



Care workers – challenges of the tax and benefits system

A research report by the
Low Incomes Tax Reform Group of
The Chartered Institute of Taxation

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Foreword

Care workers do a vital yet difficult job, providing support and safeguards to some of the most vulnerable people in society. Yet they themselves are subject to some of the most challenging treatment and work practices around.

The underlying factors are complex and have many strands, but a vast range of research and reports speak of workers essentially bearing the brunt of huge financial pressure within the sector, facing issues like non-payment of travel time and zero-hours contracts.

However, there has been little or no commentary on the complex interactions that such employment arrangements have with care workers' tax and tax credit positions which can result in unfair and confusing outcomes. The workers' typically low weekly pay can also have knock on effects on their pension saving – in effect making auto enrolment 20% more expensive for them. These issues compound an already poor employment situation for a significant number of care workers.

Of course, many of the issues will be felt by low-paid workers more widely, however it seems to us that they are particularly harsh on care workers who are already contending with so much else.

In this short report, we want to build upon some of our previous work in this area and draw attention to parts of the various systems within our remit (namely tax, tax credits and pension saving) that currently present challenges for care workers. We go on to suggest some action that the Government could take to ameliorate their positions.

While we are not experts in costing changes in the law or administrative practice, we think that many of our recommendations have little or no cost attached to them. Our aim is to draw the issues to the fore and to help make life easier for workers to understand and manage their overall positions for themselves. Other of our recommendations will come at a cost, and we know that there are no easy answers as to where the money could come from. But our concerns are, as ever, about the practicalities and if headlines such as *'Social care system 'beginning to collapse' as 900 carers quit every day'*¹ are to be believed, then allowing the status quo to continue is a false economy.

We hope that the insight that we offer into the reality facing care workers is a useful contribution to the debate around funding and delivery of home care services. More generally, we hope it is informative and thought provoking for the public, care workers and providers, policy makers and officials alike.

Ultimately, we hope that by pointing out the lack of thoughtful design in the systems that many care workers rely on, our report may eventually lead to better coordinated areas of policy that improve the standard of living and wellbeing for *all* low-paid workers. We would like to state our readiness to do whatever we can to assist the Government further in this.

Signed



Anne Fairpo
Chair, Low Incomes Tax Reform Group

1 <http://www.bbc.co.uk/news/uk-england-39507859>

1. About this report

Scope

In the past few years, LITRG has become increasingly alarmed at difficulties faced by care workers who provide publicly funded home care for private organisations commissioned by local authorities.

In this report we look at the complex tax and benefits interactions faced by care workers as a consequence of their typical terms and conditions. This is something that has drawn little attention in the care worker debate to date, but which we consider warrants this specific report.

We start by briefly outlining the current care worker landscape. We then look at the problematic (and sometimes inconsistent) National Minimum Wage rules that allow the non-payment of travel time and expenses for care workers, which can be difficult and technical to understand and which seem unlikely to be changed any time soon – despite the recent ‘Taylor review’² (billed as being ‘a hugely important step towards us ensuring fairness for everyone in work’ but containing no specific proposals on this issue).

We then discuss in detail how tax, tax credits and pension savings can be impacted by non-payment of travel time and expenses, as well as fluctuating hours and incomes, and how these can put low-paid care workers at a disadvantage in unexpected ways. Where possible, we take by way of illustration extracts from email correspondence we have received from users of our website about their experiences in relation to care work. Where we have gaps in our ‘evidence’, we draw on case studies highlighted by other reputable organisations.

Finally, we take the opportunity to put forward our own recommendations for changes to the system which aim to improve the position of low-income care workers.

Summary of recommendations

- In view of care workers’ travel patterns, client contact time, travel between visits, travel times between home and work (and costs thereof), as well as potentially some rest breaks, should all be considered for minimum wage purposes. We recommend that the Government consult further on this. (Pages 14 and 17)
- In terms of minimum wage compliance and enforcement, we welcome the appointment of the new Director of Labour Market Enforcement and would encourage him to consider extending the Gangmasters and Labour Abuse Authority (GLAA) licensing into social care. (Page 19)
- To help workers self-check minimum wage compliance, a more sophisticated, sector-specific calculator on GOV.UK would help, as would more detailed guidance – using a series of worked examples based on real-life situations. (Page 19)
- Care workers’ payslips should state how much time they have been paid for and there should be a reliable route for workers to complain about incomplete payslips or, indeed, their non-provision. (Page 19)

2 <https://www.gov.uk/government/groups/employment-practices-in-the-modern-economy>

- HM Revenue & Customs (HMRC) should supply clear, user-friendly, targeted information on tax relief for travel expenses for care workers to help ensure that they understand the rules and can make accurate claims simply and quickly themselves. It is essential that this is well-publicised and communicated. (Page 21)
- The Government should consider possible options for providing some much-needed relief to non-taxpayers for their travel expenses. This might be, for example, by allowing carry forward or carry back claims in certain circumstances, or by allowing them to claim National Insurance relief (subject to a safeguard to stop such a claim pushing a worker's salary below the Lower Earnings Limit (LEL) to ensure their contributions record remains protected). (Page 21)
- Improvements are required to the problematic P87 process, including that the form should be hosted outside of the Personal Tax Account and that the full, downloadable, PDF version of the form should be reinstated on GOV.UK for people who may be unable to use any of the online versions of the P87 available. (Pages 22 and 23)
- The £2,500 limit for completion of form P87 should be raised, keeping more care workers out of the complex Self Assessment regime. (Page 24)
- Ideally, the minimum wage rules should be changed so that care providers must pay travel time as a separate item. Alternatively, we think the tax credit rules need to be rethought to accept unpaid travel time as remunerative hours of work so that workers receive the support they need without needing to receive separate payments for their contact time and travel between visits. (Page 26)
- We would urge the Government to undertake an assessment of the challenges in the tax credits system faced by low-paid care workers who are on fluctuating zero-hours contracts, with a view to easing the process for them. (Page 27)
- The Government should proceed cautiously with their plans to impose strict conditionality rules for care workers on zero-hours contracts who claim Universal Credit (UC) and work fewer than 35 hours a week. (Page 28)
- HMRC should do more to ensure that tax credit and UC claimants are aware of their right to deduct expenses from their income, and the limitations of Real Time Information (RTI) data in this respect. (Page 29)
- The UC process for deducting unreimbursed expenses from income should be explicitly confirmed as soon as possible. (Page 29)
- We would urge policymakers to consider how care workers who are not currently earning above the LEL might be able to access the National Insurance contributions (NIC) and benefit system, given that Class 3 voluntary contributions are likely to be prohibitively expensive. (Page 31)
- Even though care workers may not trigger auto enrolment into a workplace pension due to their low earnings, they may be able to opt in with an employer contribution and we would suggest that this should be better promoted. (Page 33)
- Care workers should also be informed of the tax credit/UC impact of paying into a pension – i.e. that the cost to them of joining a pension scheme, and potentially making additional contributions to help build their pension savings, is lower than they may think once the tax credit/UC impact is factored in. (Page 33)
- Given the central role that tax relief plays in building pension savings, a means needs to be identified to align the effects of the net pay and relief at source mechanisms more closely. (Page 34)

- In the meantime, more should be done to make employers and workers aware that net pay arrangements may be unsuitable for workers who are non-taxpayers, and that they face paying more than 20 per cent extra for their pension than if they were in a relief at source scheme, even though the costs to the employer remain the same. (Page 34)

2. About LITRG

The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.

LITRG works extensively with HMRC and other Government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

LITRG also targets for help and information, those least able in the community to afford to pay for advice and makes a real difference to their understanding of the systems of taxation and related benefits. We do this by:

- Providing the most comprehensive, up-to-date primary source of information and guidance for taxpayers, tax credit claimants and their advisers on tax, NIC and tax credits via www.litrg.org.uk.
- Publishing regular news updates on areas of interest to our website readers.
- Providing support for tax credit advisers via our award-winning www.revenuebenefits.org.uk website.
- Helping students understand their tax and tax credits through our dedicated website www.taxguideforstudents.org.uk.
- Offering guidance, support and help to disabled people, their carers, families and support workers who choose to take on a personal assistant to help with their care needs. Our dedicated www.disabilitytaxguide.org.uk website is the only website that explains all of the tax and National Insurance consequences of becoming an employer and supports people through the process step by step.

The CIOT is an educational charity and the leading professional body in the UK concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3. Introduction

'The working conditions of Care Workers are among the worst of any in England. Their wages tend to be either National Minimum Wage or no more than 15% above that minimum. Frequently, even the National Minimum Wage is ignored, with employers unlawfully refusing to pay Domiciliary Workers for the time to travel in between their clients. Many Care Workers don't even know what hours they'll be working from week to week – exploitative 'Zero-hours Contracts' play a huge role in the sector and destabilise workers' lives. The low status of Care Work and poor treatment of workers has led to a vicious downward spiral into one of the most difficult sectors for workers, with widespread exploitation.'

Baroness Denise Kingsmill CBE
The Kingsmill Report – Taking Care³

Our population, including the population of disabled people, is living longer.⁴ More people than ever have substantial and complex needs, yet at the same time, with public spending under pressure, there seems to be less and less money available to fund the care needed for home care services.⁵

Local authorities, which commission the lion's share of home care services from private providers, are coping with reduced central funding by commissioning less care (per the Resolution Foundation, 85% of councils now restrict publicly funded care to those with substantial and/or critical needs⁶) but also by negotiating discounts with, or paying lower fees to, home care providers. According to the UK Home Care Association (UKHCA), which represents care providers, local authorities need to pay agencies £16.70 an hour (based on 2016 rates) to cover the cost of paying workers properly and provide enough profit to keep the businesses sustainable (see [Appendix 1](#) for a breakdown of this figure). The average paid by local authorities which provided data was only £14.58.⁷

Major financial pressures felt by care providers seem to be translating into care workers being provided with the cheapest terms and conditions possible. Again and again, reports such as that from Baroness Kingsmill (quoted above), comment on care workers' already low pay being eroded by practices such as not being paid for their travel time and being given zero-hours contracts.

Meanwhile, having little bargaining power to assert their wishes means that workers will often have no say in how they are rewarded. Of potential relevance to this is the Resolution Foundation's description of the characteristics of the care workforce: *'disproportionately part-time (38%) and female (83%), with growing numbers of migrant workers, low levels of formal qualifications, and a weak collective voice.'*⁸

3 Page 3, https://www.policyforum.labour.org.uk/uploads/editor/files/The_Kingsmill_Review_-_Taking_Care_-_Final_2.pdf

4 Of note are the National Audit Office's findings in their 2013/14 report, 'Adult social care in England' (<https://www.nao.org.uk/wp-content/uploads/2015/03/Adult-social-care-in-England-overview.pdf>) that the number of adults aged 85 or over, the age group most likely to need care, is rising faster than the population as a whole.

5 According to the IFS's report 'Public spending on adult social care in England', local authority spending on adult social care in England fell 8% in real terms between 2009-10 and 2016-17 (see page 2, <https://www.ifs.org.uk/uploads/publications/bns/BN200.pdf>).

6 Page 21, <http://www.resolutionfoundation.org/app/uploads/2013/08/Does-it-pay-to-care.pdf>

7 Page 16, https://www.ukhca.co.uk/pdfs/ukhca_homecare_deficit_2016_final.pdf

8 Page 2, <http://www.resolutionfoundation.org/app/uploads/2015/02/NMW-social-care-note.pdf>

Pay and conditions

So, just what are care workers grappling with? (Please note that while we appreciate the limitations of looking at ‘averages’, we think they help paint an overall picture here.)

A detailed report from 2013, by the University of Leeds for the Low Pay Commission evaluating the impact of the National Minimum Wage on employee earnings and hours in the domiciliary care sector, suggests an average hourly rate just 15% above the minimum wage and notes that eight out of ten care workers of private providers are on zero-hours contracts, with hours of work averaging 24 a week.⁹

A March 2017 Communities and Local Government Committee inquiry¹⁰ into the financial sustainability of local authority adult social care and the quality of care provided, suggests that the proportion on zero-hours contracts are lower (*‘49% of home care workers are on zero hour contracts, compared with 2.9% of the workforce nationally’*) but that the 15% pay differential has narrowed (*‘the median hourly pay for a care worker is £7.40’* – at a time when the National Living Wage was £7.20).

In terms of average hours of work, per figures drawn from the Labour Force Survey (May 2017) by the Office of National Statistics,¹¹ on average someone on a zero-hours contract usually works 25 hours a week. Their findings also include that 1 in 3 people on a zero-hours contract want more hours – although it is worth noting that this survey is conducted from the workforce as a whole as opposed to care workers.

Additionally, many home care workers are paid solely by reference to the amount of time they spend on their caring duties, which although currently permitted under the National Minimum Wage framework, can cause underpayment issues (more on this later). UNISON, the largest public service union, conducted a survey of homecare workers entitled ‘Time to Care’.¹² This found that 57.8% of respondents were not paid for their travelling time between visits. Those homecare workers who stated that they were not paid for their travel time were then asked how much time on average they spent travelling a week between visits. 25.2% of those not paid for travelling time spend over 6 hours a week travelling between visits.

Zero-hours contracts

Zero-hours contracts occur when a person agrees to be available for work as and when required but has no guaranteed hours or times of work. Their use in home care helps the home care providers manage peaks and troughs in demand. Importantly, they also facilitate the arrangements by which only contact time is paid for.

Individuals on a zero-hours contract will usually have the employment status of ‘worker’ meaning that in theory, they will be entitled to the minimum set of statutory employment rights, such as the minimum wage, holiday pay,¹³ a workplace pension, rest breaks and protection from discrimination. Further, being paid under the Pay As You Earn

9 Page 5, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227614/LPC_-_Final_Leeds_University_Report_-_26_February_2013SM2.pdf

10 Page 1, Executive Summary, <https://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/inquiries/parliament-2015/adult-social-care-16-17/>

11 <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/may2017>

12 Pages 19 and 20, <https://www.unison.org.uk/content/uploads/2013/11/On-line-Catalogue220152.pdf>

13 One method of calculating paid leave for zero-hours contract workers is to base entitlement on 12.07% of the hours worked (using the statutory minimum leave period of 5.6 weeks). This formula has no basis in law. Where no hours are worked, no paid leave accrues for the worker.

(PAYE) system (as most care workers are) provides a ‘secondary contributor’¹⁴ (i.e. someone who is liable to pay Class 1 secondary NIC) and means that zero-hours contract workers may be able to receive Statutory Sick Pay (SSP) and parental pay from their employer if they satisfy all relevant qualifying conditions – although it is worth noting that this includes an earnings condition.¹⁵

Zero-hour contracts can provide flexibility for those that want it, but they can also leave workers feeling very financially insecure. Research¹⁶ conducted by the GMB, Britain’s general trade union, has indicated that ‘*up to 10 million people go to work either not knowing what their hours are, or if they’ll be able to pay the bills or what their long-term prospects are*’ and this will include many home care workers. Further problems highlighted by Citizens Advice¹⁷ include workers being susceptible to abuse of their basic rights, e.g. no holiday pay, and pregnant workers having their hours reduced so that their employers can avoid having to pay Statutory Maternity Pay.

In 2013, the Department for Business, Innovation and Skills (BIS) issued a consultation on zero-hours contracts¹⁸ acknowledging that there were problems with them. However, the consultation was fairly narrow and the main outcome was the banning of exclusivity clauses¹⁹ via the Small Business, Enterprise and Employment Act 2015 (despite BIS’s own admission that they were contained in only 9% of all zero-hours contracts).

Many believe that this change has done little to help care workers.²⁰ While they may not be under an exclusivity clause in the literal sense, they may feel like they are, due to the practice of ‘blacklisting’ or ‘zeroing down’ if they look for work elsewhere, turn down work, or indeed question their rights or raise a grievance. An example of this was contained in a recent publication from ACAS ‘Everyday challenges for an atypical workforce’:

‘A care worker with 2 years’ service on a zero-hours contract explained that she had ‘fallen out’ with her supervisor after refusing to visit a particular client she’d had difficulty with. She then found she had been taken off the rota without any notice or explanation: “They haven’t given me any notice, they haven’t written anything down, they haven’t contacted me, nothing. I’ve been trying to ring them but my calls haven’t been answered. It’s just a nightmare. I don’t know whether I’ve got a job or whether I haven’t. I don’t whether they’ve sacked me, or whether I’m going to have any hours in the future. I don’t know whether I’m unemployed. I don’t know anything and I can’t get no answer.”²¹

Given these concerns it is unsurprising that a series of recent public inquiries, including the Kingsmill report, have called on the use of zero-hours contracts in care work to be banned.²² More moderately, the Burstow Commission report said ‘*Care workers should have the choice of a zero-hour contract, but the most exploitative examples of these contracts must be challenged*’.²³

14 Under the Social Security Contributions and Benefits Act 1992, secondary contributors are responsible for administering and part-financing statutory payments.

15 A qualification aspect is that average weekly earnings (usually calculated over the previous eight weeks) are at the LEL (£116 per week in 2018/19).

16 <http://www.gmb.org.uk/newsroom/millions-insecure-work>

17 <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/citizens-advice-warns-on-zero-hours-contracts/>

18 <https://www.gov.uk/government/consultations/zero-hours-employment-contracts>

19 Such clauses stipulate that a worker is not permitted to obtain more work, or to look for more work with another employer without first getting the permission of their existing employer.

20 As reported here: <http://www.communitycare.co.uk/2014/06/25/zero-hours-contract-exclusivity-clauses-ban/>

21 Page 13, <http://www.acas.org.uk/media/pdf/1/1/Everyday-challenges-for-an-atypical-workforce.pdf>

22 Page 8, https://www.policyforum.labour.org.uk/uploads/editor/files/The_Kingsmill_Review_-_Taking_Care_-_Final_2.pdf

23 Page 7, <https://www.lgiu.org.uk/wp-content/uploads/2014/12/KeyToCare.pdf>

The recent 'Taylor Review', also took a balanced view, and included a number of recommendations on the use of zero-hour contracts, including 'The Government should act to create a 'right to request' a contract that guarantees hours for those on zero-hour contracts who have been in post for 12 months which better reflects the hours worked'. However, it is questionable what impact (if any) its recommendations will have. The 'right to request' recommendation, in particular, seems to be viewed as 'toothless'.²⁴

Interestingly, the Welsh Government appear set to curb zero-hours contracts for care workers.²⁵ Under new rules, put out to consultation in June 2017, employers will need to offer workers in the domiciliary care sector on zero-hours contracts the choice of moving to a minimum hours contract after three months of continued employment, if there is ongoing demand for the work. Although not a formal recommendation of this report as such, we have concerns about the prevalence of zero-hours contracts and very much hope that other countries of the UK follow suit.

Knock on effects

Practices such as being put on zero-hours contracts and not being paid for travel time are demoralising and financially damaging to workers and their families (as well as potentially being in breach of the minimum wage law – more on this later). Not knowing what hours they are working from one week to the next, or how much money they will lose to travel time and costs, can make it very difficult to plan their lives and manage their money.

If this were not bad enough, such employment arrangements can have disturbing knock-on effects on care workers' tax, tax credit and pension saving positions, and only serve to undermine things further for them. We look at these issues in detail in the main body of this report.

Before moving on, it is worth saying that we are aware that care workers face a multitude of challenges in addition to those detailed in this report. For a start, there is a problem around the 'status' of care work not reflecting the amount or importance of the work involved. There are then problems around isolation, rushed visits, lack of training opportunities and career progression. The list could go on. Such issues are of course important to tackle to achieve a high quality and sustainable workforce, however are outside the scope of our work. We rest assured however, that bodies such as UNISON will keep a focus on them.²⁶

We also do not touch on the situation of residential care workers and those taken on under direct payment arrangements²⁷ who might also find themselves in precarious employment positions. There may be minimum wage issues caused by deductions for things like uniforms, unpaid training time – and, topically, sleep ins.²⁸ Some workers face being coerced into 'self-employment' or are told they can only work through a limited company. Others are not having their employment rights properly observed, although sometimes this is down to a lack of awareness rather than intent. These issues sit more squarely within the scope of our work but risk clouding the issue at hand, so are mentioned no further in this report. We will however continue to monitor the situation as part of our everyday work.

24 <https://www.independent.co.uk/voices/zero-hour-contracts-taylor-review-full-time-hours-toothless-a7751231.html>

25 <https://beta.gov.wales/phase-2-implementation-regulation-and-inspection-social-care-wales-act-2016>

26 See their ethical care charter: <https://www.unison.org.uk/content/uploads/2016/08/22014.pdf>

27 Social care users can opt to receive a direct cash payment so they can choose which services they purchase, which can include employing a personal assistant. There are concerns about their awareness of the responsibilities that come with being an employer.

28 <https://www.gov.uk/government/news/government-announces-additional-support-for-social-care-providers>

4. The minimum wage rules around travel time and expenses

Minimum Wage – travel time

As stated in the introduction, many home care workers are not paid for their travel time.

This is permitted by the National Minimum Wage Regulations 2015²⁹ (which consolidate the National Minimum Wage Regulations 1999 and subsequent amendments), which require that 'working time' is paid at the minimum wage or above over a pay reference period, e.g. a week or a month. In the case of care workers, 'working time' effectively means the time they spend in the client's home ('contact time') and the time spent travelling between their different clients during the day.

This means that it is not unlawful for care workers to have their travel time unpaid, so long as the total pay averages out at or above the appropriate minimum wage rate³⁰ once travel time is factored in. This is probably best explained by way of an illustration:

Alison, 27, is paid weekly at £8.70 per hour. One week, her employer pays her £261 for 30 hours' work (30 x £8.70). She spent three unpaid hours that week travelling between clients. The minimum amount paid to her should be the National Living Wage hourly rate of £7.83 x 33 hours = £258.39. As she was paid above £258.39 (i.e. above the National Living Wage amount), no arrears are due even after taking account of the additional 3 hours' unpaid working time.

The next week, she got paid the same amount (£261) but spent five unpaid hours travelling between clients. The minimum amount paid to her should be £274.05 (£7.83 x 35). She has been underpaid by £13.05.

While this report is not about minimum wage underpayment per se, we can see that workers who receive lower pay rates per hour are more at risk of being underpaid when travel time is factored into the minimum wage pay calculation. We consider this further at the end of this section.

Of note is the fact that a recommendation was made in the recent Matthew Taylor review³¹ that: 'The Low Pay Commission (LPC) should work with employers and worker representatives to ensure sector-specific codes of practice and guidance are developed that support the provision of quality work [which] could also deal with specific issues faced by particular sectors such as how to ensure social care workers are paid between calls.' The Government response however is that 'The LPC has reservations about extending its role in this way'.³²

29 <http://www.legislation.gov.uk/ukxi/2015/621/contents/made>

30 <https://www.gov.uk/national-minimum-wage-rates>

31 Page 108: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

32 Page 75: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/679767/180206_BEIS_Good_Work_Report_Accessible_A4_.pdf

The minimum wage legislation does not cover travel between home and place of work under any circumstances as we can see from Regulation 34,³³ meaning care workers do not need to be paid for the time spent ‘on the road’ between appointments and home:

Travelling treated as hours of time work

34. – 1) The hours when a worker is travelling for the purposes of time work, where the worker would otherwise be working, are treated as hours of time work unless the travelling is between –

(a) the worker’s home, or a place where the worker is temporarily residing other than for the purposes of working, and

(b) a place of work or a place where an assignment is carried out.

(2) In paragraph (1), hours treated as hours when the worker would “otherwise be working” include –

(a) hours when the worker is travelling for the purpose of carrying out assignments to be carried out at different places between which the worker is obliged to travel, and which are not places occupied by the employer;

(b) hours when the worker is travelling where it is uncertain whether the worker would otherwise be working because the worker’s hours of work vary either as to their length or in respect of the time at which they are performed.

This is fairly uncontroversial in the context of the first or last appointment of the day where travel to or from the care worker’s home forms part of the journey. The problem here is that to meet client demand, their fragmented rotas often translate to ‘rushed’ visits around peak times with long gaps spent at home.

Interestingly, if a care worker were to travel to the office to sit out a gap (rather than going home), then the amount of time travelling to and from the office would count (although the time spent ‘resting’ there would not, because rest breaks are not counted as time worked for minimum wage purposes unless they are taken during the time the worker is travelling, for example lunch on board a train).

Sadly for them though, office based visits are probably restricted to picking up supplies, attending staff meetings or dropping off time sheets. This was alluded to by the following writer to our website:

‘I am a part time community care worker and my travelling costs are included in my hourly rate, using my own car for business. My employer recently has told us we must send our completed weekly work sheets to the office by Monday afternoons. I cannot post mine in time as I work Sundays. I have been told I must bring it in personally. The office is not my place of work, I only go there sometimes to collect gloves and aprons. Also Monday is a day I do not work anyway. Do they have to pay me business mileage to do this every week? It is a 15 mile round trip and will cost me about £2 in fuel plus 40 minutes travelling.’

Recommendation: In light of care workers’ typical working patterns and conditions, ideally their travel time between home and work would be taken into account for minimum wage purposes – we think the Government should consult on this (see our Conclusion for a few further thoughts around this recommendation).

33 <http://www.legislation.gov.uk/ukSI/2015/621/regulation/34/made>

Indeed, a recent European Court of Justice case³⁴ found that workers who have no fixed place of work and spend time travelling between home to the first and last customer should have this time considered as working time. While this judgement only relates to what counts as working time under the Working Time Directive, and does not relate to pay, it supports the argument that some special consideration should be built into the minimum wage law for care workers.

We also think there is a case for looking at the rest break rules as they apply to care workers. They do not make sense given that the length of rest breaks are often within the general control of employers who are arranging the assignments. There is an argument that when a care worker has, for example, a 15 minute gap between appointments but it only takes five minutes to travel between them, they should still be paid for the full 15 minutes as there is not much they can do in between other than wait.

Minimum Wage – expenses

In terms of travel costs, where a care worker incurs costs in connection with their employment that are not reimbursed by the employer, these reduce the worker's pay for minimum wage purposes under Regulation 13 of the National Minimum Wage Regulations 2015.³⁵

According to the UKHCA National Minimum Wage toolkit³⁶ (designed to help homecare providers ensure that they are meeting or exceeding minimum wage requirement for their workforce):

‘Providers should note that if travel expenses are not paid, then these expenses incurred by a worker would be deducted from pay for National Minimum Wage purposes. Where workers are using their own cars to travel to appointments, this is probably limited to petrol expenses rather than including any contribution towards wear and tear or other vehicle related expenses. However, the rules on this aren't very clear. Where workers are using public transport and are not refunded their travelling expenses, including ticket fares, then these expenses incurred by a worker would be deducted from pay for National Minimum Wage purposes.’

So if, in the first part of the example of Alison above, she incurred £20 of travel costs for those three hours of travelling, her net pay would be taken to be £241. When we compare this to the bare minimum she should have received, £258.39, she has been underpaid. In fact, any more than £2.61 of unreimbursed costs for those three hours of travelling would constitute a breach of the minimum wage rules.

For care workers at or around the minimum wage, it is therefore vital that they receive reimbursement for their expenses on top of their minimum wage pay in order that no minimum wage law is broken. Employers could choose to meet their obligations by reimbursing travel based on actual costs (this would fall under the ‘expenses exemption’ regime so could be done on a tax-free basis³⁷); or, in the case of employees using their own transport, in accordance with HMRC's Authorised Mileage Allowance Payments system (AMAP) which is intended to make things simpler than reimbursing actual costs.

AMAP is a statutory system of tax-free approved mileage allowance for business journeys in an employee's own transport. Where the employer pays mileage allowance, relief may be obtained for amounts paid in accordance with the statutory rates of mileage reimbursement. Provided the amounts paid do not exceed the AMAP rates (given below), they are not subject to PAYE tax or NIC and do not need to be reported to HMRC.

34 <http://curia.europa.eu/juris/document/document.jsf?text=&docid=167291&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1265108>

35 <http://www.legislation.gov.uk/ukxi/2015/621/regulation/13/made>

36 Page 27, <http://www.ukhca.co.uk/pdfs/ACNMWToolkit20131004v3master180315.pdf>

37 <https://www.gov.uk/employer-reporting-expenses-benefits/dispensations>

Vehicle	Mileage in tax years	Rate per mile
Cars and Vans	Up to 10,000 miles	45p
	Excess over 10,000 miles	25p
Motorcycles	No restriction	24p
Bicycles	No restriction	20p

The mileage rate covers the costs of running and maintaining the vehicle, such as fuel, oil, servicing, repairs, insurance, vehicle excise duty and MOT certificate. The rate also covers depreciation of the vehicle. The rates are therefore quite generous, and as such few care providers seem to pay anything like the full amount. This is illustrated by the following enquiry to our website:

‘I am a low-income worker, working about 25 hours per week and earning about £8000 p/a. As I am 60, I am also entitled to £22.05 p/w tax credits. As I no longer pay tax (but I do pay National Insurance), am I still classed as a tax payer? The reason I ask is that I use my car for work (I am a home care worker) and I wonder if I am entitled to claim a mileage allowance. My employer pays me 18p per mile, but I have seen mention of 45p per mile being the “allowed” amount. Please could you advise me whether or not I am entitled to the 45p per mile?’

Many do not have their travel costs reimbursed in this way at all, as we can see from another writer to our website:

‘Hi, my friend works part-time as she is a single mother. She earns roughly 7 or 8k per year. She is a carer and has to use her own car for work. Her employer pays zero mileage rate.’

According to this article in the Guardian newspaper, some seem to get reimbursed on the basis of ‘actual costs’ – but are still left short changed:

‘For Jean and other care workers, payment for transport expenses is erratic. She gets some money for petrol, she explains, but the amount varies and is never more than £10 a week. Business insurance cover for her car, along with wear and tear, all add to her costs. In London, one worker told the Guardian she received 56p to cover a week’s visits to a patient done by bus and on foot. A single fare costs £1.50.’³⁸

Such employer practices raise questions around National Minimum Wage/National Living Wage compliance, which we look at further at the end of this section.

Home to work expenses

For an expense to be deducted in calculating the minimum wage pay, it must be ‘in connection with the employment’. This phrase is not specifically defined in National Minimum Wage legislation but can be taken to include costs incurred in the course of their work, but not costs incurred in travel between home and place of work.

It therefore used to be the case that home-to-work travel expenses counted towards minimum wage pay as they were considered a private rather than an employment related expense. An amendment was made to the National Minimum Wage legislation in 2011 (in an attempt to prevent low-paid workers using ‘umbrella company’

38 <https://www.theguardian.com/uk-news/2016/nov/17/day-in-the-life-of-a-care-worker-zero-hours-contracts>

arrangements³⁹ whereby workers were paid a cash wage below the minimum wage and had the balance made up with reimbursed home-to-work expenses) which now means that certain home to work costs that *are* reimbursed (basically those which qualify for tax relief under the travel rules – see later) cannot count towards minimum wage pay. Essentially it was intended that employers would have to reimburse any home-to-work traveling expenses *in addition* to a gross salary equaling the minimum wage base rate.

However, for a worker who does not enjoy the luxury of reimbursed expenses and meets the same home to work expenses out of their own income, their pay for minimum wage purposes remains the base rate only.

This is an interesting situation, given that the 2011 amendment was made under the banner of protecting the interests of workers at or near the minimum wage. It would have been far more wide reaching if the amendment had also rendered the home to work expenses which qualify for tax relief under the travel rules as no longer counting for minimum wage purposes where they are not reimbursed by an employer. Such an amendment would have had the effect of redefining minimum wage for care workers as the base rate plus the costs of travel related to their home to work travel on top.

Recommendation: To chime with our recommendation on home-to-work travel time above and to rectify the unfair inconsistency in the rules, ideally a care workers’ travel costs between home and work would be considered for minimum wage purposes whether or not they are reimbursed. In practice, an employer is likely to be unaware of these costs, therefore the only way they could be sure of being minimum wage-compliant would be to reimburse them.

National Minimum Wage compliance

No report on care workers would be complete without a discussion of the seemingly endemic minimum wage non-compliance within the sector. Of note is the 48% non-compliance rate found by HMRC⁴⁰ in social care employers in the period between April 2011 and March 2013. Travel issues certainly go some way to explaining this.

To recap, the current rules say that a care worker’s pay should average out at or above the minimum wage once you factor in the time they spend in the client’s home, time spent travelling between their different clients during the day and their associated out-of-pocket expenses, including vehicle mileage. We can see that workers who receive lower pay rates per hour are more at risk of being underpaid when travel time and associated expenses are factored into the minimum wage pay calculation. Moreover, the higher the proportion of travel, the bigger the risk.

We know that some care workers can spend a huge proportion of their day travelling as we can see from the following worker extract in the University of Leeds report:

‘I can’t plan my life, not knowing when exactly I am going to be working, I can’t plan things, what seems to have happened invariably is because we have lost a few service users, some of them they’ve gone into hospital, is that I have gappy rotas, periods when I am not working, odd half hours, I take a book with me, I know that I am not getting paid, sometimes it’s really depressing, one of my colleagues said she was going out from 3pm to about 7pm and actually there was only two payable hours in that whole period.’⁴¹

In its titled ‘The scale of minimum wage underpayment in social care’, the Resolution Foundation estimated that around 160,000 care workers (or 11%) were earning less than the National Minimum Wage in 2013/14

39 The subject of another of our reports: <https://www.litrg.org.uk/sites/default/files/LITRG%20PAYE%20report%20FINAL.pdf>

40 Page 3, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262269/131125_Social_Care_Evaluation_2013_ReportNov2013PDF.PDF

41 Page 50, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227614/LPC_-_Final_Leeds_University_Report_-_26_February_2013SM2.pdf

due to the failure of employers to pay homecare workers for their travel time.⁴² It further estimated the average underpayment as £815 per worker for 2013/14.

While some homecare providers seem to be making a profit,⁴³ we recognise the difficult conditions facing many others (culminating in some of them handing back local authority contracts).⁴⁴ However, it remains the responsibility of individual employers to comply with the National Minimum Wage Regulations and underpayment (whether deliberately or inadvertently) is unacceptable and needs to be tackled by HMRC.

While more money is being ploughed into HMRC's minimum wage enforcement team⁴⁵ and social care has been deemed a high priority sector since early 2015 (meaning that HMRC's activity in this area should have stepped up substantially), in its 2016 Spring report, the Low Pay Commission continued to raise concerns about the social care sector.⁴⁶

Further, in its publication 'Ensuring employers comply with National Minimum Wage regulations',⁴⁷ the National Audit Office (May 2016) reported these figures:

'In the period from 1 April 2015 to December 2015, HMRC received 125 complaints from workers about potential non-compliance by employers in the care sector. In this period, HMRC completed 172 investigations into the social care sector, 91 of which were aged less than 120 working days, and identified £331,144 arrears for 1,343 workers, charging 69 employers a total of £66,189 in penalties.

Currently HMRC is investigating 141 employers, comprising 107 complaints from workers and 34 cases from its proactive risk-based work.'

It is clear that underpayment of the minimum wage in the social care sector has been a big issue and is only set to get worse, given the scheduled hikes in the minimum wage (as against care providers' constrained income), not to mention other costs and obligations on employers that only ever rise.⁴⁸ For this reason (while clearly in favour of anything that bolsters low-income workers' positions), we have concerns about the 'Taylor premium'⁴⁹ currently being considered by the LPC (a higher minimum wage for non-guaranteed hours) and whether it will work as intended in the social care sector.

In January 2017, the Government appointed Sir David Metcalf as the first ever Director of Labour Market Enforcement to oversee a crackdown on labour market exploitation. This includes receiving evidence from, and setting priorities for, HMRC's National Minimum Wage enforcement team and the new GLAA which itself has a National Minimum Wage enforcement role as part of its licensing scheme.

42 Page 3, <http://www.resolutionfoundation.org/app/uploads/2015/02/NMW-social-care-note1.pdf>

43 <http://www.bbc.co.uk/news/business-32715728>

44 <https://www.theguardian.com/society/2017/mar/20/care-contracts-cancelled-at-95-uk-councils-in-funding-squeeze>

45 HMRC have received recent increases to their funding budget – for 2016/17 it was about £20m, for the year before, £13m and the year before that was £9m. In 2017/18, the Government budgeted £25.3 million on minimum wage enforcement. See page 20: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629872/labour-market-enforcement-strategy-introductory-report.pdf

46 Para 68, Executive Summary, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571631/LPC_spring_report_2016.pdf

47 Page 22, <https://www.nao.org.uk/wp-content/uploads/2016/05/Ensuring-employers-comply-National-Minimum-Wage-regulations.pdf>

48 The gross monetary cost to employers of hiring employees will include: National Minimum or Living Wage, holiday pay, sick pay, the administrative cost of running a payroll, employment protection costs, such as the costs of unfair dismissal claims and statutory and enhanced redundancy compensation, Employers' NIC, currently adding 13.8% to much of the wage bill, pension contributions (affecting all employers by 2018) and for larger employers – the Apprenticeship Levy.

49 <https://www.gov.uk/government/consultations/low-pay-commission-consultation-2018>

Recommendation: We hope that the appointment of a Director to oversee labour market enforcement results in improvements in the minimum wage safety net. More specifically, we note with interest the questions in the 2018/19 enforcement strategy document⁵⁰ around how the GLAA can most effectively use its extended remit and resources to enforce compliance and whether there is a case for extending licensing into care. The legacy GLA's *proactive* approach to worker protection has had a very positive impact in stamping out poor working practices in the sectors in which they operate, so we would consider this is an option worth exploring.

Much of the minimum wage enforcement framework relies on workers complaining about their employers. It is clear from the number of 'National Minimum Wage and travel' related queries to our website that there is a lot of confusion about the rules on unpaid travel time and expenses:

'Hi i work for an homecare agency and use my own car and petrol i am not given any petrol money from my employer. I only work 16 hours so I do not earn enough to pay tax therefore cant claim tax back for petrol. I and am on minimum wage so my expenses make my wage fall well below minimum wage. Sometimes on a four hour shift I will do 17 miles. Is this not illegal? and is there anything I can do about this?'

This is not surprising given the only guidance in GOV.UK⁵¹ on this is in the 'Employing people/Payroll' section and uses oversimplified examples, which hampers the workers' ability to check whether their employers are compliant (see [Appendix 2](#)).

In addition, the GOV.UK minimum wage calculator does not deal with travel time or expenses, asking only very rudimentary questions including: 'are you an apprentice?', 'how old are you?' and, 'does your employer provide you with accommodation?'

Recommendations: A more sophisticated, sector-specific calculator would help make sure that more care workers understand their rights. We suggest that this is accompanied by more detailed guidance. A better series of worked examples would be helpful. They should be based on real-life situations like those used by the Resolution Foundation in their report 'Does it pay to care?'⁵² to illustrate the typical working patterns and conditions of home care workers in the UK. The Government should bear in mind the make-up of the workforce when designing its guidance.

We also think that care workers' payslips should state how much time they are paid for. This would make it easier for care workers to check their wages against their travel time and help them to understand their position sufficiently to challenge it if necessary. To this end, we welcome the fact that the Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018 was recently laid before Parliament.⁵³ It requires payslips to state the number of hours being paid where wages vary according to time worked, either as an aggregate number of hours or as separate figures for different types of work (or rate of pay) and will come into force on 6 April 2019. However, this will need to be backed up by a reliable route for workers to report non-compliance and/or non-provision of payslips in general.

Having said all this, better enforcement action will do nothing to combat the difficult interactions between these National Minimum Wage rules and two other travel issues – claiming tax relief for travel, and whether travel time counts as 'remunerative work' for the purposes of Working Tax Credit (WTC). We will go on to look at these in the following chapters.

50 Questions 12 and 13, Strategy document, <https://www.gov.uk/government/publications/labour-market-enforcement-strategy-introductory-report>

51 <https://www.gov.uk/minimum-wage-different-types-work>

52 <http://www.resolutionfoundation.org/app/uploads/2013/08/Does-it-pay-to-care.pdf>

53 For completeness we also note that rules will be changed from April 19 to ensure that all 'workers' (as distinct from employees) will also get a payslip, however we understand that many care workers will already be receiving payslips despite not necessarily having any legal right to such.

5. The knock on effects – tax

As we have seen, care providers rarely use HMRC's mileage system to make the maximum tax-free expense reimbursements allowed where a worker uses their own car for travel between clients. They may (or may not) roll up petrol costs in the care worker's normal pay instead, rendering the reimbursement potentially taxable in the first instance or reimburse them (on a tax-free basis) based on actual costs – but often not to the extent that it restores their out of pocket position fully.

Further, as we have seen, the minimum wage rules exclude a care worker's home to work travel time and unreimbursed expenses from the minimum wage calculation meaning they may receive no pay uplift in respect of these costs. Today's road fuel prices mean that travelling between home and work to see their clients can involve significant costs to these workers, relative to their already limited budgets.

It is worth looking at the help the tax system gives to these care workers.

Travel expense tax relief

Tax relief for travel costs that are incurred as part of someone's work is well-established, with the legislation now being found within Part 5, Chapter 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003).

Under s337 and s338 ITEPA respectively, a deduction for an employee's travel costs are allowable for tax purposes if:

- You have to make the journeys in the performance of the duties of your employment (this may apply where the duties themselves inherently involve travelling such as a delivery driver or meter reader);⁵⁴ or
- They are journeys which you make to or from a place you have to attend in the performance of your duties, which can include trips from your office or other work location to visit a customer or other workplace. This rule can also include travel directly from your home to visit a customer or to another workplace (unless the journey is practically the same as the journey from your home to your normal place of work, for example, because the customer lives near your office).⁵⁵

Where sections 337 and 338 ITEPA 2003 apply, tax relief becomes available for the employee's travel expenses including the cost of travel, subsistence (e.g. food and drink) and accommodation (where there is an overnight stay).

Where these rules apply to a journey undertaken by an employee and they incur rail, bus, and other transport charges, to the extent they are not fully reimbursed by the employer they can be claimed as a tax deduction. If they use their own transport for such journeys there is the statutory system of tax-free approved mileage allowances for business journeys discussed previously. If an employer pays less than these amounts, the employee can claim tax relief for the unused balance of the approved amount (this is known as the Mileage Allowance Relief (MAR) system).

Arguably, many home carers will be able to deduct all their travel costs from their taxable income, including from home to work, because like a 'service engineer who moves about from place to place during the day, carrying out repairs to domestic appliances at client's premises' (see [Appendix 3](#)) their duties inherently involve travelling. Even

54 <http://www.legislation.gov.uk/ukpga/2003/1/section/337>

55 <http://www.legislation.gov.uk/ukpga/2003/1/section/338>

if the employee does not have a 'travelling appointment' it is likely that for many such employees every place that they attend qualifies under s338 ITEPA 2003.

This, on the face of it, is helpful to care workers in respect of the costs of travel between clients – where they may be left out of pocket despite the protection built into the minimum wage rules. In addition, while there are no special arrangements under minimum wage law to deal with care workers and the costs they incur in travelling from home to work, we can see that these same instances are recognised under tax law. (Having said that, we worry that this may not be appreciated by care workers. They may be confused by the differing treatment of home to work expenses under minimum wage law and tax law and may thus be missing out on valuable tax relief.)

Recommendation: Better information should be made available about tax relief on travel expenses to help ensure that care workers can make accurate claims. Some specific guidance, along with worked illustrations, outlining the applicability of the travel rules to care workers and their comparatively unusual travel patterns would be extremely helpful.

Confusion over rules

It seems that there is little confusion over the rules on travel expenses on the employers' part. Many employers seem to rely on the existence of the MAR system to 'explain away' the non-payment of mileage expenses, as we can see from this query to our website (received in 2014 when the relevant minimum wage rate was £6.50 an hour):

'I work for [care provider] a franchise of [care provider]. The job advert specified a car was required. My contract is zero-hours, basic pay £6.53ph + 0.67ph holiday pay. In the induction we were advised petrol costs would be covered by HMRC under the P87 system'

However, for the care workers, many of whom lack even a broad understanding of the tax system, it is a shock to discover that MAR system does not actually pay them 45p a mile and only gives them tax relief on it:

'I contacted HMRC with regard to claiming mileage. I completed form P87, and have been advised I will only get 20% of my claim. Form P87 clearly states 45p is paid per mile and not what I was told, which is 20% of that sum. Please can you help??'

For others, MAR is totally meaningless, as being able to claim tax relief depends on there being a tax liability in the first place, which for the very lowest paid carers is often not the case as we can see from the query below. This is particularly so given recent years' above-inflation increases in the personal allowance:

'i work as a carer in the community travelling to people in their own homes. i work 18 hrs per week and do not get paid mileage costs. i filled in p87 form to claim some mileage but after 5 mths was told i am not entitled to any mileage back as i do not pay enough tax! is this correct?' [sic]

Recommendations: These emails suggest to us the many care workers do not even have a rudimentary understanding of the tax system, leaving them open to exploitation. This is something that HMRC can and should do something about by supplying clear, user-friendly, targeted information. HMRC must also ensure that this is disseminated through more than one channel, for example, through unions or voluntary sector organisations dealing with the relevant part of the population or large employers, as well as through GOV.UK.

We would also suggest that the Government consider possible options for providing some much needed relief on carers' travel expenses where they earn less than the personal allowance. This might, for example, be by

allowing carry forward or carry back claims in certain circumstances,⁵⁶ or by allowing them to claim National Insurance relief given it becomes payable at lower income levels.⁵⁷ This should be subject to a safeguard to stop such a claim pushing a worker's salary below the LEL to ensure their contributions record remain protected – more on this later.

Difficult tax relief claims processes

Even where the tax relief is available to care workers (and they are aware of this), the process for claiming it is quite complex, so much so that we can see that care workers are being targeted by tax refund companies for help with making a claim (for a fee).⁵⁸ This only serves to place workers at an even greater financial disadvantage⁵⁹ – these claims should be straightforward for the workers to make themselves at no cost.

Most low-paid employees would make a claim to HMRC on an annual basis to recover tax on their expenses by filing a form P87. Historically, this form has been paper based, but there is now an online version. This is something we called for in our 2013 report on tax refund companies⁶⁰ and is a welcome development. However, the form has been developed to sit within the Personal Tax Account which means a person must have proved their identity via either the Government Gateway or GOV.UK Verify system to access it.

The GOV.UK Verify system is notorious for asking questions that are hard to pass.⁶¹ It is easier to prove your identity with the Government Gateway, however there are still a number of steps required⁶² including selecting the type of account that you want (this can be an Individual, Organisation, Agent or Pensions account), creating a username and password, undertaking a two-step phone verification and answering security questions about your payslips/P60 or passport.⁶³ This means it could still be a daunting (or even impossible) prospect for many, particularly if they are not IT savvy or do not have easy internet access (or indeed rely on a fiddly smartphone for internet access).⁶⁴

Recommendation: HMRC have been unable to provide us with a breakdown of the numbers of people successfully getting through the Government Gateway process. In any case, we think HMRC should host the P87 as a standalone form outside of the Personal Tax Account platform as they do the Marriage Allowance form,⁶⁵ so that claimants do not have to go through either the Government Gateway or GOV.UK Verify.

If a person does successfully gain access to the Personal Tax Account, it is not immediately obvious where the P87 sits. The tax refund forms are in the 'PAYE/current year/check your income tax estimate' section. We are not sure this is the most obvious place, particularly since people often only think of completing a P87 once the relevant tax year has finished.

56 A carry-forward facility is currently being considered in respect of self-funded training: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/689227/PU2152_Consultation_on_self-funded_training_web.pdf

57 In 2018/19, employee National Insurance becomes payable at £8,424 and tax becomes payable at £11,850.

58 <https://www.taxrefundpro.co.uk/blog/106-carers-nurses-claim-your-full-mileage-allowance>

59 Fees for the tax refund company here are 20% of value of claim, subject to a minimum fee of £90.

60 <https://www.litrg.org.uk/latest-news/reports/131015-tax-repayment-system-and-tax-refund-organisations-call-action>

61 This GOV.UK blog explains that only 60% of HMRC's Self Assessment customers who tried were able to Verify: <https://identityassurance.blog.gov.uk/2015/01/19/gov-uk-verify-self-assessment-trial-an-update/>

62 We explain them here: <https://www.litrg.org.uk/tax-guides/tax-basics/digital-services-%E2%80%93-dealing-your-tax-and-tax-credits-online#toc-how-do-i-register-for-a-government-gateway-account>

63 If none of these are available, HMRC will check to see if the individual has enough of a financial footprint with a credit agency to generate some questions.

64 'Smartphones have overtaken laptops as the most popular device for getting online': <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/uk-now-a-smartphone-society>

65 <https://www.gov.uk/apply-marriage-allowance>

If one can find the 'Income Tax Forms' they will find that they are asked for their Employer's PAYE Reference, which they may not have been given as it is not a legal requirement for employers to show this on a payslip.⁶⁶ At the moment, the confusion around how to deal with such questions could be causing error messages, preventing a taxpayer progressing with the form.

Recommendations: We assume that the request for the Employer's PAYE Reference is purely for a check and balance exercise, which seems unnecessary in the era of RTI and HMRC should consider removing this requirement. Alternatively, HMRC should make it perfectly acceptable to write 'unknown' or N/A in the box, and still be able to carry on with the form. Small details like this could make all the difference to a worker continuing with their claim or giving up – and potentially turning to a tax refund company.

Alternatively, there is a 'print and post' version of the P87 available on GOV.UK. You complete the form on screen and it asks you further questions depending on the answers you give, thereby aiming to make things quicker and easier for you. HMRC say that the form has been designed with the user in mind and information buttons are included next to some questions to help users comprehend and complete the form. They will be shown an error message if what they have entered appears to be wrong, or if they have missed an answer that is required – meaning more people should get the form right at the first attempt.

All of this is encouraging, however 'Employer PAYE Reference' is again a mandatory field, as is 'Employee ID' – which many employers do not allocate to their employees. Furthermore, even though you have to physically print and post the form off, you still have to complete it on screen, meaning there could still be issues for the digitally excluded.

There is another problem for those unfamiliar with the process – you cannot save a partly completed form and while HMRC suggest you gather all your information together before you begin to fill it in, it is not possible to scroll through the form to see what the requirements of the various sections are in advance. These issues may help explain the number of the queries we are getting to our website requesting paper forms (which are no longer available on GOV.UK):

'Is possible to post a former p87 to my address to claim? Thank you' (sic)

Recommendations: A more joined up approach is needed here – the user must be able to see everything the print and post form asks for at the outset – that way they could familiarise themselves with its requirements before starting to complete it. In addition, HMRC should reinstate the full, downloadable, PDF version of the form for people who may be unable to use any of the versions of the P87 available or who would simply prefer to fill out a paper form.⁶⁷

Other avenues

While tax relief can theoretically be given for expenses via a tax code adjustment,⁶⁸ the PAYE coding facility for expenses is not known to work well – particularly in the context of many changes of circumstances, which often low-paid care workers will have. That is the case even if the taxpayers are aware of the ability to 'code in' expenses in the first place. Additionally, this coding will only be on an estimated basis which can lead to problems in its own right.

66 Such information may be available on the form P60, but vast numbers of taxpayers will not be very good at keeping their P60s and so this is another insurmountable hurdle for them to get over.

67 This chimes with the human rights principle established in the case of *LH Bishop Electrical Co Ltd & Others v HMRC Commissioners* [2013] UKFTT 522 (TC) where HMRC were found to have acted illegally by requiring three taxpayers to file their VAT returns online.

68 Under s685 ITEPA 2003 'provisional deduction for allowances and reliefs'

Where the amount of employment expenses exceeds £2,500, then the tax refund claim must be made through the completion of a more formal Self Assessment tax return. Those care workers who fall into this category may never have had to complete a tax return before and are unlikely to engage an accountant or tax adviser. Consequently, these individuals must navigate the complexities of the confusing Self Assessment system on their own, and are very likely to ‘trip up’ at some point, embroiling themselves in potentially lengthy enquiries with HMRC.

Recommendation: Given the huge costs that care workers incur in travelling, a disproportionate number of them will have to be in Self Assessment to claim tax relief for those expenses (basically, anyone travelling more than around 25 miles a day⁶⁹). We would urge HMRC to review the P87 £2,500 threshold with a view to moving it upwards, which (coupled with the improvements to the process previously mentioned) could significantly ease the burden on care workers. This would dovetail with the Government’s death of the tax return ambition.⁷⁰

Further to HM Treasury’s call for evidence⁷¹ on the taxation of employee business expenses, and as announced in the Autumn 2017 Budget,⁷² the Government is to undertake work to improve the guidance on employee expenses, particularly on travel and subsistence and the process for claiming tax relief on non-reimbursed employment expenses. This is expected to involve the participation of external stakeholders, such as LITRG, and we will take the opportunity to put forward these recommendations.

69 Assuming they work 5 days a week, 46 weeks of the year, this would mean a claim of £2,587.50 (45p x 25 miles a day x 5 days a week x 46 weeks a year)

70 <https://www.gov.uk/government/speeches/chancellor-george-osbornes-budget-2015-speech>

71 <https://www.gov.uk/government/consultations/taxation-of-employee-expenses-call-for-evidence/taxation-of-employee-expenses-call-for-evidence>

72 See para 3.14: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661480/autumn_budget_2017_web.pdf

6. The knock on effects – tax credits

Many care workers are low paid. This makes them more likely to need to rely on in-work benefits, like tax credits. While these will eventually be fully replaced by UC, roll out is still fairly slow, meaning that tax credits are set to be around for some workers until 2022.⁷³

To qualify for tax credits, a worker must be aged 16 or over and must normally live in the UK. There are several ‘elements’ you might be eligible for, depending on your circumstances. These are added together to give a maximum award but this is then progressively withdrawn from claimants with incomes above a stipulated income threshold. The rate of withdrawal where income exceeds the threshold is 41%.⁷⁴

Qualifying remunerative work

WTC is payable to claimants who are in ‘qualifying remunerative work’ and who are on a low income. There are certain age and hours of work qualifications (see [Appendix 4](#)). Briefly, the conditions are:

- If you are single and responsible for a child, qualify for the disability element of WTC, or are 60 years old or over, you must work at least 16 hours per week.
- If you are a couple and responsible for a child you must, in most cases, work at least 24 hours between you (with one of you working at least 16 hours). If your partner is incapacitated, in prison, in hospital or entitled to Carer’s Allowance then you can qualify if you work at least 16 hours.
- Otherwise, you must be aged 25 or over and work at least 30 hours a week.

Qualifying remunerative work is work for which the claimant is, or expects to be, paid. There is, prima facie, an issue for many single care workers in meeting the 30 hours requirement, given average hours on a zero-hours contract are often only around 25.⁷⁵ But there is another issue too: if their employer does not pay them directly for their travel time (even if their overall remuneration at least equals the National Minimum Wage) the claimant’s weekly remunerative hours may be insufficient to meet the minimum WTC requirement.

This is an issue faced by the following writer to our website:

‘I am a domiciliary care worker. I work over 30 hours per week but get paid less than thirty, more like 20 to 25 hours pw. My query isn’t about breach of National Minimum Wage regs but whether I still qualify for WTC. I have no children, am married and as far as I can see I do qualify because of the actual unpaid hours that add up each week due to travelling in between calls without payment.’

On the assumption that this person does not qualify for the disability element of WTC or is aged 60 or over, we can see from the above that in order to qualify for WTC they need to be in qualifying remunerative work for at least 30 hours a week. Thus, even if they are satisfied that their employer is complying with the National Minimum Wage rules (i.e. because of a sufficiently high contact time rate), there is a problem. This is because if they are not paid directly for the time they spend travelling between clients, then that part of their working day is not remunerative

73 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-07-20/HCWS96/>

74 We explain more about tax credits here: <https://www.litrg.org.uk/tax-guides/tax-credits-and-benefits/tax-credits>

75 See introductory comments on zero-hours contract hours on page 11.

and, for tax credit purposes, does not appear to count towards the total number of hours spent in remunerative work.

This means that they will not qualify for tax credits and thus will not enjoy the increased support and improved incentives to work promised by the Government as a result of this policy.

For comparison purposes, if they had qualified for tax credits, their award⁷⁶ would be:

- Basic element £1,960 plus 30-hour element of £810 = maximum tax credits award £2,770
- Income £12,214.80 (disregard £6,420) – 41% taper = £394.13 per year⁷⁷

There is a real danger that carers are either not claiming tax credits because their hours are too low, or they are claiming in the mistaken belief that their travel time is counted in the total remunerative hours for tax credits, risking overpayment or even penalties.

Recommendation: It is not enough to simply ensure that pay rates are above minimum wage when travel time is added on to the hours care workers spend with clients. The rules should be changed so that care providers must pay travel time as a separate item.

Alternatively, we think the tax credit rules need to be rethought so that workers receive the support they need without needing to receive separate payments for their contact time and travel between visits.

Fluctuating income

A care worker's irregular working patterns can also cause significant issues with payments of tax credits that are initially based on the income of the previous year, for example a 2018/19 claim is initially based on the income of 2017/18. After the end of the tax year, the claim is finalised based on either the previous year's income or the current year's income depending on changes in income levels. There is an income rise disregard of £2,500 (£5,000 before 6 April 2016) and an income fall disregard of £2,500.⁷⁸

A care worker's income will rarely be constant, particularly if they are on a zero-hours contract, and the disregard system provides some cushioning for tax credits purposes. Larger fluctuations in income might mean that tax credits are significantly underpaid in a year, causing financial hardship. Or it might be that, equally or perhaps even more worryingly, tax credits are overpaid, possibly pushing the care worker and their family into debt as they attempt to repay that sum in a later year.

Sadly, overpayments for those on zero-hours contracts are common due to the 'pay now, establish entitlement later' nature of the tax credits system. However, a claimant is not required to notify changes in income levels during the tax year, though it is always a good idea to try and do this though to avoid the risk of overpayment.

Overpayments are normally recovered from future tax credits, or if that is not possible, by direct payment to HMRC or via an adjustment to the worker's tax code. Code of Practice 26 provides detailed information on tax credits overpayments, including why overpayments can happen, how to pay an overpayment back (and when you do not

76 Assuming pay of £7.83 per hour (say) for 30 hours per week for 52 weeks per year and based on the 2018/19 rates: <https://www.gov.uk/government/publications/autumn-budget-2017-overview-of-tax-legislation-and-rates-ootlar/annex-a-rates-and-allowances#working-and-child-tax-credits-child-benefit-and-guardians-allowance>

77 £2,770 less £2,375.86.

78 <https://revenuebenefits.org.uk/tax-credits/guidance/how-do-tax-credits-work/understanding-the-disregard/>

have to), challenging the recovery of an overpayment and what happens to your overpayment if you ask for your tax credits award to be reconsidered.⁷⁹

Zero-hours contracts can also cause confusion about when tax credits can start and stop. Entitlement to WTC is based on the claimant doing the required hours and the work being expected to last at least four weeks after the claim is made. If a care worker's hours are irregular and liable to change, HMRC should use the number of hours the person normally works or, if that is completely erratic, the hours they are working at the time they claim.⁸⁰

If a care worker is claiming WTC and their normal hours of work drop below the minimum required for their circumstances, they must contact the Tax Credit Office within one month. Their WTC claim will be ended, but they will be entitled to a four-week run on. If they do not inform the Tax Credit Office they risk getting overpaid. If their hours go up again they may be able to get more tax credits. Extra payments can be backdated by up to a month. However if the hours fluctuated so that they were under the hours threshold for more than four weeks, then they would need to make a new claim from scratch – and this might have to be for UC rather than WTC – more on this below.⁸¹

The result is a somewhat confusing picture. We think, having seen various conversations on internet forums on the topic of zero-hours contracts,⁸² that it is possible that some care workers will feel unable to claim tax credits, even if they are otherwise entitled to them. This is because the variation in their hours will take them above and below the thresholds for claiming WTC too frequently to claim without the risk of overpayments and/or the starting and stopping of claims.

Recommendation: We would urge the Government to undertake an assessment of the challenges faced by low-paid care workers who are entitled to tax credits with a view to easing the process for them.

UC is currently being rolled out across the UK gradually⁸³ and will eventually replace WTC (and income-based Jobseeker's Allowance, income-based Employment and Support Allowance, Income Support, Child Tax Credit and Housing Benefit). UC is calculated on a monthly assessment period basis and takes account of net income levels gleaned from HMRC's RTI system – this system marks the individual's record as being a UC claimant and automatically passes the PAYE data supplied by any employer in relation to that individual to the Department for Work and Pensions (DWP).

There is no minimum numbers of hours a claimant must work to claim UC and it is designed to be responsive to changes in earnings, so if a person's wages go up or down their UC payment should automatically change on the next payment date to reflect the change in their earnings. It must be noted, of course, that UC generally provides a lower level of financial support in comparison to tax credits. Concerns about this have been raised in enquiries sent to our websites, for example:

'Hi! I am asking on behalf of my stepdaughter who lives with my wife and I. She does not pay rent. She receives £500 a month for 40 hour week work as an apprentice health care assistant. She is 30 years old. She was told

79 <https://www.gov.uk/government/publications/tax-credits-what-happens-if-youve-been-paid-too-much-cop26>

80 <https://www.gov.uk/hmrc-internal-manuals/tax-credits-technical-manual/tctm02451>

81 The only exception to this would be if they were also getting Child Tax Credit – in which case they would stay in tax credits. If their hours fluctuated upwards so that their income reduced the award to nil, they would remain in tax credits on a nil award.

82 For an example, see here: https://www.mumsnet.com/Talk/legal_money_matters/1190504-Anyone-know-how-tax-credits-would-work-with-irregular-hours

83 You can check whether you live in a UC postcode area by entering your full postcode in the tool developed by LITRG, in conjunction with LASA: <https://universalcreditinfo.net/>

over the phone that she should receive about £50 a week tax credit. But when she applied she received a message that because of her post code (LE10) she would have to apply for UC instead. I work out that with this she will receive only £2.64 a week. This seems so very unfair that I find it difficult to believe it is true. I would be grateful if you could let me know, on her behalf, if it is indeed the case. Thank you'

In addition, although a person does not need to work a set number of hours under UC like they do for tax credits, they may be expected to carry out 'work related activity' as part of their Claimant Commitment if they are not earning above their Conditionality Earnings Threshold (CET) – or risk sanctions, such as having their UC stopped.

An individual's CET depends on the work activity group they are placed in. For those who are subject to 'all-work requirements', it is normally 35 hours x minimum wage although this may be reduced for claimants with young children, physical or mental health conditions, or who are carers. Some people will not be subject to conditionality if they are placed in the 'no-work requirements' group. This will be agreed as part of the person's Claimant Commitment.

Work related activity can involve looking for extra work or doing things like attending CV workshops. The requirements imposed and the support available to claimants is tailored and personalised and is recorded on the Claimant Commitment drawn up by the claimant's personal adviser during a face-to-face discussion.

At the moment, people on UC are not required to accept zero-hours contracts – but only if the contract requires exclusivity.⁸⁴ This seems like quite a limited concession considering the reality of being on a zero-hours contract and appears to create a 'trap'. That is, if you are claiming UC and refuse a zero-hours contract job, you can be sanctioned. However, if you accept a zero-hours contract, you may be sanctioned for not working enough hours. On the other hand, if you accept a zero-hours contract and apply for other jobs, you risk being 'zeroed down' by your employer (see page 11).

Recommendation: There remain several unanswered questions in relation to how UC fits with zero-hours contracts. As such, the Government should proceed cautiously with their plans to impose strict CET rules on care workers on zero-hours contracts who claim UC and work fewer than 35 hours a week (in fact, we think they should consider whether it is appropriate to impose CET on them at all).

Unreimbursed expenses

A person's entitlement to WTC is based upon his/her level of taxable earnings – against which permitted tax deductions are taken. The Tax Credits (Definition and Calculation of Income) Regulations 2002⁸⁵ state:

4. Employment income

(5) 'From the amount of employment income, calculated in accordance with the preceding provisions of this regulation, there shall be deducted the amount of any deduction permitted in calculating [calculating earnings by virtue of any provision of sections [231 to 232] 336 to 344, or section 346, 347, 351, 352, 362, 363, 367, 368, 370, 371, 373, 374, 376, 377 or 713 of ITEPA].'

This means that a care worker where £50 of their £275 weekly earnings are attributable to s337 or s338 travelling expenses will have an annual income for tax credit purposes of £11,700 (£225 x 52), rather than £14,300 (£275 x 52), potentially meaning a higher tax credit award.

84 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413264/foi-438-2015.pdf

85 <http://www.hmrc.gov.uk/gds/tctm/attachments/tctm12000definandcal.pdf>

For tax credits, employment expenses are deducted from income if they are *allowable* for tax, even if full effect cannot be given to them for tax purposes because the worker does not earn a sufficient amount to incur a tax liability. However, in our experience, there is a great deal of confusion about deductions from income, including employment expenses, as we can see from this writer to our website:

‘Trying desperately to find out the real answer to- should I deduct AMAP (mileage) from my p60 before giving final figure to tax credits? Keep getting conflicting info’

Claimants often do not realise they can deduct the costs from their income for tax credits purposes and this has gotten worse since HMRC started to use RTI data on tax credits renewal notices.⁸⁶ While it may match a worker’s P60, the RTI figure is not necessarily the right figure for tax credits as it does not take account of the various deductions that can be made from income. We have come across some claimants who have found it difficult to override the RTI data, even after speaking with the HMRC’s tax credits helpline and have been forced into the appeals process, which is undesirable for both claimants and HMRC.

Until recently there has been some confusion as to whether the UC Regulations allow unreimbursed employment expenses to be deducted from income for UC purposes and if so, how that fits with the use of RTI data in the UC system. This is because of the use of the word ‘disregarded’ as opposed to ‘deducted’ in Regulation 55(3)⁸⁷ (disregarded is usually used in connection with reimbursed expenses).

Employed earnings

55. – (3) In the calculation of employed earnings the following are to be disregarded –
(a) expenses that are allowed to be deducted under Chapter 2 of Part 5 of ITEPA; and
(b) expenses arising from participation as a service user (see regulation 53(2)).

The following Parliamentary Question⁸⁸ response prompted by LITRG via Stephen Timms MP, appears to give some answers:

‘The Universal Credit calculation uses earnings information received through Her Majesty’s Revenue and Custom’s automatic ‘Real Time Information’ (RTI) PAYE data transfer which does not include unreimbursed expenses. Claimants can then challenge this RTI figure by providing necessary evidence, such as unreimbursed work expenses, which a Decision Maker will consider under Regulation 41 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013.’

While this is welcome news, we are unaware as to what, exactly, DWP are doing to publicise the position, either internally to decision makers or to the public at large.

The exact route that claimants need to take to get expenses deducted for UC is also unclear, however it may involve reporting amounts through their UC account or calling the UC helpline.⁸⁹

Recommendations: HMRC, working with HM Treasury (HMT) and the DWP, should do more to ensure that claimants are aware of their right to deduct expenses, and the limitations of RTI data in this respect. In addition, the UC process for deducting unreimbursed expenses should be confirmed as soon as possible.

86 <https://revenuebenefits.org.uk/tax-credits/guidance/how-do-tax-credits-work/real-time-information-and-tax-credits/>

87 <https://www.legislation.gov.uk/uksi/2013/376/regulation/55/made>

88 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-14/113079/>

89 For more information see GOV.UK: <https://www.gov.uk/universal-credit/changes-of-circumstances>

7. Pension saving

For many workers, non-payment of travel time and zero-hours contracts can mean low and irregular pay and disheartening knock on effects for their tax and tax credits. But there are longer term financial considerations for care workers beyond those discussed already.

One area of concern for us is the ability of care workers to meet the LEL (£116 in 2018/19) which may be impacting on their ability to build a National Insurance record for state pension purposes.⁹⁰

State pension rules

From 2016, a full state pension requires 35 qualifying years' worth of contributions to get the full amount, although you should be able to get a pro-rata amount provided you have at least ten qualifying years.

A 'qualifying year' sounds as though you might need to have a perfect 52 weeks of working for it to count. In fact, for 'Class 1 primary' (employee) NICs, any tax year where you receive a minimum amount of earnings or credits (which you receive for example, if you cannot work because you are bringing up children who are aged under 12) can be a qualifying year. The 2018/19 tax year could be 'banked' as a qualifying year provided you have earned the equivalent of 52 x £116 (the LEL) – total £6,032. Any pay periods in which you have earned under the LEL will not count towards the total, so for example if you earn £187.50 a week for 26 weeks of the year, but only £90 a week for the other 26 weeks of the year then although your earnings in total will exceed the £6,032 amount, you will not have a qualifying year as your earnings in weeks where you exceed the LEL only reach £4,875.

In practice, we recognise that it is becoming less and less likely that care workers will not meet the LEL, given the average number of hours they are likely to work (per the figures relayed in the introduction, care workers on zero-hours contracts can be expected to work around 25 hours per week) and the fact that the minimum wage rates are rising much faster the LEL. Even if earnings did drop below the LEL, National Insurance credits might be available to effectively restore entitlement – however it is worth remembering that many may struggle to access WTC, which brings with it a NIC credit.

Not all care workers will be able to work the 15 or so hours required at the minimum wage to reach the LEL (particularly as they may have to work extended hours to achieve 15 paid hours). Some may be regularly working only a few hours a week and as we have seen, those that are not in favour with their employers may not get so many hours or any at all, due to being 'zeroed down'.

We should also bear in mind the incentive that exists for employers to keep earnings below the LEL. For example, a care provider offering only 14 hours a week at the National Living Wage of £7.83 (equating to earnings of less than £116) can potentially avoid:

- having to pay SSP – currently payable at around £92 a week (for a maximum of 28 weeks) which, since April 2014, is not reclaimable from the Government for any employers;
- having to pay parental payments, e.g. Statutory Maternity Pay – much, if not all, of which **is** reclaimable from the Government, but payments can be hugely complicated to understand and administer (particularly the

⁹⁰ Not meeting the LEL can also create difficulties in meeting the qualifying criteria to access contributions based benefits, for example contribution based Jobseekers Allowance, and contribution based Employment and Support Allowance. Such benefits require, as a pre-condition to entitlement that the worker earns above the LEL for sufficient length of time during relevant tax years.

Statutory Parental Pay rules which were introduced from April 2015 – the technical guidance⁹¹ is 66 pages long and there are possible penalties of up to £3,000 if an employer gets things wrong);

- having to pay Class 1 secondary National Insurance at 13.8% (which only kicks in at £162 per week);
- having to pay any contributions into their workers' pension scheme which the employer will have had to set up for them under the auto enrolment programme (more on this below). From April 2018, the employer has to pay 2% of qualifying earnings, but this is set to rise to 3%, in April 2019.

It is clear from this writer to our website that not meeting the LEL is a real issue for some:

'Hello I have two jobs both individually below the LEL for National Insurance contributions (one is an apprenticeship). So I don't pay NIC on either earnings but added together it is more than the LEL. Should I ask one of my employers to pay or contact HMRC? Thanks'

In terms of the numbers of people affected by not meeting the LEL, we note this extract from Baroness Hollis of Heigham in a House of Lords debate on the issue in 2014, during the passing of the Pensions Act:

'My data come from all the existing research that I am aware of. With the different sample sets and with cross-cutting the findings – which I have done as honestly as I can – I can only make an estimate, so I apologise that the data do not allow more precision. Half of those under the age of 30 – 3.75 million, the Mass1 survey suggests – are on short-hours contracts of some form or another. Usually, they will not get credits, not even for children, or qualify for UC if they are single people, which they usually are, and living at home, as often they are. From the personnel directors' survey of zero-hours contracts, nearly 40% work under 16 hours a week, in other words, below the LEL. Of all part-time workers in April 2013, 30% earned below the LEL, the entry point to National Insurance, according to Unite. A third of those run other part-time work alongside their first short-hours jobs and two-thirds of those second jobs are at minimum wage or also below the LEL'.⁹²

As well as having an uncertain working life, care workers could be unwittingly heading towards an uncertain retirement – one reliant on means tested state benefits. This is particularly worrying when coupled with the likelihood that no private pension will be accumulated due to missing out on auto enrolment – which we look at below.

Recommendation: We would urge policymakers to consider how to help care workers to access the NIC and benefit system, perhaps by extending the system of credits or allowing them to aggregate earnings in the event of them having more than one 'mini' job. Alternatively, perhaps they could be provided with a way to cheaply buy in to the system – Class 3 National Insurance (the voluntary contribution) is currently prohibitively expensive at £14.65 a week.⁹³

Auto enrolment

Auto enrolment is a Government initiative that requires all employers to automatically enroll certain staff into a pension scheme and make contributions towards it. Usually the staff member will also have to make contributions to the pension scheme which the Government may top up with tax relief.

91 <https://www.gov.uk/government/publications/shared-parental-leave-and-pay-employers-technical-guide>

92 https://publications.parliament.uk/pa/ld201314/ldhansrd/text/140224-0001.htm#st_67 (column 713)

93 <https://www.gov.uk/voluntary-national-insurance-contributions>

Auto enrolment is designed to ensure that more workers have easy access to a workplace pension scheme, enabling them to save towards their retirement and enjoy an income over and above the state pension.

Employers must automatically enroll all staff who are:

- aged 22 to state pension age,
- working in the UK, and
- earning over £10,000 a year (2018/19). £10,000 a year translates into a £192 threshold for weekly paid employees and £833 for monthly paid.

A care worker's income may vary, but if at any point they earn more than the eligibility threshold for their pay period, their employer should auto-enroll them at that time (or otherwise within three months if the employer uses the 'postponement' facility⁹⁴). Once they have been enrolled, and assuming they do not opt out, their employer will then calculate pension contributions each time they are paid, in accordance with the percentage table below.

	Overall total contribution required	Minimum from employer	Potential contribution from employee (when tax relief is factored in)
From April 2018	5%	2%	3% (2.4%)
From April 2019	8%	3%	5% (4%)

Normally, the relevant percentage of their 'qualifying earnings' has to be put into their pension each pay day. Qualifying earnings, in 2018/19, start at £116 per week, £232 per fortnight or £503 per month. The rationale for having a lower earnings band limit like this is that it maintains 'a de minimis gap that produces contributions in pounds not pennies'.⁹⁵ Currently, the gap between the current entry point and the lower limit of the qualifying earnings band is £3,968 giving minimum annual contributions for people with regular earnings of around £10,000 per annum of about £198.40 – not a huge amount.

However, if their income fluctuates, this may mean that in some pay periods they could earn enough for there to be pension contributions, and in other pay periods they will fall short and there will be none. Therefore, not only are there challenges for care workers in meeting the entry point to auto enrolment in the first place, even if they do, fluctuating earnings means it could take a very long time for a care worker to accrue anything like adequate retirement provision.

Having said all that, certain workers underneath the official entry point can still 'opt in' to auto enrolment if they want to – and potentially get an employer contribution. Further, most pension schemes will allow workers to contribute more than the minimum they need to under law, either by increasing their contribution by a set percentage or by making an ad hoc contribution – thus allowing care workers who can afford it, to build better pension savings.

⁹⁴ An employer can choose to delay assessing (and therefore enrolling) staff into a pension scheme for up to three months.

⁹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388546/automatic-enrolment-earnings-thresholds-2015-2016-response.pdf

Any additional contributions the care worker puts in will not be matched by their employer. However, the worker may get tax relief and a boost to tax credits or UC. The latter is obtained because, in the calculation of tax credit and UC income,⁹⁶ employees may deduct 100% of pension contributions. This means that a higher tax credit or UC award might result from the deduction of employee pension contributions from assessable income. For example, UC's 'taper rate' of 63p in the pound means that a £100 pension contribution could result in a £63 increase in the individual's UC award.

Recommendations: We acknowledge the DWP's recently announced plans to remove the lower level of qualifying earnings so that every saver makes pension contributions from their first pound of earnings, and to lower the age threshold from 22 to 18. However, these changes are a long way off.⁹⁷ In the meantime therefore, we would suggest that employees' right to opt in to an employer's pension scheme is better promoted. Some care workers may have the ability to save even if they earn under £10,000 (pro rata). If they were aware of the incentive of an employer contribution and their right to opt in, more might take this up.

It would certainly also be useful for lower earning employees to be informed of the tax credit and UC impact – i.e. that the cost to them of joining a pension scheme and potentially making additional contributions to help build their pot quicker, is lower than they may think once the tax credit/UC impact is factored in.

Lack of tax relief

In addition, there is the issue of net-pay as against relief at source schemes, the former of which sees the low-paid miss out on tax relief. As such, some care workers could face paying more than 20 per cent extra by way of their pension contribution.

The issue affects those who earn over the £10,000, needed to trigger auto enrolment, but below (or not very much above) the £11,850 income tax threshold, who are enrolled in a net-pay pension scheme rather than a relief at source scheme.

To explain: there are two ways pension schemes can collect the tax relief that savers benefit from when contributing to a pension; net pay and relief at source.

- 1) Under 'net pay arrangements' – the pension amount is deducted from an individual's pay BEFORE tax is calculated (meaning the employee receives tax relief there and then).
- 2) Under 'relief at source' arrangements – the pension contribution is deducted after tax is calculated and HMRC later send the tax relief to the pension scheme.

Under relief at source arrangements, members of pension schemes who do not pay income tax are nonetheless permitted to basic rate tax relief (20%) on pension contributions up to £2,880 a year. In practice this means that HMRC will top up a net contribution of £2,880 to a gross £3,600. The government-backed pension provider, NEST, uses a relief at source scheme, as do various other auto enrolment scheme providers.

However, this tax relief is not available to non-taxpayers for schemes that operate net pay arrangements, like NOW: Pensions, and the vast majority of occupational and trust based schemes. It has been previously speculated that around 900,000 people are affected by the issue and many of these could be care workers.⁹⁸ It is such a thorny

96 <http://www.legislation.gov.uk/ukdsi/2013/9780111531938/regulation/55>

97 The report states that it is the government's ambition to implement the proposed changes to the framework in the *mid-2020s*: See page 8: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/668971/automatic-enrolment-review-2017-maintaining-the-momentum.PDF

98 <http://www.pensionsage.com/pa/Not-possible-to-resolve-AE-tax-relief-issue-for-low-earners-govt-says.php>

issue that some pension providers are topping up non-taxpayers' pensions pot out of their own pockets to offset the shortfall.⁹⁹

Based on the current minimum annual contribution of £198.40 example above, an employee in a relief at source scheme would have to put in £95.23 to achieve the £198.40 total contribution, whereas an employee in a net pay arrangements scheme would have to put in £119.04.¹⁰⁰ The extra cost to the latter employee may not seem like a significant amount now but it should be borne in mind that the contribution rates to auto enrolment pensions will be increasing.¹⁰¹

The DWP's ambitions for auto enrolment will no doubt bring more low-paid earners into auto enrolment, which is to be welcomed, however this also means that the number of those not getting tax relief could increase.

Recommendations: Given the central role that tax relief plays in building pension savings, a solution needs to be found to the net pay 'problem'. In the recent DWP review of auto enrolment¹⁰² it was stated: 'The government recognises the different impacts on pension contributions for workers earning below the personal allowance. To date, it has not been possible to identify any straightforward or proportionate means to align the effects of the net pay and relief at source mechanisms more closely for this population.' We do not think this is acceptable. As suggested in the recent LITRG report 'The complexities of government-incentivised savings schemes for people on low incomes'¹⁰³ it should be possible for HMRC, by using PAYE real time information data, to match pension contributions deducted via the payroll to individuals' records and reconcile where those in a 'net pay' arrangement have not received tax relief but would have done so under a 'relief at source' scheme. The relief they have lost out on could be paid to the pension scheme in which they are enrolled.

In the meantime, more should be done to make employers and workers aware that net pay arrangements may be unsuitable for workers who earn below the personal tax threshold, and that they face paying more than 20 per cent extra for their pension than if they were in a relief at source scheme.

99 <https://www.nowpensions.com/press-release/now-pensions-top-non-taxpayers-pension-pots-offset-net-pay-income-tax-relief-shortfall-second-year/>

100 £10,000 less £6,032 = £3,968 x 3% = £119.04. £3,968 x 2.4% = £95.23.

101 Assuming no changes in the earnings thresholds, from April 2019, the employee contributions figures would be £198.40 for those in net pay arrangements versus £158.72 for those in relief at source arrangement (difference of £39.68).

102 See page 51: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/668971/automatic-enrolment-review-2017-maintaining-the-momentum.PDF

103 <https://www.litrg.org.uk/latest-news/reports/180227-complexities-government-incentivised-savings-people-low-incomes>

8. Conclusion

‘Some low paid HCAs and support workers will heroically keep going as long as they feel they are still giving good care. But the advent of zero-hours contracts, fee cuts and no payment for travel time is making it financially prohibitive for some domiciliary care workers to struggle on. Attrition rates are already dangerously high: and they will only increase when carers feel that they can no longer even give good care. Society will lose some talented carers unless the commissioning process changes radically and Government starts to move money from health to reward social care for its contribution to lowering NHS costs.’

Camilla Cavendish

The Cavendish review: An Independent Review into Healthcare Assistants and Support Workers in the NHS and social care settings¹⁰⁴

In this report, we have drawn attention to the ways in which care workers’ low pay and working arrangements can impact on and interact with their tax, National Insurance, pensions saving, tax credits and other welfare entitlements.

Clearly these interactions are confusing and disturbing in terms of their effect on care workers and our report makes many recommendations in the form of what we hope are practical measures that can be implemented relatively quickly to help ameliorate their positions. Other recommendations have costs attached for various Government departments, which we have not tried to quantify. Consultation on some aspects of this report would, however, be welcome and could help to gather data and quantify both costs and benefits.

In particular, the Government should consult on one of our most important and significant recommendations as far as care workers’ pay is concerned – extending the National Minimum Wage rules to cover home to work travel.

It may be that this could be implemented by BEIS issuing new guidance on what the meaning of ‘working time’ is – as they have recently done for sleeping-in time, rather than by amending the National Minimum Wage Regulations, however both options have pros and cons. There is also an argument that this change should apply to all ‘itinerant’ workers – a wider group than care workers, although they would of course benefit. A clearer picture of who comprises this group of workers would be useful.

We recognise that this recommendation carries a cost implication for employers, which would need to be considered carefully. Yet the tight budget constraints facing care providers means that sustainable improvements for workers cannot realistically be achieved without additional public funding. So, although not strictly within our remit, this report indirectly supports other calls for changes to the way that homecare services are funded.¹⁰⁵

In all of this, we know there are no easy answers as to where the money might come from, however our concerns are about how the system could be made to work better. It seems to us, as to Camilla Cavendish (quoted above), that care work is becoming an increasingly unattractive proposition. If poor pay and treatment in work, not to mention lack of support from the system, are affecting staff recruitment and retention then in time, the care sector

104 Page 78, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236212/Cavendish_Review.pdf

105 While the Government has recently committed to spending an extra £2bn on the social care system, and allowed local authorities to raise council tax bills in order to fund social care services, any extra money seems very likely to be absorbed quickly.

will become economically unsustainable (indeed, the Care Quality Commission raised the alarm about this last autumn¹⁰⁶ and have more recently noted that some areas are now closer to the tipping point¹⁰⁷).

Not doing anything is therefore counterproductive. In addition, there are clear benefits to a more satisfied and stable workforce – some of the most important being a better quality of care for vulnerable people and the relief of pressure on informal carers – both of which have wider positive economic implications. While further work is needed to understand the costs of the measures we propose, it is also needed to understand the potential savings that could offset those costs.

We hope that after reviewing this report there will be action by HMRC and other Government departments to improve the outcomes (and therefore standard of living and wellbeing) for those in care work. We very much look forward to contributing to the ongoing work in this area and would be willing to expand upon any of the areas covered in this report, if it would be helpful to do so.

106 Page 45, http://www.cqc.org.uk/sites/default/files/20161019_stateofcare1516_web.pdf

107 Page 27, http://www.cqc.org.uk/sites/default/files/20171123_stateofcare1617_report.pdf

Appendix 1

Breakdown of UKHCA's hourly cost of paying a care worker¹⁰⁸

Cost	Assumption	Hourly cost
Basic pay for "contact time"	National Minimum/Living combined	£7.13
Enhancement for unsocial hours	None	£0.00
Travel time	11.4 minutes to 1 hour of contact time	£1.35
Cost:		£8.48
National Insurance	9.5% of gross pay	£0.81
Holiday pay	12.07% of gross pay	£1.02
Training & supervisory time	1.73% of gross pay	£0.15
Pension contributions	1% of gross pay	£0.08
Distance travelled	4 miles per hour at £0.35/mile	£1.40
On-costs:		£3.46
Costs of sale:	Wage costs + on-costs	£11.94
Running the business	27% of total price	£4.26
Profit or surplus	3% of total price	£0.50
Overheads:		£4.76
Total hourly price:	Costs of sale + overheads	£16.70

108 Page 14, http://www.ukhca.co.uk/pdfs/ukhca_homecare_deficit_2016_final.pdf

Appendix 2

GOV.UK's guidance around care workers and travel time¹⁰⁹

Minimum wage for different types of work

1. Overview

The [National Minimum Wage](#) is worked out at an hourly rate, but it applies to all [eligible workers](#) even if they're not paid by the hour.

This means that however someone gets paid, they still need to work out their equivalent hourly rate to see if they're getting the minimum wage.

There are different ways of checking that workers get the minimum wage depending on whether they are:

- [paid by the hour](#) (known as 'time work')
- [paid an annual salary](#), under a contract for a basic number of hours each year (known as 'salaried hours')
- [paid by the piece](#) – the number of things they make, or tasks they complete (known as 'output work')
- [paid in other ways](#) (known as 'unmeasured work')

Use the National Minimum Wage calculator to check if payments are over the minimum wage.

What counts as working time

For all types of work, include time spent:

- at work and required to be working, or on standby near the workplace (but don't include rest breaks that are taken)
- not working because of machine breakdown, but kept at the workplace
- waiting to collect goods, meet someone for work or start a job
- travelling in connection with work, including travelling from one work assignment to another
- training or travelling to training
- at work and under certain work-related responsibilities even when workers are allowed to sleep (whether or not a place to sleep is provided)

Don't include time spent:

¹⁰⁹ <https://www.gov.uk/minimum-wage-different-types-work>

- travelling between home and work
- away from work on rest breaks, holidays, sick leave or maternity leave
- on industrial action
- not working but at the workplace or available for work at or near the workplace during a time when workers are allowed to sleep (and you provide a place to sleep)

Example 1

A care worker has 2 appointments in the morning and doesn't take any breaks. The worker must be paid at least the minimum wage for the time he spends at the appointments, plus the travel time between appointments.

Example 2

A care worker has 2 appointments, one in the morning and one in the afternoon. After the first appointment he goes home to have a break before he goes to his afternoon appointment. The time spent travelling from the first appointment to his home and from his home to the second appointment doesn't count towards the minimum wage.

If the care worker didn't go home but took a break on the way to his next appointment, he would be paid for any travel time but not for the break.

Example 3

A care worker has one appointment in the morning, then goes to the office to work there. At the office she is entitled to a 30-minute break. Then she goes to another appointment in the afternoon.

The worker must be paid at least the minimum wage for the time at the appointments, plus the travel time to and from the office. The break at the office doesn't count towards her minimum wage calculation.

Call the [Acas helpline](#) for advice about the National Minimum Wage.

Appendix 3

Extract from Employment Income Manual: EIM32366¹¹⁰

Travel expenses: travel in the performance of the duties: travelling appointments

Section 337 ITEPA 2003

An employee who holds a travelling appointment can deduct all of their business travelling expenses as travel in the performance of the duties of the employment, even where the journey starts from home.

There is little guidance in case law about what constitutes a travelling appointment but a commercial traveller can be said to be typical. A commercial traveller is travelling on his or her work, as distinct from travelling to it, from the moment of leaving home. Another example is a service engineer who moves about from place to place during the day carrying out repairs to domestic appliances at clients' premises. Such employees are often described as itinerant.

If an employee has to report to and work at a particular office at the start and end of the day, travel between there and home is not travel in the performance of the duties, unless the calls at that office are fortuitous or incidental.

Whether an employee is truly itinerant, or merely has two or more fixed places of work, is essentially a question of fact. There are bound to be marginal cases.

Many jobs require mobility, in the sense that an employee will have to work at a number of different places from week to week or month to month. But this does not mean that the duties themselves inherently involve travelling, merely that the employee will not always incur the same cost in getting to (or staying near) work. Clearly the frequency with which such changes take place is of major importance. There will be a strong presumption that anyone required to go to a number of different sites each day on an irregular basis will have a travelling appointment. Other factors, however, also need to be taken into account, such as the nature of the work itself and whether, for pay purposes, the employee is treated as starting work only on reaching each site.

It is important, therefore, when an employee considers that he or she has a travelling appointment, to obtain as much information as possible about work patterns. If necessary, ask for a record covering a typical period of weeks or months.

Even if the employee does not have a travelling appointment it is likely that for many such employees every place that they attend is a temporary workplace. So relief for their business travel is likely to be due under Section 338 ITEPA 2003, see [EIM32005](#).

¹¹⁰ <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim32366>

Appendix 4

Extract from Tax Credit manual: TCTM02410¹¹¹

Entitlement: WTC entitlement – qualifying remunerative work: normal conditions for being treated as being in qualifying remunerative work

The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, Reg. 4(1)

To be treated as being in qualifying remunerative work a person must satisfy all the following four conditions, and in the case of the second condition, one of the variations in that condition. (but see [TCTM02420](#)):

First condition

The person is an employed person or a self-employed person and;

1. Is working at the date of claim

Or

1. Have an offer of a job that has been accepted at the date of claim and the work is expected to start within 7 days of making the claim.

Note: if the claim falls within (b) above, condition 2, 3 and 4 below refer to work that the person will be undertaking.

For the purposes of this condition;

an “employed person” means a person who is engaged under a contract of service, a contract of apprenticeship or in the service of the Crown or in an office (including and elected office),

a “self-employed” person means a person engaged in carrying on a trade, profession or vocation on a commercial basis and with a view to the realisation of profits, either on one’s own account or as a member of a business partnership and the trade, profession or vocation is organised and regular. (see [TCTM02415](#))

Second condition

First Variation: In the case of a single claim;

1. A person must be aged at least 16 and working for not less than 16 hours a week if:

* there is a child or qualifying young person (as defined in Reg 2 of the Child Tax Credit Regulations 2002) for whom the person is responsible in accordance with the rules in regulation 3 of the CTC Regulations 2002,

Or

¹¹¹ <https://www.gov.uk/hmrc-internal-manuals/tax-credits-technical-manual/tctm02410>

* the person satisfies the conditions of entitlement for the disability element of WTC i.e. has a disability which puts that person at a disadvantage in getting a job and satisfies the “qualifying benefit” test,

Or

1. The person satisfies the conditions for the 50 plus element of WTC and is working for not less than 16 hours a week. (Note: The 50+ element ceased 6th April 2012)

Or

1. A person must be aged at least 25 and working for not less than 30 hours per week.

Or

1. A person must be aged at least 60 and working for not less than 16 hours a week

Second Variation: In the case of a joint claim where neither person is responsible for a child or qualifying young person, the person:

1. Is aged at least 16 and undertakes work for not less than 16 hours per week and has a physical or mental disability which puts that person at a disadvantage in getting a job and satisfies Regulation 9(1)(c).
2. Is aged at least 25 and undertakes work for not less than 30 hours per week.
3. Is aged at least 60 and undertakes work for not less than 16 hours per week.

Third variation: In the case of a joint claim where at least one partner is responsible for a child or qualifying young person, the person:

1. Is aged at least 16 and is a member of a couple where at least one partner undertakes work for not less than 16 hours per week and the aggregate number of hours for which the couple undertake work is not less than 24 hours per week;
 2. Is aged at least 16 and undertakes work for not less than 16 hours per week and has a physical or mental disability which puts that person at a disadvantage in getting a job and satisfies Regulation 9(1)(c);
 3. Is aged at least 16 and undertakes work for not less than 16 hours per week and that person’s partner is:
incapacitated and satisfies any of the circumstances in Regulation 13(4) to 8; or
an inpatient in hospital;
in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence);
entitled to carer’s allowance under section 70 of the Social Security Contributions and Benefits Act 1992(a); or
1. Is aged at least 60 and undertakes work for not less than 16 hours per week.

Third condition

The work must be expected to last at least 4 weeks after making the claim or, if b. of the first condition applies, after the work starts.

Fourth condition

The work must be done for payment or in expectation of payment.

This means work for an employer in return for wages salary or some other measurable reward

Or

If the person is a self-employed earner, work carried out other than as an employed earner for a reward or profit.

Appendix 5

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Any remaining errors are the sole responsibility of the authors.

We would like to dedicate this report to Chris Jones, the late LITRG vice-chair, who had a real interest and passion for bringing about change in this area. May he rest in peace.