Low Pay Commission consultation on April 2023 National Minimum Wage rates
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

1.1 As a group of tax specialists with interest and insight into the pay and tax issues facing the low-paid, we welcome the opportunity to respond to this consultation from the Low Pay Commission (LPC).

1.2 There is wide consensus that the minimum wage has been a great success – it has (so far) helped raise pay without any significant loss of jobs.[1] An increase from £9.50 to £10.32 (or even £10.50) however, is one of the largest jumps yet – 82p or nearly 9% - around the current rate of inflation.

1.3 While the rise is good news for those who receive it, it means business' costs will increase and prices may well go up to accommodate the rise, which may increase inflationary pressure, which affects everyone. While we are not economists, we are obviously concerned as we think this will impact on low income workers not on the minimum wage who may not have received an inflationary pay rise.

1.4 There are other reasons that drive our concern that care needs to be taken around such a large increase at this time. There is a risk that employers facing higher labour costs as a result of the NLW, who can't put up their prices, may turn to devices such as reducing jobs, hours or perks, to help them protect their profitability. This isn't our area of expertise, but it is foreseeable that there may come a point at which raising the minimum wage (including the extension of the NLW to lower age ranges) will have an unacceptable negative effect on employment (given there is already some tolerance of job loss), which may be difficult to reverse.

[1] https://economy2030.resolutionfoundation.org/reports/low-pay-britain-2022/

CHARTERED INSTITUTE OF TAXATION
30 Monck Street, Westminster, London, SW1P 2AP

REGISTERED AS A CHARITY NO 1037771

Tel: +44 (0)20 7340 0550
E-mail: litrg@ciot.org.uk

Web: www.litrg.org.uk

UK REPRESENTATIVE BODY ON THE CONFEDERATION FISCALE EUROPEENNE

1.5 We have for some time raised concerns about certain practices which are detrimental to workers such as the skimming of holiday pay[2] and simple minimum wage underpayments. We are also concerned about the 'false self-employment'[3] of workers to avoid the minimum wage altogether. There is a risk of these practices increasing if employers are under more pressure to cut costs. The fact the Single Enforcement Body has yet to materialise and there is no clear timetable for when this may happen, does not send out a strong deterrent message to employers who may be considering turning to such practices.

1.6 We would also recommend that any future increases in the minimum wage should be considered in the context of their interactions with tax, National Insurance and other systems, such as student loans, universal credit and tax credits. Currently some workers may not feel much of the benefit of minimum wage increases in their pockets, which is regrettable if significant increases now start having unintended consequences. We share an example, where there is a marginal deduction rate (which measures the impact of earning an additional £1 on tax and benefits) of 67% on a minimum wage increase from £9.50 to £10.50.

1.7 There may be better ways of supporting the lowest paid workers which could be explored in addition to or instead of simply increasing the minimum wage. We also point out that even people that are not on the minimum wage can be impacted by changes to the minimum wage and this needs to be factored into decision making about any increases, so that low paid workers are not detrimentally affected by indirect consequences of any increases.

1.8 For example, the minimum income floor policy (MIF) in Universal Credit (UC), which assumes a notional level of income for self-employed claimants whose earnings fall below a threshold, is directly linked to the NLW. Effectively, this means the higher the NLW, then the higher the MIF is set. Because the MIF creates an artificial level of income that is used to calculate the UC award, the higher that MIF figure, then generally the lower the UC award. This may well be detrimental for self-employed workers who cannot simply increase their income in response to a minimum wage increase.

1.9 In terms of compliance and enforcement, we think HMRC need to improve enforcement of the minimum wage. HMRC do compliance work in this area and indeed publish a 'name and shame' list of employers who breach NMW rules – however the list seems to include quite a few employers which very small underpayments per worker which may be indicative of minor or less serious breaches. We suggest that workers would benefit more if HMRC concentrated on arguably more serious and complex cases involving 'worker' status ('workers' as well as employees are entitled to the minimum wage) and false self-employment.

---

[2] For example, umbrella companies hold back earnings from workers and put it in a pot to cover holidays. When the worker takes a holiday, they get paid from the pot. If, however, at the end of the employment, the worker has not used all the holiday pay they have saved in the pot, some umbrella companies retain it, rather than pay it out.

[3] Treating a worker as self-employed when the true nature of his/her engagement is that of employment.

1.10 In terms of guidance to help support compliance, the minimum wage manual that used to be available to employers in PDF, but which has now been removed, also needs to be reinstated. We know from experience that when trying to research something that may be difficult and technical, employers may favour PDFs to support them in this.

1.11 With an ageing population and ubiquitous 'live in' care arrangements (some of which are actually on a falsely self-employed basis, which HMRC NMW enforcement officers need to deal with urgently) we would like to see some sector specific enforcement work and clarification around things like the interaction between the accommodation offset and sleep-in shifts.

2 About Us

2.1 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.

2.2 LITRG works extensively with HM Revenue & Customs (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.

2.3 The CIOT is a charity and the leading professional body in the United Kingdom 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

3.1 As tax specialists with an interest and expertise in problems facing the low paid, we are pleased to be able to input into the LPC's work.

3.2 We have commented only on questions that we feel are relevant to LITRG's audience, which is taxpayers who are unable to afford professional advice. We generally refer to these taxpayers as 'unrepresented taxpayers' throughout this document.

3.3 Generally speaking, the views contained within this document have been formed from our collective experience, by which we mean:

- Dealing with queries that are received from the general public via our website.[4]
- The experiences of LITRG staff and panel members from working in practice either before or alongside their work with LITRG,
- The experiences of LITRG staff and panel members in a volunteering capacity for the tax charities.[5]
- Anecdotal evidence fed into us by the tax charities directly.

3.4. We obviously welcome the existence of the minimum wage; however, we think it is impossible for those on low incomes to consider their overall financial position without understanding the position of their engager and how their pay will interact with not only tax and National Insurance but also in-work benefits and other welfare entitlements.

3.5. One of our main roles is therefore to analyse the different systems that the low paid come into contact with, to try and understand and flag potential interactions, and how changes in one system may have an effect elsewhere.

3.6. Furthermore, from our contact with workers and our research into their problems, not to mention our understanding and experiences of the inner workings of HMRC, we feel we have a good understanding of what is happening in practice in the lower-paid part of the labour market and why.

3.7. Taking all this together, we feel we can add most value by making some fairly high-level comments under the following broad themes:

- Economic outlook – while we have some high levels concerns about the minimum wage rise contributing to inflationary pressure which means more and more people finding it difficult to buy the goods and services that they need, this is not our area of expertise, so here we focus on outlining some concerns about potential employer reactions to a large increase in the minimum wage

- The NLW – in particular, how increases may not translate into pockets of the lowest paid and may indeed impact other workers not on the minimum wage

- Compliance and enforcement – observations around HMRC NMW's focus and an observation around the format of a key employer manual to aid compliance

- The accommodation offset – what is the situation in the live-in care sector?

3.8. We are happy to discuss any aspect of our response in more detail if that would be useful.

4 Economic outlook

[4] www.litrg.org.uk. We do not provide specific casework, but signpost taxpayers to relevant guidance and resources.

[5] References to the tax charities refer to TaxAid and Tax Help for Older People.

4.1 We welcome the government's bold ambitions for the minimum wage. However, we would urge caution, particularly given all the 'shocks' to the economy such as Brexit, Covid and the Ukraine war that now seem to be culminating in a tight labour market, volatile economic growth and inflation.

4.2 Many employers will have already been contending with difficult trading conditions and increasing cost and may struggle to absorb any further increases. We are concerned about the extent to which low-income workers who are due an increase will be impacted as a result of any changes in behaviour by their employers.

4.3 The general consensus seems to be that the negative effects of increases to the minimum wage have, to date, been minimal[6]. However, it is not known at what point raising the minimum wage (including the extension of the NLW to lower age ranges) will have an unacceptable negative effect on employment (given there is already some tolerance of job loss), which may be difficult to reverse.[7]

4.4 The issue is that increases in the minimum wage obviously mean that extra costs are borne by the employer – not just the prima facie rate rise - but also employer's National Insurance contributions (NIC), holiday pay and pension contributions based on the higher rates.

4.5 This could end up in 'trade-offs' like employers offering fewer hours (with potential knock on consequences on working tax credit (WTC) claims and any other provisions that are based on number of hours worked[8]) and/or removing or changing certain perks. It could end up in employers offering work on less favourable or less secure terms, zero hours contracts for instance, which can help employers manage their costs, but which have a detrimental effect on people's ability to plan and feel financially secure.

4.6 It may also result in employers trying to skim holiday pay (as is often a problem for agency workers who work through umbrella companies[9]) or plain underpayment of the minimum wage. The fact the

[6] https://economy2030.resolutionfoundation.org/reports/low-pay-britain-2022/

[7] In December 2021 the IFS said (https://ifs.org.uk/publications/15875): 'The NLW will rise to £9.50 in April and the government is committed to raising it to two-thirds of the median wage by 2024. The Low Pay Commission expects this to be around £10.60 in 2024, a level which – compared with average earnings – would be amongst the highest in OECD countries. While our results are reassuring, we cannot rule out that increases to this level would result in larger increases in unemployment. Effects should continue to be monitored carefully.'

[8] Although in UC a person does not need to work a set number of hours like they do to qualify for WTC, 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.

[9] https://www.bbc.co.uk/programmes/m000tcl7

Single Enforcement Body, which was going to be tasked with bringing together three existing enforcement bodies[10] but also taking on the regulation of holiday pay and umbrella companies, has yet to materialise does not send out a strong deterrent message to employers who may be considering turning to such devices. Indeed, rather than implement some of the desperately needed changes to improve the outcomes for workers in the round, the government has launched yet another review into the future of work.[11]

4.7 We think there is a particularly high risk of minimum wage underpayment in the care sector where there are underlying structural issues around under funding. Most care work is procured from private service providers by local authorities. However huge cost pressures are effectively being pushed onto private service providers, who in turn have to find ways to operate at a lower cost. Care workers are already likely to be at risk of being underpaid the NMW because of non-payment of their travel time and expenses[12]. We worry that this issue of underpayment is only set to get worse if there are big increases in the minimum wage (as against the private service providers' constrained income).

4.8 From our considerable involvement with voluntary organisations and via feedback from members of the public to our website, we also strongly believe there is an increasing problem with the 'false self-employment' of low-paid workers[13]. Historically, employer's NIC has tended to be the driving force behind false self-employment; however, we think that avoidance of work protections, including the minimum wage, may now be playing a part.

4.9 Taking on someone as self-employed rather than as an employee has all sorts of advantages for an engager, including not having the fixed costs and obligations of an employer. The problem with an employer who treats someone as 'self-employed' in order to avoid certain costs and obligations is that this self-employed label can act as a gateway to other problems for workers. For instance, making someone self-employed to avoid the minimum wage means they probably won't have the certainty of having their taxes dealt with under PAYE, will probably be denied holiday or appropriate rest breaks. As there will be no secondary contributor for NIC purposes, they will not be entitled to paid sick leave and other statutory leave/entitlements. In addition, they may not have 'right to work' checks, meaning people may end up working illegally and they also may end up working for engagers who don't have Employer's Liability Insurance.

---

[10] HMRC National Minimum Wage/National Living Wage (NMW/NLW), Gangmasters and Labour Abuse Authority (GLAA) and the Employment Agency Standards (EAS)

[11] https://www.gov.uk/government/publications/future-of-work-review-terms-of-reference

[12] As explained in our report: https://www.litrg.org.uk/latest-news/reports/180502-care-workers-%E2%80%93-challenges-tax-and-benefits-system

[13] We focus on this issue in much of our response to the recent employment status consultation (https://www.litrg.org.uk/latest-news/submissions/180531-employment-status) and look at what may be driving such behaviour on the part of engagers. Within that response, we include a selection of queries that we have received from workers presenting potential false self-employment.

4.10 This raises difficult questions – on the one hand, we appreciate how important a decent pay rise can be every year, in terms of morale and productivity. On the other hand, there is an important balance to be found to ensure employers don't react in a way that leaves workers even worse off.

5 The NLW

5.1 The introduction of the NLW has no doubt hugely benefitted some low-income workers who are really struggling (including some workers paid above the NMW levels, due to 'spill-over' effects). However, in-work poverty rates are the highest they have ever been.[14] Indeed, LITRG regularly hear from low-paid workers who, despite the NLW and subsequent bold rises, seem to be experiencing severe deprivation, stress and strain as they try to make ends meet.

5.2 We recognise that there are many reasons for this, including:

- having a good hourly wage does not guarantee a good weekly or monthly wage if people are not given the hours,
- people are in precarious/insecure employment,
- the fact the minimum wage does not cover the self-employed, and
- high costs of living - for example, because of having children or high housing costs.

5.3 But we think there may be another reason: the interactions that exist between the minimum wage and tax and benefits systems mean that NLW does not necessarily translate into cash in the pockets of low-paid workers.

5.4 For example, higher pay means things like paying tax (usually 20% on anything over £242 a week in 2022/23), National Insurance (13.25% on anything over £242 a week from July 2022) and paying more in pension contributions (up to 5% of your wages over £120 a week – although, if you are lucky, some of this may be made up from tax relief). A large minimum wage increase may mean that people in full time NLW jobs (£10.32 x 40 hrs x 52 weeks) will have an annual wage higher than plan 1 and postgraduate student loan thresholds.[15]

5.5 It may also impact on the amount of in-work benefits you receive, as the higher your wages, the less you get in benefits. For universal credit (UC) purposes, there is a 55% withdrawal rate on 'net' income over your work allowance (up to £573 per month). For working tax credit (WTC) purposes, there is a 41% withdrawal rate on 'gross' income over £6,770 a year.[16]

[14] As set out here: https://www.jrf.org.uk/data/poverty-rates-working-age-adults-working-households-region

[15] https://www.litrg.org.uk/tax-guides/students/student-loans

[16] Although tax credits are gradually being replaced by UC, the transition is still ongoing, meaning that tax credits are still available to claim in some limited circumstances and may continue for some existing claimants.

5.6 To use a very basic illustration: Jenny, 35, a lone parent, usually works around 25 hours a week in a pub, at the minimum wage. At £9.50 per hour there is no tax or NIC (earnings of £237.50 per week). Because she is on a low income, Jenny receives UC of £286.93 per UC assessment period.[17,18]

5.7 If her hourly rate were to rise to £10.50 an hour (say) (£262.50 a week), then, based on current rates, her award would be £236.91 per UC assessment period. At £10.50 an hour, there is also tax and NIC at 33.25% on her earnings above £242 per week (£6.81 per week).[19]

5.8 So, of her £125 increase in terms of gross earnings during her UC assessment period, the true value of the minimum wage increase to Jenny is only £40.93. The Treasury receives the remaining amount (£84.07) in reduced welfare payments (£50.02) and increased income tax and NIC revenue (£34.05). Her marginal deduction rate on the £125 is 67%. And this is before we consider whether she might lose any passported benefits.

5.9 While we appreciate that this situation is in many ways inevitable if we are going to shift to a high-wage, low-welfare economy, welfare benefits are always going to be required to support some people (particularly those with limits on their capability to work, children or other caring responsibilities). In addition to or instead of simply just increasing the minimum wage, there would seem to be some small, practical steps that could be taken to ameliorate the positions of workers by allowing them to keep a little more of their pay in their pockets – for example, increasing the scope and level of the work allowances in UC for the minimum wage increases.[20]

5.10 There are other, less obvious, ways that the minimum wage system and tax/welfare benefit systems collide. For example, one of the conditions for carer's allowance (£69.70 per week in 2022/23) is that you must not earn more than £132 a week. Therefore, if you are working 16 hours at the NLW of £9.50 per hour (which you may need to do to claim working tax credit) you could lose all of your carer's allowance as your earnings would be £152. Many unpaid carers rely on the financial support of carer's allowance and this unfortunate interaction can have a negative impact on them. We have

---

[17] She is entitled to maximum elements of £334.91 (basic) + £290 (child) of £624.91 per month. We have assumed she is not entitled to any housing costs element. Her monthly income of £1,187.50 is over the work allowance of £573 by £614.50. This means her award is reduced by £337.97 [(£1,187.50 - £573) x 55%].

[18] We have assumed for the purposes of this example that Jenny has five pay days in each UC monthly assessment period. However, in some months she may have four pay days.

[19] Her net monthly income of £1,278.45 is over the work allowance of £573 by £705.45. This means her award is reduced by £387.99 [(£1,278.45 - £573) x 55%].

[20] The work allowance in universal credit is the amount a claimant can earn before their benefit starts to be progressively withdrawn.

repeatedly called for the uprating of the carer's allowance earnings threshold to match 16 hours x NLW each year.[21]

5.11 We would also point out that people that aren't on the minimum wage can be impacted by the increases to the minimum wage. It can stop people earning slightly above it being able to salary sacrifice into their pension for example, as employers must put procedures in place to cap salary sacrifice deductions and ensure minimum wage rates are maintained. We think increases may also interact with the Conditionality Earnings Threshold (CET) in Universal Credit (explained in footnote 8) – some further work should be done to fully understand any consequences.

5.12 Self-employed claimants of Universal Credit (UC) are also impacted by increases to the NLW. The Minimum Income Floor (MIF) rules treat people as earning a certain amount, even if they haven't.[22] To work out your MIF you need to multiply the minimum wage for your age group by the number of hours you're expected to work. If the minimum wage goes up, this means the MIF goes up, and the amount of UC that self-employed people subject to the MIF can get will be reduced accordingly.

5.13 The MIF already penalises those who have fluctuating incomes and those who have big business expenses that fall in one month rather than spread over the year, meaning they may get little or no UC.[23] Making the policy even harsher by increasing the amount they are deemed to have earned even if they haven't, seems unfair and unrealistic when the low paid self-employed cannot simply increase their income in response to a minimum wage increase.

5.14 We note the following extract from a recent Resolution Foundation report on low pay in 2022[24]: '*In the 2019-20, 38 per cent of self-employed workers had low hourly pay (on the two-thirds of median measure), compared to 14 per cent of employees. This amounts to 1.6 million self-employed workers on low hourly pay, a third of the total low hourly paid workforce. This share has grown rapidly over the past 20 years. And while low pay is falling for employees, it is flat among the self-employed – and rising when it comes to low weekly pay.*'

5.15 Before any further minimum wage increases are introduced, there needs to be a fuller assessment/understanding of how other systems interact with the minimum wage.

6 Compliance and enforcement

[21] https://www.litrg.org.uk/latest-news/news/180711-press-release-unpaid-carers-action-plan-does-not-go-far-enough-says-litrg

[22] The MIF doesn't affect all self-employed universal credit claimants – some may have sufficiently high earnings, which mean the MIF is not applied and some will be exempt from the MIF, at least temporarily.

[23] See the calculations that we have prepared here: https://www.litrg.org.uk/latest-news/reports/171030-self-employed-claimants-universal-credit-%E2%80%93-lifting-burdens

[24] https://economy2030.resolutionfoundation.org/reports/low-pay-britain-2022/

6.1 We think HMRC need to improve enforcement of the minimum wage. Our perception is that HMRC are still focussed on 'low-hanging fruit' within an employment setting. HMRC's naming list certainly suggests that HMRC enforcement officers' caseloads are tilted towards 'broader' cases where a greater number of workers have been underpaid a smaller amount.

6.2 For example, on the recent list from December 2021, 208 employers were named. The Government figures show that a large proportion (37%) of NMW breaches were for incorrect deductions from employee wages, including for costs and expenses of acquiring and maintaining uniforms.[25] The company at the top of the list underpaid its 3600 staff by an average of £42 each, which implies the employer had fallen into such a pitfall.

6.3 We think HMRC now need to turn their attention to the arguably more complex and serious breaches of minimum wage rules that tend to go hand-in-hand with 'false self-employment' (see section 7). We also have concerns regarding HMRC's ability to handle 'worker' minimum wage cases, for example, those in the gig economy.[26] On the December 2021 list, only 4 employers were on the list for 'worker status error'.[27]

6.4 We do not condone an employer paying someone less than the minimum wage but focussing on employers and cases of genuine confusion or misunderstanding where the resulting underpayments are small and, of themselves, probably do not cause significant worker detriment does nothing to help those workers whose employers are recklessly or consciously underpaying the minimum wage.

6.5 At present, guidance for employers trying to be compliant is not sufficient – not just in substance (as we have commented on in our previous submissions) but in format now also.

6.6 We have recently become aware that the PDF version of BEIS's extremely important minimum wage manual for employers[28] has been removed. There is now only an HTML version available.

6.7 We appreciate that PDFs have some disadvantages, for example they are bad for screen readers and for people who need to resize documents for a mobile screen; however, many people find PDFs familiar and easy to use. PDFs also come into their own in respect of large and complex documents

---

[25] https://www.gov.uk/government/news/over-200-employers-called-out-for-falling-short-of-paying-staff-the-minimum-wage and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039498/R18_Education_Bulletin_-_salaried_hours_final.pdf

[26] Gig economy workers seem to have many of the characteristics of self-employment (e.g., they decide when they work and use their own tools), but they often have less autonomy than genuinely self-employed people and may derive all or most of their income from the business that they work for. Thus, many may well fall under the definition of 'worker' and be entitled to the minimum wage.

[27] Worker status error is defined in the educational bulletin as follows: 'This includes instances where the worker is incorrectly treated as self-employed, or an unpaid intern that should be classified as worker'

[28] https://www.gov.uk/guidance/calculating-the-minimum-wage

that are often printed off and used frequently for reference. Employers for instance, may want to print off BEIS's minimum wage manual to have at their fingertips.

6.8 But the manual in HTML is now split into different sections with expandable sub-sections with no cover page, no contents page and no page or paragraph numbering. The problem is that it makes it extremely hard to get an overview of what is in the manual (and the search bar can be easily missed). We are worried that employers, who can't see at a glance that what they are trying to research is covered in the manual, will just give up. Ctrl-F only works if the sub-section is expanded (or unless you click 'expand-all' but this is also easily missed). It also means that it is not easy for an employer to compare information across different versions of the manual to be able to identify change.

6.9 This is concerning given employers have many obligations to meet with regards to the minimum wage and need to be able to find information to help them meet their obligations quickly and easily (and to be able to demonstrate that they have done so). There are a number of employers that are 'digitally excluded' as evidenced by the exemptions available from Real Time Information (RTI) payroll reporting[29]. They rely on being able to 'hold it in the hand' rather than just being able to see it on screen.

6.10 It is vital that a sensible PDF version of this document is made available alongside HTML. To be clear – we do not think that this is just because it is nice to have, but because it is an important tool in helping employers to be compliant with the requirements imposed on them.

7 Accommodation offset

7.1 One sector we are aware of where employers provide accommodation to workers is the care sector, where 'live in' care arrangements have become ubiquitous.

7.2 There has been a rise in the numbers of people being given Government funding via personal budgets, etc. to engage the services of a PA. There are also self-funders. At the same time there seems to have been a increase in 'live in' carers for people who need around the clock support in their own home. This has been facilitated and promoted by introductory agencies and independent living groups.

7.3 Where employers are treating their live in workers as employed, there are questions in our minds over whether the minimum wage is being dealt with properly – particularly given the fact there are sleep in shifts and accommodation offset complexities and interactions. We also note the potential for the incorrect application of domestic worker exemption.

[29] https://www.gov.uk/guidance/find-out-which-employers-are-exempt-from-online-payroll-reporting

7.4 More worrying however, is the fact that many live in care workers are being treated as self-employed incorrectly. We explain more in our article written for a technical journal attached as Appendix 1.

7.5 This self-employed 'model' is obviously very attractive as it can mean people's money goes further. But it is also very likely to be non-compliant from a range of perspectives including minimum wage, tax, employment law and health and safety (from cases we have heard about there can be serious working time/rest break issues). It carries inherent risks for both the person being cared for (if the usual 'employee' type recruitment checks aren't done) and the worker - the isolated nature of work in private houses places these workers at a distinct disadvantage.

7.6 We think the live in care sector needs to be urgently investigated by HMRC's NMW team (as well as HMRC tax, the EAS, Health and Safety and any other enforcement bodies involved).

7.7 We sympathise with HMRC's NMW team that these worker status error type cases are time-consuming and difficult to investigate – particularly as there will not usually be any official 'employer' data to scrutinise as a starting point. But this does not mean that they should not be undertaken where appropriate. Indeed, it seems to us vital that HMRC do undertake this work – and urgently. As well as undertaking the work, HMRC should publicise this to act as a deterrent for other employers carrying out similar practices. Not just for workers but to prevent a large problem building up which could ultimately result in vulnerable elderly and/or disabled people facing huge arrears demands, being named and shamed and given penalties.

LITRG
20 June 2022