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The scale of minimum wage underpayment in social care

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There is increasing recognition that a better deal for the workforce will be essential to the quality and sustainability of social care provision in the UK, but so far there has been scant evidence as to the scale of investment needed. The Resolution Foundation is currently undertaking a major investigation into the costs of improving care worker conditions – via things like paying the living wage and enhancing pension contributions – and the wider savings that would result, for example through lower tax credit spending as wages rise.

But before we consider the costs and benefits of improvements like these, it is essential to ensure that pay levels at least comply with the law. The National Minimum Wage is a right, not a privilege, but previous research has shown that a significant minority of frontline care workers are not receiving it. This note describes how we have developed this previous research by estimating the quantum of wages missing from frontline workers' pockets each year due to minimum wage non-compliance on the part of care providers.

The Low Pay Commission and others have repeatedly flagged social care[1] as a sector of concern in terms of compliance with the National Minimum Wage (NMW). Several factors combine in this respect. Reflecting an ageing population with rising care needs, it's one of the largest and fastest-growing sectors of the economy, with the potential to add an additional one million jobs in the next decade alone. Meanwhile, unlike the NHS, it has faced significant funding cuts in recent years, pushing down the price that commissioners are willing to pay for services and the time considered necessary for tasks to be performed. As well as driving down pay rates themselves, such commissioning practices have contributed to the irregular, casualised and task-based nature of work, with hourly pay often based on 'contact' time only. Finally, the workforce displays many of the characteristics we associate with low pay: disproportionately part-time (38%) and female (83%), with growing numbers of migrant workers, low levels of formal qualifications, and a weak collective voice.

Reflecting this concern, HMRC has stepped up its focus on social care. A summary of recent investigations into NMW compliance in the sector reported £340,000 arrears of pay identified for 2,440 workers between 2011 and 2013 (a more recent case during 2013-14 resulted in around 3,000 staff at a single care provider being repaid over £600,000). HMRC also found a rising incidence of non-compliance, with a greater 'strike rate' during 2011-12 and 2012-13 than in any of the preceding years. The primary reasons for non-compliance related to hourly rates below the appropriate NMW rate; deductions from pay for items deemed to be business expenses; and unpaid time, which, when factored into hourly rate calculations, brought them below the NMW. Such unpaid time included time spent travelling between clients in domiciliary care, and unpaid training and 'on call' hours across domiciliary and residential care settings. While calculating total working time can be complex, the law is clear that these activities are in scope for the purposes of the NMW, and that if pay is based on a subset of this time, for example 'contact' hours, then it must adequately reward the total at or above NMW rates.[2]

While such enforcement efforts on the part of HMRC are welcome, the non-compliance they have uncovered is unlikely to reveal anything like the true extent of NMW underpayment across the social care workforce. Therefore we have attempted to provide a more comprehensive, though still conservative, estimate of the scale of non-compliance in the UK's social care sector. As well as capturing prima facie hourly rates below the NMW, our estimate factors in unpaid working time, one of the major reasons for non-compliance. We are not able to capture other aspects of non-compliance such as unwarranted deductions from pay.

[1] In this analysis we define social care as the provision of personal and practical support for elderly and disabled adults in their homes and in residential care settings, separate from NHS medical and nursing provision

[2] Complexities in the definition of working time for NMW calculations can relate to the interaction between 'working time' and time that does not need to be paid, including travelling to or from home, breaks and sleeping time. Examples on the gov.uk website illustrate these complexities

Calculating pay rates that reflect unpaid time is extremely difficult given that our knowledge of hours and wages in social care jobs comes from surveys of employers that will generally not record such time. The most robust estimate to date of non-compliance, by Dr Shereen Hussein,[3] took conservative unpaid time estimates from a separate survey of workers[4] and added these to a large and sector-specific dataset[5] detailing pay and hours, in order to adjust hourly rates to reflect total working time. A complex modelling process which also incorporated prior estimates by the Low Pay Commission and ONS[6] resulted in an estimated 9.2%-12.9% of frontline care jobs paying below the NMW. This reflects the current 'best guess' of the prevalence of non-compliance in social care.

But what does this mean in terms of lost pay across the economy?

To answer this we first need to know what this level of non-compliance equates to in terms of numbers of jobs. By combining figures from Skills for Care for England with UK data we estimate that there were 1.4 million frontline care jobs in the UK in 2013-14.[7] Taking the midpoint of the range for the prevalence of non-compliance (11%) suggests a total of 160,000 direct care jobs paying below the minimum wage in 2013-14. This is at the lower end of Dr Hussein's range for the number of care jobs paying below NMW (155,000 – 220,000) due to improvements in Skills for Care's methodology for estimating the number of jobs in the sector that have resulted in a lower total (it does not reflect any reduction in NMW non-compliance in recent years).

Secondly, we need to estimate the value of the underpayment for those whose wages fall short. To do this we follow the previous approach for adding unpaid time to the available sectoral data on pay and hours worked. Using updated unpaid time estimates supplied by Dr Hussein,[8] we compute revised hourly wage rates and compare these to the age-specific NMW rates that actually applied at the time. On this basis we estimate that each non-compliant frontline care job underpaid by an average of £815 over the course of 2013-14.[9]

Putting these two figures together, our estimate is that frontline care workers across the UK lost out on £130 million in wages during 2013-14 due to NMW non-compliance.

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[3] Dr Hussein is Principal Research Fellow (Chair) at the Social Care Workforce Research Unit, King's College London

[4] The Longitudinal Care Work Study (LoCS), King's College London

[5] The National Minimum Dataset for Social Care (NMDS-SC), which is collected by Skills for Care based on returns from care providers

[6] Dr Hussein used Bayesian modelling techniques that factored in previous estimates of NMW underpayment in social care, such as those by the Low Pay Commission and ONS. These estimates were based on non-sector specific datasets and did not account for unpaid time, and therefore resulted in lower rates of non-compliance than Dr Hussein's approach. This process therefore produced a view on the prevalence of underpayment that accounted for all prior knowledge to date. The complexity of this model means we have built on the results in our analysis rather than attempting to replicate the approach in its entirety

[7] Following Dr Hussein's approach, we take Skills for Care's latest estimate of the size of the direct care workforce in England, and scale this proportionally for Northern Ireland, Scotland and Wales based on the number of frontline care workers in each of the nations as recorded in the Labour Force Survey (ONS). This is a more robust approach than simply using the Labour Force Survey totals for direct care workers, as standard occupational and industry codes fail to accurately capture this workforce as a whole

[8] As Dr Hussein did, we factor these estimates down to account for the possibility of workers over-estimating the time for which they are not paid when responding to self-reported surveys, for example, due to confirmation bias or an incorrect understanding of what constitutes working time in NMW regulations

[9] As well as wages for working hours this figure captures the knock-on effects on statutory holiday, maternity and paternity pay, as well as a very conservative estimate of training time based on UK Homecare Association assumptions

Wages below the legal minimum will have a knock-on effect on retirement savings as well. A very modest estimate, based roughly on private employers' auto-enrolment obligations once the policy is fully rolled out,[10] suggests at least £4 million is missing from these workers' pension pots each year. If employers operate more generous schemes then this figure will be substantially higher.

And it is not just the worker who loses out – illegal pay also robs the Exchequer of tax revenues and in-work benefit expenditure. For example, if the missing £130 million had been paid to workers during 2013-14, HMRC would have collected an additional £9 million of employer National Insurance contributions (NICs) alone. Add in employee NICs, income tax revenues, and tax credit and Housing Benefit expenditure and the millions missing from the public purse will rise significantly further.

These estimates are striking in their illustration of the scale of compliance issues in a particular sector and the impact on both low-paid workers and the wider economy. But even these figures may well understate the true extent of wages missing due to NMW non-compliance in social care. For example, although we have accounted for face-value illegal rates and unpaid time, we have not been able to account for deductions from pay, which was the most common reason for non-compliance uncovered in HMRC's investigations. And both our own calculations and the previous research that we use as a starting point have erred on the side of conservatism in the estimation of unpaid time. Previous qualitative research by the Resolution Foundation into non-compliance in the domiciliary care sector illustrates how the working patterns of some workers could lead to substantially higher losses than £815 per year.

Finally, with all parties committed to real terms increases in the minimum wage, and care budgets set to remain constrained, the scale of non-compliance has the potential to grow in coming years if action is not taken.

There is no doubt that care providers are operating in a difficult environment, with commissioning practices and increasingly limited public funding placing acute financial pressures on businesses. In addition, the irregular and task-based nature of social care work can make the calculation of hourly rates for the purpose of NMW compliance more complex than in many other sectors. However, such challenges are no excuse for illegal pay. This social care wage theft is an abuse on the part of employers which they are fully liable for. A stronger and more effective system of enforcement and redress is an immediate priority, starting with a scaling up of recent HMRC efforts in this sector. Beyond this, previous Resolution Foundation analysis has set out how the enforcement system could be made more effective though better resourcing, clearer guidance, less reliance on self-reporting and tougher penalties; and how local authorities could take more responsibility for ensuring compliance as part the commissioning process.

The Resolution Foundation's current investigation into wider issues around low pay and poor terms in social care recognises that more wholesale improvements than just NMW compliance will be required to put the workforce on a sustainable footing. We all recognise that such improvements come at a price even accounting for the wider savings that would result, and many, including care providers and commissioners, are calling for a more generous national public funding settlement to foot the bill. This is an important debate to have, but if those with skin in the game are to be taken seriously then we must ensure we are starting from a point of at least legal pay levels and stamp out NMW non-compliance in social care.

[10] In line with auto-enrolment requirements once fully implemented, we have modelled 3% employer contributions for workers with annual earnings above the personal tax allowance in the private sector, which accounts for around three fifths of all social care jobs. More generous contributions have been modelled in the public and voluntary sectors, in line with ONS analysis of average contribution rates

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