

Government Equalities Office
Returning to work after time out for caring – a Government call for evidence
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 We welcome the opportunity to respond to this consultation on the barriers to returning to work after time out for caring. We are responding specifically on behalf of carers of older or disabled people who try and juggle their caring duties alongside a return to work – a group we have particular knowledge of through their communication with us on various issues such as Carer’s Allowance.
- 1.2 The LITRG is not a carer organisation. Our brief is to focus on tax and related benefit matters as they affect the unrepresented, including carers on low incomes. We have therefore not answered the specific questions in the online survey but rather offer general comments which we hope, when taken together with responses from others, will be useful input to the consultation.
- 1.3 The purpose of our response is to highlight what we see as some current barriers to work for returners, such as needing to use paid care workers for appropriate replacement care, and making recommendations as to how to reduce such burdens across a segment of the system with which we are familiar, including income tax, National Insurance contributions (NIC) and tax credits.
- 1.4 Specifically, for employees, we highlight that a return to work may be shaped by their ability to find work that fits around their caring duties.
- 1.5 There is also an issue around eligibility for Carer’s Allowance if you are in part-time work. From April 2017, someone aged 25 or over working 16 hours on the minimum wage will earn

£120 per week. However, Carer's Allowance has an earnings limit of £116 meaning this person is at risk of losing all of their Carer's Allowance. A person in this position may be tempted to cut their hours so that they still qualify. However, depending on their circumstances, cutting their hours to below 16 could mean they no longer qualify for working tax credit (WTC).

1.6 This is confusing and unfair and may be acting as a disincentive to returners. There is also a lack of guidance on permissible deductions from earnings on GOV.UK that could help people retain their Carer's Allowance payment when moving into work.

1.7 We also note the problems that may exist for those in self-employment, given their activities may be on a small scale. Indeed, the introduction of new rules around self-employment within Universal Credit (UC) may be a problem for returners who are trying to balance work with their caring duties because a minimum level of income from self-employment may be assumed (the 'Minimum Income Floor' (MIF)); even if their actual income is lower than this. The MIF can result in less UC support than they might otherwise have received.

1.8 Our recommendations therefore include:

- With input from specialist external organisations, such as carers' charities, the Government should consider what specific policy interventions might be appropriate to encourage *genuinely* flexible working and to create carer friendly workplaces.
- Replacement care will often need to be bought in to help carers return to work, however there are well known problems for workers in the social care sector such as the non-payment of travel time. We urge the Government to consider how they can improve conditions for paid care workers as this could help relieve pressure on returner carers.
- The earnings threshold for Carer's Allowance should be increased automatically with the uprating of the minimum wage each year so that those aged 25 and over who work 16 hours a week do not lose out. In the meantime, improvements should be made to the Carer's Allowance guidance on GOV.UK for carers thinking about returning to work.
- More could be done to raise awareness of Carer's Credit as this could help low earning carers plug any gaps in their NIC record. The process for claiming it needs to be made as easy as possible – currently the only option for claiming it is an 8-page paper application form.
- HMRC should treat any 'strengthened self-employment test' tax credit cases involving carers sympathetically, taking account of the fact there may be particular circumstances to consider.
- In UC, appropriate training and guidance around carers *must* be given to staff who are going to be taking on the role of key decision makers as this will ensure those with caring responsibilities are not subject to unrealistic conditionality requirements or the minimum income floor if they are self-employed.

- 1.9 We hope that the relevant public organisations, including the Department for Business, Energy and Industrial Strategy (BEIS), HM Revenue & Customs (HMRC) and the Department for Work and Pensions (DWP) will work together to bring about these changes. We are very happy to discuss any aspect of our comments in more detail.

2 About Us

- 2.1 The 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 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 Introductory comments

- 3.1 People who look after family members or friends because of long-term ill health or disability, or care needs related to being elderly, make a vital contribution to society.
- 3.2 Such people may return to work because the person they have looked after has gone into residential care or has died. However, in many cases they will return to work while still caring – this may be because they 'want to have a life outside caring', because they need the money or because the benefits system requires them to do so.¹
- 3.3 Through returning carers contacting us via our website for help and advice – mainly in connection with Carer's Allowance, and through our understanding and experiences of the system in general – we have some insight into their needs and concerns and know that

¹ For example, under UC, carers caring for less than 35 hours per week and those caring for someone who is not 'severely disabled' may have some 'work-related requirements' unless the decision maker decides that there are special circumstances which would mean it would be unreasonable for them to have to meet these requirements.

problems can occur for them in relation to four primary areas that lie within our area of interest and expertise:

1. The employment landscape
2. Organising replacement care
3. Minimum wage interaction with Carer's Allowance and tax credits
4. Self-employment.

3.4 In our response, we have not addressed each of the individual questions as many cover topics outside of our field of knowledge and there are several other organisations who are better placed than us to comment. We feel we can make the best contribution by providing some broad comments, as a body representative of low-paid workers, including returning carers, which we feel are relevant to this consultation and which we hope will inform the Government's next steps.

4 The employment landscape

- 4.1 Re-entering the world of work can be very daunting. A returning carer may be concerned about the availability of suitable work and/or having an understanding employer who recognises their caring role. Back in 2001, only two thirds of working carers (but only about a half of those working in the private sector) said their employer was supportive and 'carer-friendly'.¹
- 4.2 The labour market has since changed with a reduction in permanent, direct employment and a growth in temporary roles, sub-contracting, etc. (the Director of Labour Market Enforcement talks of '*the fissuring of employment relationships*'²). LITRG are very concerned about the impact that growing non-standard working practices such as zero hours contracts or temporary agency work have on the low-paid.
- 4.3 It seems to us that arranging flexible hours, days or special leave so as to fit work around caring duties may be more difficult (or even impossible) to manage in such non-standard work where you have little bargaining power – particularly as the right to request flexible working is an employment law right that currently accrues only to 'employees' and not 'workers'³ – zero hours contract workers and agency workers generally fall into this latter category and so cannot benefit from that statutory protection.
- 4.4 Of note are the numerous times that carers are referred to in the *Matthew Taylor Review*, however no detailed policy recommendations are put forward apart from the following:

¹ <http://www.sociology.leeds.ac.uk/assets/files/Circle/carers-uk-report-2.pdf>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/632074/labour-market-enforcement-strategy-2018-19-summary-of-issues.pdf

³ <https://www.gov.uk/employment-status/worker>

'As part of the statutory evaluation of the Right to Request Flexible Working in 2019, Government should consider how further to promote genuine flexibility in the workplace. For example, it should consider whether temporary changes to contracts might be allowed, to accommodate flexibility needed for a particular caring requirement. Government should work closely with organisations like Timewise and Working Families to encourage flexible working and initiatives like "happy to talk flexible working" to a wider range of employers.'

- 4.5 **Recommendation: With input from specialist external organisations, such as carers' charities, the Government should consider what specific policy interventions might be appropriate to encourage genuinely flexible working and to create carer friendly workplaces.**

5 Organising replacement care

- 5.1 Returner carers, who are dependent on paid care workers to provide replacement care so they can work, may find feel unwilling or unable to recruit appropriate care workers. From Kingsmill¹ to Cavendish² to Burstow³, a series of recent reports and reviews have outlined the crisis in the social care sector and the problems of demoralised and undervalued care workers.
- 5.2 Many of the issues around paid care workers are very complex, given that the operation of the sector is largely dictated by central funding and local authority commissioning practices. However, some of the things that could help improve things for paid care workers are actually straightforward, such as dealing with the problematic issue of travel time for minimum wage purposes.
- 5.3 The Resolution Foundation found in its report on *'The scale of minimum wage underpayment in social care'*,⁴ that around 160,000 care workers (or 11%) were earning less than the minimum wage in 2013/14 due to the failure of employers to pay homecare workers for their travel time. It further estimated the average underpayment as £815 per worker for 2013/14.

¹ https://www.policyforum.labour.org.uk/uploads/editor/files/The_Kingsmill_Review_-_Taking_Care_-_Final_2.pdf

² <https://www.gov.uk/government/publications/review-of-healthcare-assistants-and-support-workers-in-nhs-and-social-care>

³ <https://www.lgiu.org.uk/wp-content/uploads/2014/12/KeyToCare.pdf>

⁴ <http://www.resolutionfoundation.org/publications/the-scale-of-minimum-wage-underpayment-in-social-care/>

- 5.4 Many care workers also do not get their travel costs reimbursed, eroding their precarious financial positions yet further, as is well illustrated by this correspondent to our mailbox:

'I'm a care worker. My contract is zero hours, basic pay £6.53ph + 0.67ph holiday pay. The job advert specified a car was required. In the induction we were advised petrol costs would be covered by HMRC under the P87 system; however, this will not materialise as we earn under the taxable limit. In 13 weeks I have paid out over £250 for travel to clients but I will never receive any reimbursement for petrol costs. I'm using my credit card to pay for fuel.'

- 5.5 **Recommendation: There are wide benefits to a more satisfied and stable workforce not only in terms of a better quality of care for vulnerable people but also in terms of the relief of pressure on informal carers. We would the Government to consider how they can best address such problems within the social care sector.**

6 Carer's Allowance and the minimum wage/tax credits

- 6.1 There are a range of complex benefit issues to consider when a carer returns to work – for example while some benefits may stop because of increased income, they may start qualifying for others.¹
- 6.2 In general, we think that the Government should do more to ensure that carers get expert advice from a welfare rights specialist at a local advice agency before returning to work so that they understand the full impact on their benefits. This may also help identify any unclaimed benefits and support that they or the person they care for may be entitled to in order to help them in their return to work.
- 6.3 More specifically however, there is a particularly harsh interaction concerning tax credits, the National Minimum Wage (NMW) and Carer's Allowance that will affect those returning to work. We think the Government should address this urgently.
- 6.4 Carer's Allowance, which provides valuable financial support to carers is not means tested as such, however there is a cap on how much you can earn from work (employment or self-employment) and still be entitled to Carer's Allowance. In theory, this facilitates people to continue to receive Carer's Allowance during the, often difficult, transition from caring to work, which is most helpful.
- 6.5 In 2017/18, in order to get Carer's Allowance your earnings *after allowable deductions* must be no more than £116 per week. This creates a disturbing cliff edge and means that this correspondent to our mailbox misses out on Carer's Allowance by just £1 (unless she has any deductions that can be made from her earnings – more on this later):

¹ For an illustration, see here: <https://www.theguardian.com/commentisfree/2016/jun/16/jobcentre-advisers-pressure-work-carer>

'Hi, I'm a carer working in 2 jobs to make ends meet. My earnings vary due to my son's illness as to what hours I work weekly but [I] usually have a take home pay of £117, sometime slightly more. Due to working unsociable hours I [take a] taxi home. Are these costs taken into consideration at all or do you have any other idea of any expenses I could take off? regards' (sic)

- 6.6 Since the introduction of the National Living Wage (NLW) for those age 25 or over (which, we recognise is good news for many) those working just *16 hours* at the NLW risk losing all of their Carer's Allowance. Of course, a person in this position could cut their hours so that they still qualify, however depending on their circumstances, cutting their hours to below 16 could mean they no longer qualify for another vital strand of financial support – WTC.
- 6.7 There are different deductions¹ that can be made from earnings to help a person retain Carer's Allowance payments without having to cut their hours. One of the deductions is 'an expense that is not repaid to an employee by the employer if it is incurred in the performance of the duties of the employment and is wholly, exclusively and necessarily incurred' – the type of expenses that qualify, such as professional subscriptions, business mileage or specialist clothing are, in our experience, quite commonly incurred.
- 6.8 Being aware of the 'employment expense' rule may give more people the opportunity to work part time and still qualify for Carer's Allowance, however no mention is made of this rule on GOV.UK.² Further, we recognise that the problematic minimum wage interaction will still affect many – causing them a significant loss of income and even facing the choice between giving up work or losing their benefits.
- 6.9 **Recommendation: The earnings threshold for Carer's Allowance should be increased automatically with the uprating of the NLW each year so that those aged 25 or over and working 16 hours do not lose out. In the meantime, improvements to the guidance on GOV.UK for carers should be made.**
- 6.10 Where people are able to retain their Carer's Allowance while working, it is also worth highlighting the confusion and misunderstanding that can arise because Carer's Allowance is taxable (although most carers will only have to pay tax on it if they have other sources of

¹ The full list of deductions includes:

- Income tax and NIC.
- Half of any contributions that you make into a work or personal pension.
- An expense that is not repaid to an employee by the employer if it is incurred in the performance of the duties of the employment and is wholly, exclusively and necessarily incurred (in that same way that they are deductible for income tax purposes).
- You can also take off up to half of your earnings (after the above deductions if they apply) for amounts you pay to someone to look after either a child under 16 who you or your partner get child benefit for, or the person you are the carer for, when you are at work (so long as you pay someone other than a close relative).

² <https://www.gov.uk/carers-allowance/eligibility>

taxable income such as occupational or personal pensions or part-time earnings, and if this combined income takes them over the threshold for paying tax).

- 6.11 We looked at the considerations around Carer's Allowance being taxable in detail in our response to the Department of Health's consultation on 'unpaid carers'¹ and while we do not propose to repeat the detail here, our recommendations included:
- Raising awareness of the fact that Carer's Allowance is taxable and how tax is collected, for example by stating it clearly in the award letter with some worked examples.
 - Amending the wording on the starter checklist² to make it clear that Carer's Allowance is a taxable benefit, thus enabling tax to be collected (as required) under the Pay As You Earn (PAYE) system.
 - Giving a P60 type statement of the taxable amount of Carer's Allowance at year end to help people understand exactly how much they have received and complete any tax forms accurately.
- 6.12 Finally, it is worth noting that Carer's Allowance is treated as 'unearned income' for UC meaning a person's UC award is abated pound for pound for their Carer's Allowance (one cancels the other out). However, UC includes a carer element to support carers on a low income who provide unpaid care for a severely disabled person for at least 35 hours per week.³ This element will be paid in addition to the claimant's standard UC entitlement meaning that carers can receive some recognition for their caring duties within their UC award.
- 6.13 We hope that the Government will do everything it can to encourage people that are entitled to it, to claim this help in UC.

7 Self-employment

- 7.1 Some carers find that running their own business/being self-employed is a good way of re-entering the labour market, as it allows them to manage their own time and often means they can work from home. However, this comes with all the associated reporting requirements that being self-employed entails. For example, they will need to register for Self-Assessment (even if their overall income is below the personal allowance), prepare accurate accounts and annual tax returns, keep fastidious records of income and their

¹ <https://www.litrg.org.uk/sites/default/files/files/160729-LITRG-response-Unpaid-carers-FINAL.pdf>

² An employer uses this form to gather information they need about a new employee for PAYE purposes.

³ <http://www.legislation.gov.uk/ukxi/2013/376/regulation/30/made>

expenses,¹ potentially calculate their own tax and Class 2 and 4 National Insurance liabilities and budget to make those payments.

- 7.2 For those we represent, these can be onerous responsibilities. We suggest that it is not always clear or easy for people to find out about and understand their responsibilities and this has worrying consequences. There are other issues too, related to the fact that self-employment for carers can be on a very small scale.

7.3 **National Insurance costs**

- 7.3.1 Under proposed changes to the self-employed National Insurance system, Class 2 National Insurance is to be abolished. This will result in the lowest earners among the self-employed potentially paying five times more than they do now to secure entitlement to a state retirement pension. Alternatively, there is a risk that they will decide not to make these expensive voluntary NIC payments due to the increased cost and will therefore fail to build up enough provision for retirement and will rely more on the state for assistance.

- 7.3.2 National Insurance credits might be available to help plug any gaps in a National Insurance record for those in low paid self-employment (or indeed, employment²) – however it is worth remembering that many in work may struggle to access Carer's Allowance, which brings with it an automatic NIC credit. While Carer's Credit³ may be available to help fill any gaps in a person's National Insurance record for those caring and working at the same time (and not entitled to Carer's Allowance), this is not an automatic credit and needs to be claimed – and we understand that take up is extremely low.⁴

- 7.3.3 We do not go into any further detail on these proposed changes to Class 2 NIC here as it is unclear as to whether they are going ahead,⁵ however for more insight as to the potential impacts, we can point you to a recent Guardian article (in which LITRG are quoted): *'New bombshell for self-employed: pay 400% more NIC...or lose state pension'*.⁶

¹ As with employment income, there is no tax deduction for the costs incurred of buying in replacement care. We would like to see this changed.

² Employees have to meet the Lower Earnings Limit – currently £113 per week.

³ <https://www.gov.uk/carers-credit>

⁴ <https://www.carersuk.org/news-and-campaigns/news/carers-uk-responds-to-low-take-up-of-carer-s-credit>

⁵ This was one of the items that was dropped from Parliament to make way for the general election and it doesn't seem to have been picked back up, per the list of current bills:
<https://services.parliament.uk/bills/>

⁶ <https://www.theguardian.com/money/2017/mar/18/national-insurance-self-employed-400pc-more-contributions>

- 7.3.4 **Recommendation: Meanwhile, we think more could be done to raise awareness of Carer's Credit and the process for claiming it needs to be made as easy as possible – currently the only option for claiming it is an 8-page paper application form.**

7.4 *Tax credits*

- 7.4.1 The strengthened self-employment test in tax credits may bring additional pressures for those returning to work via self-employment. This has been introduced from April 2015 in a bid to stop tax credit claims for those who HMRC consider to be 'hobby' trading. Although there may be some merit to this, it may well make life more difficult for carers whose work is via self-employment, rather than employment.
- 7.4.2 For claims prior to April 2015, there was no restriction on claiming WTC for people who were self-employed, providing the work was done for payment, or in expectation of payment, and they met the remunerative work conditions. For claims from 6 April 2015 onwards, all claimants who are using self-employed work to meet the qualifying remunerative work condition for WTC must show that they are trading on a commercial basis and their business is done with a view to achieving profits. The self-employment should also be organised and regular.¹
- 7.4.3 The way HMRC are applying the test is that for claims where the income from self-employment provides an hourly rate at least equivalent to the minimum wage for a given number of hours a week, they will consider that the test is passed and where the income is less than that, they are likely to ask for additional information to support the claim. The evidence asked for may include things such as business plans, receipts, invoices and copies of any work diary. Claimants may lose their WTC if they cannot satisfy HMRC that they meet the test.²
- 7.4.4 The impact of this test on carers is potentially concerning – there is no relaxation of the rules for them. Many carers may be self-employed as it offers them the flexibility that they need to work around their caring duties. Yet they may be less 'efficient' than they could be if they are having to deal with interruptions, etc. which means that they may well fall short of the 'minimum wage' threshold and find they are more likely to be selected by HMRC to provide additional evidence and justification before they can receive WTC.³ This has the potential to cause difficulty and inconvenience as many in this group may struggle to show that their self-employment meets the required conditions if it is combined with caring responsibilities

¹ <https://www.gov.uk/government/publications/revenue-and-customs-brief-7-2015-new-rules-for-the-self-employed-claiming-working-tax-credit>

² <https://www.gov.uk/government/publications/revenue-and-customs-brief-7-2015-new-rules-for-the-self-employed-claiming-working-tax-credit>

³ Particularly as the minimum wage has increased significantly following the introduction from 1 April 2016 of the NLW rate. This is the rate paid to those aged 25 and over currently is £7.50 per hour.

and others will just not have the necessary evidence, such as business plans, to readily prove to HMRC that they are trading commercially.

- 7.4.5 **Recommendation: HMRC should treat any cases involving carers sympathetically, taking account of the fact there may be particular circumstances to consider.**
- 7.4.6 Tax credits are being phased out over the next few years and replaced by UC. Under UC, our view is that in some cases self-employed claimants are treated less favourably than the employed claimants with similar earnings over a year and one of the most concerning aspects is that if you are gainfully self-employed then a minimum level of income from self-employment will be assumed (the MIF), even if your actual income is lower than this.¹ This applies after a 12-month start-up period.
- 7.4.7 Self-employed claimants in the 'all work requirements' group of UC, who have been found to be 'gainfully self-employed', will be subject to the MIF for any month where their income from self-employment falls below the MIF threshold. The MIF threshold is equal to the NMW for the claimant's age group multiplied by their expected number of hours each week. For most people, the expected number of hours will be 35 hours a week, although it may be less, for example, if the claimant has a physical or mental impairment.
- 7.4.8 This minimum level of income will not apply to anyone who is found to have a limited capability for work, following a work capability assessment or who is in any of the other conditionality groups. While this will put many returning carers outside of the scope of the MIF, much rests on the decision maker taking into account what they can manage and what is realistic and achievable for them.
- 7.4.9 The prospect of returning carers having to rely on the judgement of UC decision makers when having their ability to work assessed adds a substantial degree of uncertainty and is worrying, as the decision makers may not have the expertise and understanding to discharge the task assigned to them.
- 7.4.10 **Recommendation: Ensure that staff who are going to be taking on the role of key decision makers are given appropriate training and guidance around carers.**

LITRG
19 October 2017

¹ We explain more about this in our submission to the Work and Pensions Committee on self-employment and the gig economy <https://www.litrg.org.uk/latest-news/submissions/170302-self-employment-and-gig-economy>