that while these kinds of employment arrangements are a potential way for care workers to have greater autonomy of their levels of pay and working arrangements, this is mediated by bias and discrimination, where workers from outside of the UK are sometimes pressured to artificially lower their rates to attract clients.²² These workers will not be able to access employment tribunals and face a race to the bottom in terms of competitive pricing of their labour.

3.4 It is legal not to pay residential care workers for so-called 'sleep-in shifts'. Currently, payment for sleep-in shifts is determined by negotiation between local commissioners, providers and the workforce.²³ Payment for sleep-in shifts must be accompanied by additional funding for the sector.

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

4.1 While existing agencies are merged into a single enforcement body, immediate action on the ground must continue - e.g. increasing the number of inspectors in the HMRC National Minimum Wage enforcement team focused specifically on ASC.

¹⁸ Trojanski, A. (2020) [Towards the "Uber-isation" of Care? Platform work in the sector of long-term home care and its implications for workers' rights](#). Workers' Group Research Report. European Economic and Social Committee.

¹⁹ Macdonald, F. (2021). '[Personalised risk in paid care work and the impacts of 'gig economy' care platforms and other market-based organisations](#)'. International Journal of Care and Caring, 5(1), 9-25.

²⁰ McDonald, P., Williams, P., Mayes, R., & Khan, M. (2024). [Income generation on care work digital labour platforms](#). British Journal of Industrial Relations, 62(2), 358-380

²¹ CQC, Personal care: ongoing role, introductory agencies and individual care workers - 26th May 2022 - <https://www.cqc.org.uk/guidance-providers/registration/personal-care-ongoing-role-introductory-agencies-individual-care>

²² Hamblin, K., Burns, D., & Goodlad, C. (2023). [Technology and homecare in the UK: Policy, storylines and practice](#). Journal of Social Policy, 1-17.

²³ Wilkinson, J. (2022) Sleep-in shifts in social care. Low Pay Commission. <https://minimumwage.blog.gov.uk/2022/01/27/sleep-in-shifts-in-social-care/>

4.2 It is illegal not to pay homecare workers for the time they spend travelling between the homes of their clients - however, this is common practice, meaning that workers do not receive the minimum wage for all the hours they worked.²⁴ We endorse the Resolution Foundation's recommendations that:

“employers must be required to keep records of travel time and furnish these to workers as standard so they can flag issues, and to enforcement agencies on request.”

4.3 Enforcement should focus on tackling the growing exploitation of migrant care workers. The Independent Chief Inspector of Borders and Immigration (ICIBI) recently found that there is only one compliance officer for every 1,600 employers licensed to sponsor migrant workers.²⁵ Live-in care migrant workers are especially vulnerable to exploitation.²⁶

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

5.1 The shift to treating trade unions as partners is very welcome - in contrast to the Trade Union Act 2016 and the Strikes (Minimum Service Levels) Act 2023.

5.2 There are significant barriers to trade union membership among care workers, including:

- High turnover, as well as the fragmentation and dispersal of the workforce, where workers often do not have a specific place of work –a particular challenge for homecare workers. Locating such workers and finding somewhere to meet them, individually or collectively, is highly resource-intensive for unions.²⁷
- Challenges reaching the recent influx of migrant care workers (on the Health and Social Care Visa) who experience heightened fear and mistrust, and other barriers, such as language.
- Employers do not always encourage or support trade unions accessing their workforce, due to fears that it may encourage workforce agitation - in contrast to NHS and local authority workplaces.

“I think there’s a lack of institutional mechanism through which care workers can find representation. Yes, there are unions. Do care workers get told about unions when they join their workforce? In my experience, no, so I think even just a conception that you might join a union is something that isn’t common among a lot of care workers. There’s a lack of a well-known professional body, like you might have in other professions, so nursing or social work, which could stand as representative of the interests of care workers.” Member of the Homecare Workers’ Group

²⁴ Cominetti, N., (2023). [Who cares? The experience of social care workers, and the enforcement of employment rights in the sector](#). London: Resolution Foundation.

²⁵ Independent Chief Inspector of Borders and Immigration (2023), [An inspection of the immigration system as it relates to the social care sector](#).

²⁶ University of Nottingham Rights Lab. 2022. [The vulnerability of paid migrant live-in care workers in London to modern slavery](#). Nottingham: University of Nottingham.

²⁷ Johnson, M., Rubery, J. and Egan, M., 2021. [Raising the bar? The impact of the UNISON ethical care campaign in UK domiciliary care](#). *Transfer*, 27(3): 367-382.

“There are a few exceptions but by and large we don’t have access to workplaces. Whereas in the NHS or in the council we can... as part of our recognition agreements we can go around, walk around wards and speak to people. I can’t walk into a care home or supported tenancy and speak to members or non-members about organising. So, access to our membership and the wider workforce is just very limited. And that extends to... like this evening for example, I’m holding a members’ meeting and it’s in Wetherspoons, like a mile away from a care home. So, it’s obviously not ideal.” Organiser in an established trade union

B) Impact on businesses

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

6.1 Without additional government investment in ASC, smaller care providers will find it extremely difficult to implement this Bill with undesirable consequences.

6.2 The Autumn Budget placed additional financial pressures on ASC due to the lack of government investment to offset these additional costs:

- lowering the threshold at which employers are required to pay NI on their employees’ earnings - disproportionately affect sectors such as ASC with many part-time workers on low wages.
- An unfunded increase in the National Living Wage.

6.3 The risk is that providers offset these increased costs by employing a higher proportion of workers on the minimum wage, and reduce rewards for increased seniority or years of experience.

6.4 As the Government’s own Impact Assessment concludes, a further consequence will be that self-funders will be charged higher fees for their care. If self-funders cannot afford to pay higher fees, this has the knock-on consequence of increasing the reliance on unpaid carers.

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

7.1 We support the proposed amendment to the Bill to make Carer’s Leave a paid entitlement. Balancing paid work and care presents significant challenges to carers’ financial situations through the impact on their ability to work, and their own health and wellbeing.

Carer’s leave is a policy priority as it acknowledges:

- a) the ubiquity of caring;
- b) the contributions carers make to health and care systems; and
- c) the considerable costs – not only financial – borne by carers.

7.2 Our research indicates it is essential that carers leave should be a paid or compensated right in order to ensure that it is available to all carers across all sectors. An unpaid or uncompensated right risks exacerbating inequalities already known to exist in access to carers' leave schemes already offered by some employers. If carers have to bear the cost of taking leave by losing pay, then it is likely that women and those on lower incomes will face significant barriers to using it. If leave is not paid, then employees may use their sick leave or annual leave, with detrimental consequences for their overall wellbeing.

7.4 Policies that appear 'neutral' may nevertheless reinforce gender inequalities because they are affected by related issues including persistent gender pay gaps, gendered divisions in unpaid labour and in formal labour markets. A statutory right to unpaid carers leave in the context of a gender-segregated labour market with a substantial gender pay gap is likely to substantially exacerbate inequality.

7.5 Lower paid employees are more likely to be carers - and need this new right the most. For many, taking unpaid leave involves losing vital weekly income and will be unaffordable. Unpaid leave might increase uptake among more affluent carers and help build acceptance of the view that combining work and care is normal and desirable (both would be welcome outcomes); however for the lowest paid employees it could be an 'empty gesture'.

7.6 Our recent comparative analysis of nine countries offering some form of statutory carers leave allows us to assess the implications for job and income security, equality and equity, despite a striking absence of administrative data or formal evaluation on the use of carer leave policies internationally.²⁸ Governments have found that, to be widely available to those who need it, the leave needs to be compensated or paid.

7.7 Where short-term leaves are unpaid, existing inequalities create barriers to equitable access. Internationally, the level of earnings replacement varies²⁹ - from 55% of usual earnings in Canada; 67% in Japan; 70% in Finland; 80% in Sweden, Slovenia and Poland; and 'base rate' salary in Australia and Italy.

- Finland - short-term leaves are not remunerated (unless subject to collective bargaining agreements). Women are more likely than men to be unable to afford to take unpaid leave as the existing gender pay gap makes this unaffordable.
- Japan - decided to increase compensation to 67% of earnings in order to improve uptake.
- Canada - carers receive only partial income replacement. Dual earner households often decide that the female partner should access the leave as her pay is typically lower.

About the Centre for Care

This response is provided by members of the ESRC-funded Centre for Care. The Centre for Care is a research-focused collaboration between the Universities of Sheffield, Birmingham,

²⁸ Fast, J.; Hamblin, K. and Heyes, J. (eds.) (2024). [Combining Work and Care: Care Leave and Related Employment Policies in International Context](#), Bristol: Policy Press.

²⁹ Fast, J.; Hamblin, K. and Heyes, J. (eds.) (2024). [Combining Work and Care: Care Leave and Related Employment Policies in International Context](#), Bristol: Policy Press.

Kent and Oxford, the London School of Hygiene & Tropical Medicine, the Office for National Statistics, Carers UK, the National Children's Bureau, and the Social Care Institute for Excellence. Funded by the Economic and Social Research Council, with contribution from the National Institute for Health Research (NIHR) and Department of Health and Social Care, as one of its flagship research centres, it works with care sector partners and leading international teams to provide accessible and up-to-date evidence on care – the support needed by people of all ages who need assistance to manage everyday life.

Led at the University of Sheffield by Centre Director Professor Kate Hamblin and Deputy Director Professor Nathan Hughes, our work aims to make a positive difference in how care is experienced and provided in the UK and internationally by producing new evidence and thinking for policymakers, care sector organisations and people who need or provide care. In studying care, we focus on ways of improving wellbeing outcomes and on the networks, communities and systems that support and affect people's daily lives, working closely with external partners.

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