Low Pay Commission Written Consultation 2014 Report

What are your views on the outlook for the UK economy, including employment and unemployment levels, for the period October 2014 – September 2015?

The United Kingdom Homecare Association is the professional association of homecare providers from the independent, voluntary, not-for-profit and statutory sectors. The Association represents over 2,100 provider member organisations across the United Kingdom. Our aim is to support our members to provide high quality, sustainable homecare to allow people to live at home in their community for as long as they choose. We welcome this opportunity to respond to the Low Pay Commission Written Consultation 2014 Report.

UKHCA believes that the outlook for the economy is slightly improving. Although, in March 2013, because of a weaker outlook for consumer spending, business investment and exports, the Office for Budget Responsibility (OBR) revised down its near-term growth forecasts to 0.6 per cent this year and 1.8 per cent in 2014.[1]

However, recently growth has been revised up, and surveys suggest growing consumer confidence and faster growth in construction and manufacturing than previously thought. Also, exports are up and there has been a pick-up in business investment. Similarly, the Organisation for Economic Co-operation and Development (OECD) has upgraded its outlook for the UK economy from 0.8% prediction in May 2013 to 1.5%, and described the current rate as "encouraging".[2]

Nevertheless, the recovery is still patchy and mainly concentrated in London and the South East. The fiscal squeeze continues with continuing pressure by central government on local authorities to make substantial cuts in their budgets, including their social care budgets (see below). As the Association of Directors of Adult Social Services (ADASS) says, the prospects for social care funding is bleak and getting bleaker.[3]

Also, the pace of recovery is constrained by slow growth in productivity and real incomes (which continue to fall), prolonged problems in the financial system, the fiscal consolidation, and the outlook for the global economy. According to OBR, *"Growth is not expected to return to above-trend rates until 2015, as credit*

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[1] Economic and fiscal outlook March 2013, Office for Budget Responsibility, March 2013, p.5. http://budgetresponsibility.org.uk/wordpress/docs/March-2013-EFO-44734674673453.pdf

[2] OECD Interim Economic Assessment, 3 September 2013, p.1. http://www.oecd.org/eco/outlook/Interim_Assessment_Handout_September_2013.pdf

[3] Social care funding: a bleak outlook is getting bleaker, ADASS press release, 8th May 2013. http://www.adass.org.uk/index.php?option=com_content&id=914:social-care-funding-bleak-outlook-bleaker&Itemid=489

conditions begin to normalise and real wages and real; wages and productivity start to recover, supporting the growth in consumption."[4]

Despite the relative weakness in growth, the labour market continues to improve. OBR and the Office for National Statistics (ONS) data show employment rose to 29.7 million in the three months to December 2012, against OBR's forecast that it would remain unchanged at 29.6 million.[5] The claimant count measure also performed better than OBR expected, falling to 1.54 million in January 2013.[6] Along with this, and possibly related, growth in average weekly earnings fell in the private sector fell in the fourth quarter of 2012 to 1.3 per cent, compared to 2.0 per cent in the third quarter.[7]

We believe that, like the general economic outlook, the outlook for employment is improving but could easily be knocked off course by inflation and wage increases. OBR reports that the Consumer Prices Index (CPI) measure of inflation was slightly higher than their December 2012 forecast, at 2.7 per cent both over the final quarter of 2012 and in January 2013. OBR have now raised its forecast for CPI inflation in 2013, but expect it to fall gradually over 2013 and 2015, remaining close to 2 per cent from 2016 onwards.[8] The Retail Prices Index (RPI) measure (which also includes mortgage interest payments and housing depreciation) is expected to follow a similar path to CPI inflation.[9]

Growth in average earnings continued to fall in the fourth quarter of 2012 with average weekly earnings in the private sector only growing by 1.3 percent compared to 2.0 per cent in the third quarter and OBR's forecast of 2.0 per cent in December 2012. With an upward revision to price inflation and a downward revision to wage growth, OBR expects real wage growth to be negative in 2013 and only marginally positive in 2014, before picking up in 2015 and reaching 2 per cent in 2016.[10]

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[4] Economic and fiscal outlook March 2013, Office for Budget Responsibility, March 2013, p.8.
http://budgetresponsibility.org.uk/wordpress/docs/March-2013-EFO-44734674673453.pdf

[5] Economic and fiscal outlook March 2013, Office for Budget Responsibility, March 2013, p.21.
http://budgetresponsibility.org.uk/wordpress/docs/March-2013-EFO-44734674673453.pdf

[6] Economic and fiscal outlook March 2013, Office for Budget Responsibility, March 2013, p.22.
http://budgetresponsibility.org.uk/wordpress/docs/March-2013-EFO-44734674673453.pdf

[7] Economic and fiscal outlook March 2013, Office for Budget Responsibility, March 2013, p.7.
http://budgetresponsibility.org.uk/wordpress/docs/March-2013-EFO-44734674673453.pdf

[8] Economic and fiscal outlook March 2013, Office for Budget Responsibility, March 2013, p.70-71.
http://budgetresponsibility.org.uk/wordpress/docs/March-2013-EFO-44734674673453.pdf

[9] Economic and fiscal outlook March 2013, Office for Budget Responsibility, March 2013, p.72.
http://budgetresponsibility.org.uk/wordpress/docs/March-2013-EFO-44734674673453.pdf

[10] Economic and fiscal outlook March 2013, Office for Budget Responsibility, March 2013, p.78.
http://budgetresponsibility.org.uk/wordpress/docs/March-2013-EFO-44734674673453.pdf

What has been the impact of the NMW? Has the impact varied, and if so how (for example by sector, type, and size of business or groups of workers (including women, ethnic minorities, migrant workers, disabled people, older workers, and those who are unqualified)?)

Our member organisations tell us that the NMW is becoming a bigger issue because of the pressures local authorities are exerting on them to reduce costs and make efficiency savings. Increasingly members tell us that they are struggling to meet their statutory requirements, including paying the NMW.

As we have said to the Low Pay Commission over previous years, the major reason for low pay in the social care sector is that local authorities act as a near monopsony (a single buyer) for the purchase of homecare in their local area. Because of this, they can exert a downward pressure on independent and voluntary sector providers' costs. It is estimated that over half of independent homecare are dependent on the statutory sector for 80% or more of their business.[11]

In our evidence for the Commission 2013 report, we highlighted the continued downward pressure on costs by councils, which we said can only get more severe as they attempt to grapple with cuts of £1billion in their adult social care budgets.[12] We estimated that 9 out of 10 providers experienced a real-terms decrease in fees paid by the councils with which they trade in the financial year 2011-12 alone, with no realistic prospect of better terms in the next few years.[13]

The situation appears to have deteriorated over the last year and is likely to deteriorate even further in the future. ADASS's latest annual survey of social care shows that councils are planning to reduce their budgets by another £800 million this year, a cumulative cut of 20 per cent since 2010. This is in spite of the resources transferred from the NHS to local authority funded social care.

The ADASS survey also shows that the area most likely to be highly important as an aid to councils saving resources is 'better' procurement practices (68 per cent). When asked which areas had been affected by savings to date, nearly half of councils said that providers are facing financial difficulties, and 57 per cent thought that in two years' time providers will be facing greater financial difficulty.[14]

[11] Time to Care? Commission for Social Care Inspection (2006). P.28. The report has not been transferred to Care Quality Commission website. Therefore use following link: www.ukhca.co.uk/pdfs/timetocare.pdf
[12] ADASS Budget Survey 2011, May 2011.
http://www.adass.org.uk/index.php?option=com_content&view=article&id=285&Itemid=190
[13] Care is not a commodity, UKHCA, July 2012, p8.
http://www.ukhca.co.uk/pdfs/UKHCACommissioningSurvey2012.pdf
[14] Social care funding:a bleak outlook is getting bleaker, ADASS press release, 8th May 2013.
http://www.adass.org.uk/index.php?option=com_content&id=914:social-care-funding-bleak-outlook-bleaker&Itemid=489

The following is a selection of comments received from our member organisations on how they are struggling to pay the minimum wage in the face of continuing cuts or freezes in local authority homecare fees:

Provider in Hampshire

> *"We understand a minimum wage rate is required but it is unhelpful when councils are freezing or reducing rates paid for care for pressure to be put on to increase wages. The introduction of pensions is already putting pressure on wage costs.*
>
> *"The Minimum Wage increase should wait until we are back to the position where councils will accept an annual inflation increase.*
>
> *"It is unfair to keep asking private clients to cross subsidise the council clients. Those that have saved for their old age are being penalised by those that have not. We understand that councils do not have infinite resources but we still believe that councils are still inefficient organisations that really do not know what is going on in the private sector."*

Provider in Telford

> *"Any responsible employer will be experiencing the same dilemma. On the one hand, we wish staff to receive a wage that they can live on (not necessarily the 'living wage'), maintain a reasonable car and be content to do a difficult job. On the other hand, we have been unable to increase our prices for 3 years and therefore any pay increase comes from a squeeze of our margins, these are already not great. Trying to point out the realities of the situation make us sound like greedy, money grabbing employers. We are not one of those, we are a small employer (£1m turnover), in an industry where we have to get right every visit we undertake. The pressure is relentless and we take this responsibility seriously. If minimum wage continues to increase at a rate way in excess of inflation without any opportunity to increase our prices, then one of two things will happen. We will have to consider cutting corners/taking more risks – e.g. minimising paid training which is unacceptable or we will go out of business. It's sort of that simple."*

Provider in Surrey

> *"I feel that if the NMW went up we would probably go out of business. We have recently had to drop our charge rates (to the council) by £2 per hour and that has had a serious knock on effect on our business. We are having to spend a lot of time and money on training and of course paying the girls to come in and do the training is hard.*

"I think that the Councils should pay more for us to be able to deliver the standard of care that is required for our Service Users."

Provider in Essex

"The race to the bottom based on price by commissioners has meant that we have had to reduce charge rates to remain competitive; the block contract was awarded at significantly less that it was 8 years ago and makes no allowance for the impact of pensions' provision for staff.

"Despite this because we value our staff and need new staff and want to continue to offer a quality service our Board of Directors made the decision in January to use (the company's financial) reserves to fund an increase to £7 for all care staff which has been extremely well received, however we can't afford to do this again."

Provider in Derbyshire

"I do not need to write at length about the ludicrously low rates imposed by local authorities; you have lobbied for many years on this very subject. Derbyshire continues to frustrate and leave me aghast on this issue. Whilst they impose rates of £10-11 per hour on private agencies, they cross-charge their own in-house service at £16-31 per hour!!

"Over the last five years we have seen the NMW increase every year by at least 2%, sometimes by more. Increases in our imposed rates have simply not matched this climb. Last year we received 0% from Derbyshire, the year before it was 1.5%, the year before that, just 1%. During the same period many of our costs have risen sharply. The cost of gloves, for example, has risen by more than 45%. This would be even higher had we not been able to take advantage of your very welcome 'economies of scale' approach. It doesn't take much intelligence to work out that outgoings have increased much more than income has. All of this has had to be absorbed by the business. With such low margins, the situation is becoming quite impossible. I have recently had to make two of my office staff redundant in my efforts to accommodate this continued squeeze. With the introduction of the pension legislation next year I may very well have to repeat this exercise."

What our member organisations are telling us appears to be supported by the findings of the Low Pay Commission's own commissioned research for its 2013 Report from Leeds University. This shows that the proportion of the domiciliary care workforce at or below the NMW was statistically significantly higher in October 2011-April 2012 than in both previous periods (October 2010-March 2011 and April 2011 to October 2011).

The Leeds researchers note that this increase comes at a time of increased volatility in the sector, due to budgetary pressures, changes to commissioning processes and changing employer strategies. They also say that there findings suggest increased pressure on all employees' hourly pay rates (including managers and senior care managers) in the sector, but especially care workers where low pay is concentrated.[15]

What has been the impact of the minimum wage on young people and what effect do you think it has on their employment prospects?

Our member organisations have not alerted us to problems paying young people the minimum wage, or that it is having an effect on their employment prospects. One possible reason for this is that many providers are unclear about the regulations of employing young people in social care; less than 1% of the social care workforce is below 18 years of age.[16]

However, this may change. We are pleased to say that Skills for Care is encouraging social care employers to help young workers become apprentices and have reissued guidance confirming that young people aged 16 and 17 can be employed in adult social care providing:

- They have completed or are undertaking an approved training programme in health and social care.
- The registered manager or a delegated person assesses the competence and confidence of the young worker to carry out all the tasks required of them, including where necessary intimate care.
- That appropriate support is offered to the young worker.
- The consent of the person being supported and/or their advocate has been obtained.
- Inexperienced practitioners are not left in charge of a care setting or left to work on their own.

Skills for Care want to make it clear to social care employers that age isn't an issue in recruiting workers who are really motivated to develop long term careers in the sector.

What has been the impact of the Apprentice Rate on the NMW?

As with young people and paying the minimum wage, our member organisations have not alerted us to problems paying the NMW Apprentice Rate of £2.65 per hour. This may be because apprenticeships in social care are still fairly

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[15] Bessa, I., Forde, C., Moore, S. and Stuart, M. The National Minimum Wage, earnings and hours in the domiciliary care sector, University of Leeds, February 2013, p27. http://www.lowpay.gov.uk/lowpay/research/pdf/LPC_-_Final_Leeds_University_Report_-_26_February_2013SM2.pdf

[16] Nmds-sc briefing Issue 5 – Age and Gender, Skills for Care. https://www.nmds-sc-online.org.uk/Get.aspx?id=285951

undeveloped and are likely to be more relevant to higher apprentice levels, i.e., management, than direct entry care workers.

Direct entry care workers are only required to complete the Common Induction Standards (CIS) within 12 weeks of starting their job. Lone working should not be permitted by providers until the CIS are completed or until competence has been assessed and a manager 'signs off' that a practitioner is 'safe to leave' to work alone.

Apprentices can be employed full-time or part-time as long as they are contracted to work a minimum of 30 hours per week. Skills for Care says that the Skills Funding Agency has confirmed that zero-hours contracts will be accepted for apprenticeships, which Skills for Care says is: "*a positive step for domiciliary care workers and those on zero hour contracts*." [17]

Skills for Care, in partnership with the Department of Health, are now actively promoting social care apprenticeship programmes. Skills for Care have recently developed a Higher Apprenticeship (level 5) in social care – Care Leadership and Management (England).

What is your view of the Commission's position that the current arrangements for the accommodation offset should be retained, and that it intends to recommend staged increases in the offset towards the value of the hourly adult rate of the NMW when economic circumstances mean the real value of the NMW is tending to rise?

In our response to the Commission's questions for its 2013 Report, we said we had received legal advice that the accommodation offset would probably apply to live-in care, although there isn't any case law to confirm this. We contacted our member organisations about their experience of the offset but we received no responses. We therefore presume it is not an issue for homecare providers in general, except a small minority who may provide accommodation to attract workers in hard to fill areas.

How far is there compliance with the NMW? Do particular groups experience problems with NMW compliance (for example apprentices or interns/others undertaking work experience)? Where there is non-compliance are there implications for the NMW rates, or other implications (for example for the quality and accessibility of official guidance on the NMW, or the enforcement work of HMRC)?

UKHCA has heard from a number of our member organisations who have recently faced NMW inspections from HM Revenue and Customs (HMRC). The cases that come to us through our telephone helpline demonstrate how difficult it is for homecare providers to interpret the complex rules governing what

[17] Skills for Care, qualifications and training.
http://www.skillsforcare.org.uk/qualifications_and_training/apprenticeships/Informationforemployers.aspx

counts towards pay and time worked especially travel time. Employers who fail to grapple with these rules risk enforcement action by employees or HMRC and penalties of up to £5,000, as well as back pay and being publicly named and shamed.

In order to work out if they are paying the NMW, providers need to calculate a person's pay over a reference period. This will be the person's normal pay period but can't be longer than one month for the purposes of establishing NMW compliance. Providers need to work out the total contact time worked by an individual, plus all their "applicable" travel time and time spent on training for that period. The total pay for these hours must average out to at least the NMW for the provider to be compliant.

Providers must also understand that not all payments will count towards calculation of the NMW. The payment of premium rates of pay (to incentivise working unsocial hours and weekend working) to a worker for what is essentially the same work is likely to mean that only the lowest rate counts for NMW calculation purposes. For instance, the premium part of overtime rates will not count and nether will unsocial hours' allowances which are not consolidated into the main payment for the work.

Many of our member organisations are surprised to find that they are not compliant because enhanced and unsocial hours' payments are not taken into account in calculating the NMW. For example, a Somerset member organisation, which had recently been audited by HMRC for the NMW, told us:

> *"We were told that 'enhanced' rates of pay were not taken in to consideration for NMW purposes. As a high percentage of our staff is on a higher half hourly rate than they are hourly rate (and the majority of our work is in half hour increments) we believed that we were paying well over NMW – even taking travel time in to consideration. We have been told however that the NMW is calculated on the 'lowest possible' hourly rate that individual workers can earn. As our actual hour rate (not hourly) is nearer to NMW than '2 X half hour' rate – we <u>may</u> have been paying (as far as HMRC are concerned) below NMW to some of our workforce.*
>
> *"We also pay an even higher rate on weekends (which we need, and want, to do to encourage workers to cover calls during unsociable hours) – but these rates are not taken in to consideration either. Our half hour rates on the weekends vary between £3.90 - £4.50, taking the Care Workers monthly pay well over NMW (when calculated with all 'breaks' of under half an hour being calculated as 'work'). But when all 'enhancements' are stripped out – there are some workers who are on lower hour rates – that could be being paid below NMW (as far as HMRC) are concerned.*
>
> *"If we were to be compliant with HMRC rules – we would have to 'strip out' enhancements for workers, to be able to pay them a higher hourly flat rate. This would end up with Care Workers possibly being paid less*

> *than they are at the moment, and leaving the weekend calls very difficult to cover."*

Many providers are also surprised to find that deductions from payments made by an employer or payments which the worker makes to the employer will also generally not count towards payment of NMW. This means that recovery of Disclosure and Barring Service (DBS) certificates or training costs may well result in a lower hourly rate.

Some providers do not realise that payment of expenses by the employer do not count, and expenses that are not reimbursed will mean a reduction in the hourly rate for NMW purposes. A Shropshire member organisation, who thought they were doing everything correctly, told us:

> *"Our new staff are paid at minimum wage until they get their NVQ certificate, but what we didn't understand was that if we made an employee a loan and took it back monthly, that they were maybe being paid under the minimum wage! After much toing and froing we had to pay back £900 together with repayments to every employee that was considered to be under the minimum wage."*

As we said in our written evidence for the 2013 report, it is our view that because enhanced and unsocial hours' payments are not taken into account in calculating the NMW providers will be forced into creating a pro-rata pay rate to reduce risk of non-compliance of NMW but as a result struggle to incentivise their workers to undertake vital care out of normal working hours. This is no doubt an unintended consequence of HMRC's policy but will have a highly undesirable impact on people who use social care.

One area of compliance which is particularly difficult is travel time and travel expenses. Time spent travelling to and from home to work isn't included in calculating hours for NMW but time spent travelling between clients would. Time spent waiting to travel or after travel and before the next appointment may also count, unless that time is designated as a rest break.

However calculating travelling in homecare is not always this clear cut. For example, where an hourly paid worker is given a variety of appointments or assignments throughout the day but the gap between each assignment is longer than the travelling time between the two assignments, it isn't clear how much time should count towards calculation of the minimum wage.

Anthony Collins Solicitors LLP, UKHCA's recommended solicitors, advises that in the above case all the time will count unless the worker is entitled to take a rest break during the gap between assignments. They suggest that member organisations require their staff to take unpaid breaks in between assignments. Rest breaks can't be scheduled whilst staff are travelling, so care providers will be wise to ensure that any rest break is scheduled either just before or just after an assignment and the staff still have sufficient time to travel to their next assignment.

As the Low Pay Commission will appreciate, the complexity of the rules surrounding the NMW means that it is relatively easy for organisations to make a mistake and therefore risk enforcement action by employees or HMRC.

In our oral evidence to the Low Pay Commission for its 2013 report, we voiced concern at the level of guidance on the NMW through GOV.UK, especially the lack of sector specific guidance. Chairman of the Commission, David Norgrove, advised us to approach the Cabinet Office about this, which we did as well as the Department for Business, Innovation and Skills (BIS), the previous government department responsible for issuing NMW guidance. We received no response from BIS and a very disappointing response from the Cabinet Office.

Because of the level of government guidance on the minimum wage, and the increasing number of calls to our telephone helpline about NMW compliance, we commissioned Anthony Collins Solicitors LLP to write *Work, Rest and Pay: A guide to difficult working time and minimum wage issues in domiciliary care* for our member organisations.

To support our member organisations with NMW compliance, we have also been doing a considerable amount of other work. This includes the creation of a costing model for providers, which includes a check that NMW has been met, instructing Anthony Collins Solicitors LLP to produce a NMW toolkit for UKHCA members, which we hope to release in September, and obtaining HMRC's internal documents on compliance with NMW through the Freedom of Information Act.

We note that the lack of guidance from government to help employers deal with complex working patterns remains highly unsatisfactory. UKHCA has invested a considerable proportion of our legal expenses for this financial year creating guidance for our member organisations. However, the costs of doing so mean that we must make these resources "member only" benefits. We are unable to justify wider circulation of these materials to providers outside our membership who have not contributed to the costs of their development. However, we would be more than willing to do so with suitable funding from a government department.

At what level should each of the rates of minimum wage be set in October 2014 (i.e. for adults, 16-17 year olds, 18-20 year olds, apprentices, and the accommodation offset?

Please see our responses to the questions above on young people, apprentices and the accommodation offset.

Are there any other views or evidence you would like to give us about the operation and impact of the NMW?

Although not one of the Low Pay Commission's consultation questions for the 2014 Report, there has been growing political and Media interest in zero-hours contracts and its connection with low pay.

The Resolution Foundation think-tank estimates that 150,000 domiciliary care workers are employed on zero hours contracts but this is likely to be an underestimate.[18] Our own figures suggest that over half the domiciliary care workforce of 490,000 is on zero-hours contracts. However, these figures should be treated with caution as there is no consistent data base across the UK, nor is there a single definition of what constitutes a zero-hours contract.

Although the number of domiciliary care workers on zero-hours contracts is large, we do not believe there is any evidence that this creates a disposition to non-payment of the NMW. However, we see that research commissioned by the Commission for its 2013 Report, mentioned above, suggests that being employed on a zero-hours contract is, in some time periods, statistically significantly associated with being paid less than the minimum wage, although in the most recent time period (October 2011-April 2012) this association was not statistically significant.[19]

The use of zero-hours contracts in the independent and voluntary homecare sector is extensive and longstanding. This is because the working patterns of homecare workers are vastly different from other sectors and the way that zero-hours employment has been explained to the public in recent media reporting has been unclear.

Demand for homecare services vary throughout the day, typically peeking around early morning, lunchtimes and evenings. Generally, careworkers will provide support for several people each week on an ongoing basis. Over time, their working patterns will vary as their service users regain independence, require more care, are admitted into hospital or enter residential care.

Zero-hours contracts enable flexible working patterns which respond to demand and the needs of individual service users. While this can create a degree of unpredictability of working patterns (and therefore wages), it is rare that careworkers face the commonly reported stop-start working described in other employment sectors by the Media.

However, as we said above, the use of zero-hours contracts is largely determined by local authorities, who buy the majority of care delivered by the independent and voluntary sector.

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[18] A Matter of Time: the rise of zero-hours contracts (2013), The Resolution Foundation, p3. http://www.resolutionfoundation.org/media/media/downloads/A_Matter_of_Time_-_The_rise_of_zero-hours_contracts_final_1.pdf

[19] Bessa, I., Forde, C., Moore, S. and Stuart, M. The National Minimum Wage, earnings and hours in the domiciliary care sector, University of Leeds, February 2013, p5. http://www.lowpay.gov.uk/lowpay/research/pdf/LPC_-_Final_Leeds_University_Report_-_26_February_2013SM2.pdf

Councils themselves almost universally purchase care according to the time that workers are in a service user's home (we refer to this as "contact time"). From the fees generated the provider must pay their workers (including applicable travel time for NMW purposes) and the costs of their operation (including training, supervision, and management costs).

In UKHCA's 2012 Commissioning Survey, we found very little evidence of councils calculating fees paid to providers by any other method than contact time. In addition, historically providers have faced contracts from councils, typically of three year periods, where there was a high risk of non-renewal at the end of the contract period, or where there was no guarantee of purchase during the life of contract.

In the many responses UKHCA has received from our member organisations there is a clear message that the homecare sector and individual businesses would not be able to operate without extensive use of zero-hours contracts. A number of responses from providers indicated that if zero-hours contracts were effectively "banned", their businesses would face closure.

However, we are absolutely clear that the current commissioning of homecare services by local authorities, facing massive public spending constraints, makes the use of zero-hours absolutely essential for the functioning of the homecare sector at the level we have already achieved.

One of the main reasons the Resolution Foundation think-tank identifies what it sees as a growth in zero hours contracts has been cuts to local authorities' budgets by central government, which has caused them to drive down the fees paid to providers. The Foundation says that the removal of guaranteed block volumes of paid care to providers by councils in framework agreements *"incentivise the use of zero-hours contracts among providers as a means of managing risk."* [20]

Similarly, the Commission's own commissioned research, mentioned above, reports that providers were unhappy about the rates that they could pay their workers *"and asserted that the move away from guaranteed volume meant that they had to employ care workers on zero-hours contracts – they believed that this affected the quality of the service they could provide."* The providers also reported to the Leeds researchers' difficulties in recruitment and an awareness that rates of pay in domiciliary care could not compete with those at major supermarkets.[21]

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[20] A Matter of Time: the rise of zero-hours contracts (2013), The Resolution Foundation, p.15. http://www.resolutionfoundation.org/media/media/downloads/A_Matter_of_Time_-_The_rise_of_zero-hours_contracts_final_1.pdf

[21] Bessa, I., Forde, C., Moore, S. and Stuart, M. The National Minimum Wage, earnings and hours in the domiciliary care sector, University of Leeds, February 2013, p-p. 6-7.

The policy direction in all four UK administrations places homecare services at the forefront of services for people using social care. It is essential that our sector is able to expand. This will inevitably be with the continued use of zero-hours contracts.

The sector has faced two additional issues which support the inevitable use of zero-hours contracts:

1) Aggressive price cuts by councils: As we said above, we estimate that 90% of providers experienced a real-terms decrease in fees paid by the councils with which they trade in the financial year 2011-12 alone, with no realistic prospect of better terms in the next few years; and

2) An increasing appetite by central and local government for plurality of providers in the market as part of the personalisation agenda, reducing the number of contracts with any guaranteed purchase by councils, the introduction of "framework agreements" open to multiple providers, and an increasing use of personal budgets and direct payments.

The objectives of personal choice for people who use services and a diverse market of providers are both widely supported. However, it must be understood that both of these factors increase the likelihood of a workforce which does not reach optimum "economic efficiency", as there is considerable unpredictability of work, especially where councils choose to put packages of care out to multiple providers and initiate competitive bidding (usually based on price).

In the many responses UKHCA has received from our member organisations, the clear message is that the homecare sector and individual businesses would not be able to operate without extensive use of zero-hours contracts. A number of responses from member organisations indicated that if zero-hours contracts were effectively "banned", their businesses would face closure.

The ability to pay workers for periods of inactivity during the day, including where ongoing work with an individual service user ceases for the variety of reasons described above is, in our view, economically unviable for all but a limited number of homecare providers. Media portrayals of the increasing use of zero-hours contracts have included references to a shift of risk from employer to worker. It is our view that in the homecare sector there is actually a passing of the risks faced by local government which is shared between both provider (in terms of predictable revenue) and worker (in terms of predictable wages). And, as can be seen from the latest ADASS survey which shows that the area most

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http://www.lowpay.gov.uk/lowpay/research/pdf/LPC_-_Final_Leeds_University_Report_-_26_February_2013SM2.pdf likely to be highly important as an aid to councils saving resources is 'better' procurement practices.

It is also clear from our member organisations that the use of zero-hours contracts in our sector does not match the Media portrayal of other employment sectors where these contracts are used.

Many providers continue to report the widespread attraction of flexible working for our workforce, and the number of workers who combine homecare services with personal commitments, including childcare and variable income requirements over time. Employers were also clear that it was in their interests to ensure that their workforce understood the terms and conditions of their working arrangements and how they could make changes in their availability and desired number of hours known.

Providers have repeatedly stated that as their income is generated almost entirely on the hours of care they deliver, they have every incentive to ensure that their workers receive as many opportunities to obtain as much work as they are willing to accept. Even those few who operate both guaranteed hours contracts and zero-hours contracts reported a significant proportion of their workforce who opted for zero-hours arrangements.

In conclusion, UKHCA maintains that the ethical use of zero-hours contracts in the homecare sector is both inevitable (because of the operating environment) and meets a demand from a workforce who themselves benefit from the flexibility it offers. Calls for a reduction in zero-hours contracts within our sector would require a massive increase in the spend on social care by local authorities which we believe is entirely unachievable in the current economic climate, and with the regrettably low status that society places on social care work and care services which the state purchases on behalf of older and disabled people.

Supplementary Question:

What economic conditions would be needed to allow the NMW to rise by more than current conditions allow?

On 16th September the Secretary of State for Business, Innovation and Skills, Vince Cable, said that:

> *"The National Minimum Wage is a vital safety net in protecting the low paid. However as signs of an economic recovery start to emerge, we need to do more to make sure that the benefits of growth are shared fairly across the board.*

"The Low Pay Commission every year carries out a huge amount of valuable, detailed work looking at labour conditions across the economy. Today, in addition to their ongoing annual remit, I am asking them to extend this expertise to help the government and business understand how we can deal with the issue of low wages in the economy. In particular I have asked them to look at what economic conditions would be needed to allow the National Minimum Wage to rise by more than current conditions allow."

As we said above, the outlook for the UK economy is improving but only slightly. The evidence suggests that the recovery is patchy and mainly concentrated in the South East. Also, there are many factors that could easily derail the recovery, in particular international events. Moreover, the economy is still smaller than its pre-crisis peak and the government has yet to make serious inroads into the country's budget deficit.

But most importantly for our member organisations, the fiscal squeeze on local authorities by central government is continuing. Local authorities will therefore continue to exert downward on the fees they pay to providers.

UKHCA believes it would be premature to allow the NMW to raise more than current conditions allow without a consequent increase in the fees paid by local authorities. Member organisations would struggle to pay the minimum wage and a number could face the real possibility of going out of business.

We also believe that the Labour Party's proposal to *"look at whether there are some sectors where we can afford a higher minimum (wage)"*[22] could potentially be disastrous for the sector. Homecare providers would not be able to compete with the rates of pay in supermarkets and other sectors. Rates of pay in homecare are often below or just equivalent to those paid by Tesco or the hospitality sector. As one council manager put it to the researchers from the University of Leeds:

"… if we are paying carers the same money that Tesco is paying those people putting cans of beans on their shelves, why would somebody come in and get all the grief of that. They might as well go and work for Tesco. So there's obviously that issue there."[23]

[22] Ed Miliband's speech to the Labour Party Annual Conference 2013, 24 September2013. http://www.labour.org.uk/news

[23] Bessa, I., Forde, C., Moore, S. and Stuart, M. The National Minimum Wage, earnings and hours in the domiciliary care sector, University of Leeds, February 2013, p45. http://www.lowpay.gov.uk/lowpay/research/pdf/LPC_-_Final_Leeds_University_Report_-_26_February_2013SM2.pdf