

# National Care Forum Submission to Business and Trade Committee Inquiry into Employment Rights Bill

## 1. Introduction

- 1.1. This is the National Care Forum's (NCF) response to the Business and Trade Committee's call for evidence as part of its Inquiry into the Employment Rights Bill. NCF is the membership organisation for not-for-profit care and support providers. There are currently 176 members who provide care and support to over 268,000 people, in over 8,200 services and who employ over 145,000 staff.
- 1.2. Adult social care providers offer services for people of all ages, not just care homes for older adults. These diverse services form an ecosystem of care and support for many communities to draw upon when they need them. This includes supported living, supported housing, housing with care as well as home care, befriending services, day services, personal assistants, employment help, addiction and rehabilitation services, homelessness, housing and mental health services, as well as services which overlap with the wider VCSE sector. Our response reflects this diversity.
- 1.3. We are largely supportive of the measures to improve the pay, terms and conditions of the adult social care workforce contained within the Employment Rights Bill. The measures have the potential to improve lives across social care and the wider economy. Because of this, we are deeply concerned that wider government policymaking and measures contained within the Budget, will undermine the government's intentions as set out in the Bill. The resources needed to implement the Bill's measures successfully are conspicuously missing; without clearly articulated and dedicated resource to support the ambitions within the Bill, it is very hard to see how it can succeed with effective implementation on the ground.

## 2. Overall Impact on Adult Social Care Providers

- 2.1. The government's own impact assessments and economic analysis of the Employment Rights Bill indicates that adult social care will be one of the most impacted sectors by the various policies within the legislation<sup>1</sup>.

---

<sup>1</sup> See page 95 of the Economic Analysis in particular:  
[https://assets.publishing.service.gov.uk/media/67162540d100972c0f4c9abd/Employment\\_rights\\_bill\\_economic\\_analysis.pdf](https://assets.publishing.service.gov.uk/media/67162540d100972c0f4c9abd/Employment_rights_bill_economic_analysis.pdf)

2.2. The composition of the sector is one reason why this is the case, with many organisations being SMEs and not-for-profit organisations:<sup>2</sup>

- Over 18,500 organisations provide care and support across 40,000 establishments and almost 60% of these are non-residential in nature.
- 85% of these organisations have fewer than 50 employees and large organisations (250+ employees) make up just 2% of the total number of organisations.
- There are also 65,000 people employing their own care and support staff directly.

2.3. With a 1.5m strong workforce, more people work in adult social care in England than the NHS, and there are significant recruitment and retention challenges if we are to meet the needs of the future as well as the present<sup>3</sup>:

- There is a vacancy rate of 8.3% (131,000 vacancies). This is an improvement on recent years thanks in large part to international recruitment although this is now being curtailed.
- Unmet and undermet need is growing. There are now 5 million unpaid carers<sup>4</sup>, possibly reaching as high as 10 million<sup>5</sup>, and nearly half a million people are awaiting care assessments, care or direct payments to begin or a review of their care plan<sup>6</sup>.
- By 2040, the number of people living with major illness could increase by 37%, nine times the rate at which the working age population is expected to grow<sup>7</sup>.
- The Health Foundation estimates that meeting growing demand for care, enabling more people to access publicly funded care, and improving services could cost an extra £18bn by 2032<sup>8</sup>.
- Skills for Care estimates that, based on growth of the population aged 65 and above, by 2040 the sector may need 540,000 extra new posts (29% growth)<sup>9</sup>.

---

<sup>2</sup> <https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Workforce-intelligence/publications/national-information/The-state-of-the-adult-social-care-sector-and-workforce-in-England.aspx>

<sup>3</sup> Ibid.

<sup>4</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandwellbeing/bulletins/unpaidcareenglandandwales/census2021>

<sup>5</sup> <https://www.carersuk.org/policy-and-research/key-facts-and-figures/>

<sup>6</sup> <https://www.adass.org.uk/wp-content/uploads/2024/07/ADASS-Spring-Survey-2024-FINAL-1.pdf>

<sup>7</sup> <https://www.health.org.uk/publications/health-in-2040>

<sup>8</sup> <https://www.health.org.uk/publications/long-reads/adult-social-care-funding-presures>

<sup>9</sup> <https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Workforce-intelligence/publications/national-information/The-state-of-the-adult-social-care-sector-and-workforce-in-England.aspx>

- 2.4. A large proportion (approximately 70%) of care and support is commissioned by the state. The pressures on the workforce are largely being driven by the failure of successive governments to both properly fund and ensure local commissioners to commission in a way that enables providers to improve workforce pay, terms and conditions. The government's own impact assessment on the Bill states that it expects the cost of a Fair Pay Agreement to fall on local authorities and people funding their own care due to the "*limited room for ASC providers to respond through productivity improvements, erosion of pay differentials, or reduced profits... Increased costs to local authorities could result in greater costs to the Exchequer.*"<sup>10</sup>
- 2.5. The lack of a workforce plan for social care is also a key part of this failure. Attempts to introduce reformed career and development structures continue to fail because care and support providers are underfunded by the state for publicly commissioned care and support. Increases to the National Living Wage, for instance, are not usually met by local commissioners. This constrains employers' ability to offer more attractive pay, terms and conditions and maintain pay differentials which recognise and reward the attainment of additional skills, specialisms, and responsibilities<sup>11</sup>:
- Care workers with five or more years of experience in the sector can only expect an hourly rate which is 10p higher than a care worker with less than a year of experience.
  - The median rate of pay for care workers sits at £11.00. Care workers therefore had lower hourly rates compared to NHS healthcare assistants who were new to their roles (£11.67) and those with two years of experience (£12.45).
- 2.6. The Employment Rights Bill seeks to strengthen worker rights and introduce a process, via an 'Adult Social Care Negotiating Body', to arrive at a negotiated Fair Pay Agreement to improve the pay of care workers. These are important measures to building a stronger adult social care workforce, but these cannot be implemented successfully without proper funding of these measures and the wider sector alongside wider reform of the adult social care system.
- 2.7. If, for example, the government did push ahead with a Fair Pay Agreement but did not fund it, there is no way for providers as employers to deliver the levels of fair pay that the Fair Pay Agreement is likely to seek. Staff costs make up between 70% and 80% of most care

---

<sup>10</sup> <https://assets.publishing.service.gov.uk/media/671259d59cd657734653d7e5/impact-assessment-establish-a-fair-pay-agreements-process-in-the-adult-social-care-sector.pdf>

<sup>11</sup> <https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Workforce-intelligence/publications/national-information/The-state-of-the-adult-social-care-sector-and-workforce-in-England.aspx>

providers' operating costs; if the commissioning of those services does not include funding to pay the full costs, including on costs, of a Fair Pay Agreement, then there is no way to meet those additional staff costs. Likely outcomes would be that our members would need to hand back care contracts, reduce the services they offer and possibly make some staff redundant to simply pay for it. We would have less availability of and accessibility to care and support at the exact time our society needs it. In such circumstances, it is hard to envisage how investment in new services, innovation and other key ambitions of the government for the health and care sector, such as the shifts from sickness to prevention, hospital to community and analogue to digital, could come to fruition. The Fair Pay Agreement is not a measure that can be implemented without support.

- 2.8. The recent Budget has exacerbated the precarious financial situation of many of our members and has worried them that the government really is intending to implement the Employment Rights Bill without the funding to make it successful. The Nuffield Trust has estimated the additional unfunded costs of the Budget to the sector at £2.8bn next financial year, putting many organisations at risk of closing and ultimately impacting the care and support for thousands of older and disabled people. A similar dynamic would play out if several measures in the Bill were implemented without funding.
- 2.9. The Care Provider Alliance has carried out research to understand what the impact is likely to be from unfunded increases in employer National Insurance Contributions and the lowering of the earnings threshold<sup>12</sup>. Key findings show that without government support:
- 73% will have to refuse new care packages from local authorities or the NHS
  - 57% will hand back existing contracts to local authorities or the NHS
  - 77% will have to draw on reserves
  - 64% will have to make staff redundant
  - 64% will step back from paying the Real Living Wage (note that many of our members either pay this or aspire to – the budget is undermining that aim)
  - 92% of providers who also serve people who pay for their own care will be forced to increase rates for self-funders. Many self-funders will be unable to bear extra costs and may reduce care or rely more on family carers.
  - 22% are planning to close their businesses entirely.

---

<sup>12</sup> <https://careprovideralliance.org.uk/press-release-urgent-call-to-address-devastating-impact-of-budget-on-care-and-support>

- 2.10. In short, the government must work with providers to implement the Employment Rights Bill in adult social care. This must include financial support and be part of a wider process of reform in the sector. To not do so would lead to an increase in unmet and undermet need, and additional pressure on the NHS, as local commissioners struggle to pay for care and support and providers are pushed to hand back contracts or close their services. As we outline in section 4 below, this would directly impact the economy and put strain on wider public services. Our members want to work with the government to ensure our workforce gets the recognition and pay it deserves.

### 3. Enhancing workers' rights

Below we have commented on a few of the Bill's measures which we think impact our members' employees particularly.

#### **Zero hours workers and a right to guaranteed hours**

- 3.1. Around 30% of the sector's staff are employed on zero-hours contracts, although this is much lower across the not-for-profit part of the sector. A recent benchmarking exercise carried out across our membership showed that the mean average was 11% on zero hours contracts.
- 3.2. We support the proposals to ensure care workers have guaranteed hours, likewise our not-for-profit members are proactive in trying to increase guaranteed hours for their staff - evidenced by the relatively low levels of zero hours contract found in our benchmarking work. However, it would be impossible to implement the Bill's proposals at scale without reforming the way commissioning works, funding pay increases for staff and ensuring that elements of flexibility are safeguarded.
- 3.3. It should also be acknowledged that some care workers proactively opt for these contracts due to the flexibility they think they provide. Some care workers may have other caring duties for instance that need a high degree of flexibility. There is some work to do to outline other permanent options which also contain flexibility in working arrangements. We need to find a solution that works in adult social care, and which provides flexibility with fairness that does not mean the erosion of other terms and conditions for workers.
- 3.4. It is largely down to the way adult social care is commissioned by local government and the NHS for the reliance on zero-hours contracts in some parts of the sector, such as homecare.

- 3.5. In homecare it will be incredibly difficult to offer guaranteed hours to staff on zero-hours contracts unless commissioning practices are reformed. Local commissioners often commission on time and task rather than outcome, and pay far lower than the actual cost to deliver care. Demand is also very variable. The combination of low prices and uncertain demand means that providers rely on zero-hours contracts to align staff hours with the income they are actually getting from commissioners. Many providers can't afford to offer guaranteed hours or reimburse for last-minute changes in shift under such circumstances.
- 3.6. Across the sector, zero-hours contracts may be used to manage fluctuating demand as well as providing a temporary solution to staff shortages due to turnover or sickness. Commissioning practice and wider reform of the adult social care system are the only ways to sustainably move towards reducing the reliance on zero-hours contracts without suffering a contraction of the availability and accessibility of services.
- 3.7. The government should also ensure that the process of reviewing the guaranteed hours offer at the end of every 'reference period' is not administratively burdensome for providers. Many will not have the capacity or ability to pay for more administrative support.

### **Statutory Sick Pay**

- 3.8. The proposed reforms which would remove the waiting period and lower the earning limit required to access SSP would greatly benefit social care workers, but providers will need to be supported to implement it from day one.
- 3.9. The pandemic illustrated the danger of not having good sick pay arrangements by creating a perverse incentive for sick workers to continue working and risking transmission of Covid-19.

### **The Adult Social Care Negotiating Body and a Fair Pay Agreement for Care Workers**

- 3.10. We've already outlined some of our high-level concerns in 2.4, 2.5, 2.6 and 2.7 above about the lack of funding to help implement a Fair Pay Agreement for care workers. There are several things that need to be considered:
- How can the government ensure that wage increases do not lead to provider bankruptcies or local authorities cutting back services?
  - Social Care trade associations will be vital in negotiating on behalf of employers. However, they will need support to develop the infrastructure, expertise, and personnel

needed to negotiate on a level playing field with the government and trade unions through the adult social care negotiating body.

- Fair Pay Agreements should be underpinned by a reframing of the relationship between central government, local government and providers of care and support. The agreement can only be implemented if it is properly funded in recognition of the statutory duty to provide social care which is an essential public service.

3.11. It will take years for a Fair Pay Agreement to be negotiated and implemented. Care workers cannot wait that long. We believe the government should bring forward funded interim measures, ahead of a Fair Pay Agreement, to boost the pay of care workers. Care workers should be paid at a rate according to their skills and competencies, at a level that is comparable NHS colleagues and ideally above the Real Living Wage.

3.12. There are also other measures the government could take action on now to strengthen the status of care workers that are not currently in the Bill:

3.12.1. Adopt the Adult Social Care workforce strategy which has been developed by a wide range of organisations, people working in and people drawing upon social care<sup>13</sup>. Use this to deliver a long-term workforce plan for adult social care which models future workforce requirements and seeks to diversify the types of roles available, as well as developing career structures and qualifications.

3.12.2. Introduce professional registration for all adult social care workers and establish a professional body, such as a Royal College, to represent them. The establishment of this should be funded by the state.

## 4. Economic Impact

4.1. Attempting to implement the Employment Rights Bill without the necessary funding and wider support required to make it a success will have a significant negative impact on the economy.

4.2. Adult social care is a key part of our nation's infrastructure, with the potential to unlock economic prosperity and combat socio-economic and health inequalities in every part of the country

---

<sup>13</sup> <https://www.skillsforcare.org.uk/Workforce-Strategy/Home.aspx>

- 4.3. Social care services are anchor institutions for their local communities – they generate spending which remains within the local community in which they exist and support a much wider ecosystem of community services and local businesses. Collectively, these services are some of the biggest employers across the country, and according to Skills for Care, contribute an estimated £68.1bn gross value added per annum to the English economy.<sup>14</sup> For every £1 invested in social care, £1.75 would be generated in the wider economy and if a quarter of low paid workers had their pay increased to the Real Living Wage, the UK economy would grow by £1.7bn.<sup>15</sup>
- 4.4. Furthermore, the very nature of social care is enabling to people. As well as improving population health and wellbeing and creating new jobs, good social care enables some people in receipt of care and, crucially, their unpaid carers (often women) to join or return to the workforce if they would like to. It is a powerful tool in addressing inequalities and keeping people out of hospital.
- 4.5. As we are already seeing in the impact to the Budget (see 2.8 and 2.9 above), any attempt to implement the measures within the Employment Rights Bill, without the necessary resources to make them successful, will likely result in the handing back of contracts, closure of services and redundancies in the workforce. This has a knock-on impact on the people drawing on those services, leading to higher levels of unmet and undermet need across all age groups. Increasingly, more and more people will be forced to quit work to care for their loved ones because there is no care and support which is accessible or available near to them. Similarly, more and more people will delay access to care services and end up entering either social care or the NHS at a much later acuity of need. These likely impacts are entirely the opposite of the government's stated policy ambitions to move towards prevention.
- 4.6. If the government is serious about its intentions to bolster workers' rights as well as shift to a more preventative approach to health and wellbeing, it must bring forward measures to reform adult social care and fund it properly.

---

<sup>14</sup> <https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Workforce-intelligence/publications/national-information/The-state-of-the-adult-social-care-sector-and-workforce-in-England.aspx>

<sup>15</sup> State of the Adult Social Care Sector and Workforce in England, Skills for Care, 2023.