

8 Good Reasons Why Adult Social Care Needs Sectoral Collective Bargaining

by Dr Lydia Hayes



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ISBN
978-1-906703-35-6
September 2017

published by the
Institute of
Employment Rights
4th Floor, Jack Jones
House, 1 Islington,
Liverpool, L3 8EG

e-mail
office@ier.org.uk
www.ier.org.uk

Design and layout by
Upstream (TU)
www.upstream.coop

Printed by The
Russell Press (www.russellpress.com)

£8 for trade unions and
students
£30 others

**THE
INSTITUTE
OF
EMPLOYMENT
RIGHTS**

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8 good reasons why adult social care needs sectoral collective bargaining

In the UK's adult social care industry, the need for sectoral collective bargaining is nothing short of urgent. This booklet draws on research based on the opinions and experiences of care workers that was published in 2017 as *Stories of Care: A Labour of Law*.¹ By sharing some of that book's findings, this booklet identifies the enormous benefits that collective bargaining could bring to both adult social care workers and the people for whom they care. It also supports the industrial strategy set out in the Labour Party manifesto, 'For the many not the few', which commits the next Labour government to '*roll out sectoral collective bargaining – because the most effective way to maintain good rights at work is collectively through a union*'.

Good quality jobs are desperately needed in adult social care. The appalling truth is that in every corner of the UK, families are being let down by inadequate care provision, disabled people are suffering and workers are expected to tolerate unacceptable standards of employment and a gross disregard for their caring knowledge and expertise. Sectoral collective bargaining could change this.

In 2016, the Institute of Employment Rights brought together leading employment law experts to write *A Manifesto for Labour Law*. The central message is: **Government action is needed to ensure collective bargaining across industries so that the voices of Britain's workers can be heard and respected.** Its compact, authoritative and accessible recommendations are informing debates across the labour and trade union movement. This booklet aims to add to that debate with eight good reasons why adult social care needs sectoral collective bargaining.

what is sectoral collective bargaining?

Sectoral collective bargaining is a system for setting terms and conditions of employment across industries. Collective bargaining takes place in many countries around the world and was very important in Britain for at least 50 years after the end of the First World War. Setting terms and conditions of employment through collective bargaining helped to ensure that working people were not ripped off by their bosses and could enjoy a fair share of the UK's economic wealth. At its height, 82% of UK workers benefitted from collective bargaining.

how sectoral collective bargaining works

Sectoral collective bargaining puts democratic participation and decision-making into action in the economy. Employers join employers' associations so that their interests and concerns can be jointly represented, and the interests and concerns of working people are represented through their membership of trade unions. Both sides come together to negotiate a deal for their industry. This is written up as a *collective agreement* which details the minimum standards that will apply (including pay, holidays, training, sick pay, apprenticeships and much more). Sectoral collective agreements can be enforced in law. However, evidence points to a strong track record in which agreements are respected and applied on a day-to-day basis because they create a level playing field for all employers across an industry and workers are aware of the standards set out in the agreement because they have been consulted and involved.²

why is sectoral collective bargaining a good idea?

Since the 1980s, the setting of terms and conditions at work has increasingly moved towards a 'take it or leave it' system in which individuals have had little choice but to accept whatever an employer offers. Under this system, employers compete with one another to drive down labour costs and Parliament has had to intervene by setting statutory minimum standards. However, these minimum standards are insufficient to enable working people to lead a healthy life.³ For example, the government claimed that the introduction of a higher-rate National Living Wage would improve living standards but families are now worse off because the policy failed to reflect increases in the cost of living and was accompanied by cuts to tax credits and increases in tax.⁴ In theory, individual legal rights provide a safety net so that no-one is exploited but in practice (and for millions of working people) these rights are either unavailable, insufficient or unenforced. The 'take it or leave it' system has created many problems in the UK labour market. Employment rates are higher than at any time since records began but 40% of workers in the UK are now in 'bad jobs': jobs which do not provide them with security and a living wage.⁵ Sectoral collective bargaining is a better way to set minimum labour standards because it is democratic and enables working people to have a say in shaping the terms and conditions of employment for the jobs in which they work.⁶ Collective agreements are much more detailed and industry-specific than statutory rights. They can address short-term issues such as pay and flexibility, as well as longer-term issues such as productivity, training, recruitment and pensions.

REASON 1

adult social care is an industry

It might seem strange to think of 'care' as a matter of 'UK industry' yet the size, sophistication and economics of adult social care provision should be understood in industrial terms. When care workers recognise themselves as being part of an industry, they feel less isolated, are far more likely to join trade unions and are more confident in the possibilities of positive change.⁷ A lack of industrial status for the adult social care workforce emphasises a lack of social recognition for the value of care work.

“ I don't think we have ever been recognised. Years ago, the district nurse would do a lot of what we do but now it's cheaper to get us to do it ... ”

Michelle, care worker,
Stories of Care
(2017)

It is economically rational to regard adult social care as an industrial activity. As the principles underpinning the NHS reflect, a healthy nation, in which there is support for all during ill-health and disability, is a productive and competitive nation. Adult social care generates both social and economic wealth. Research work is currently underway to establish the economic value of the adult social care industry across all four nations of the UK, but we know that its annual direct economic value in England is over £20 billion.⁸ That is considerably more than the value of the production and distribution of electricity and gas (£16 billion) and the food and drink service industry (£19 billion). The wider contribution of adult social care to the English economy is estimated at £40 billion.⁹

Big changes to the delivery and organisation of social care since the 1990s have shifted the care of elderly and disabled people away from institutional settings and towards care at home. In addition, care provision has been privatised and the employment of care workers has transferred from the public sector into corporate hands. One impact of privatisation has been to halve the price of care and most of this saving has been achieved by halving the cost of care workers' labour.¹⁰

.....

Of all Britain's low-waged sectors, including the sizeable retail and hospitality sectors, it is the adult social care sector that now employs the largest number of women in low-paid jobs.¹¹

.....

The adult social care workforce across the UK is two million strong, and in England alone there are an estimated 1.55 million jobs in the sector.¹² To put this in perspective, there are one million construction workers, 1.1 million workers in transport, storage and postal industries and 1.3 million workers in all of England's restaurants, cafes, bars and pubs. Adult social care is a major source of employment, women comprise the vast majority of the workforce and they are typically low-paid.

There are at least 20,000 employer organisations and most of their income comes from public funding via local authorities, an additional 65,000 individuals use public funds to directly employ care staff and countless thousands of others do so privately as self-funders.¹³

Advocacy workers	often employed by charitable organisations to assist people in accessing services or welfare support.
Care workers	located in institutional care homes, in people's own homes or in the local community.
Personal assistants	directly employed by people managing and paying for their own care through a social care direct payment or individual budget.
Rehabilitation workers	who provide time-limited support to people recovering from a period of hospitalisation, accident or illness.

Table 1

The adult social care workforce is employed in an increasingly diverse range of circumstances and contexts. There are four main job categories (see Table 1). Care workers are by far the largest work group and they provide hands-on, practical support and assistance to older and disabled people living in residential/nursing home institutions or living independently in their own homes.

Care workers frequently acknowledge that their personal interactions with service-users or residents are often the only link that many have

with ‘the outside world’.¹⁴ This is an important reminder that while care quality depends on the relationships established between care workers and care recipients, social care provision is multifaceted. Its success or failure also relies upon effective management, appropriate coordination and cooperation, a continuity of sufficient resources, the predictability of organisational order and timely access to knowledge, equipment and capable personnel.

With more people living longer, considerable growth in demand for care has been both foreseeable and consistent with predictions.¹⁵ Over the next decade there will be more than half a million additional older people in need of substantial care and rising demand will require the current number of adult social care workers to double.¹⁶ The increased incidence of disability and ill-health in old age underlines the case for recognition of adult social care as an industry. Without adequate social care provision, huge numbers of workers from other sectors will exit the labour market to care for family and this will do enormous damage to economic productivity.¹⁷ Since these workers are most likely to be women, there are stark negative consequences for gender equality and women’s economic well-being.

.....
*The commercial nature of the care industry
should not be confused with the idea of
caregiving as a charitable endeavour.*¹⁸
.....

Care companies and trading charities recognise that the adult social care industry needs ‘strong and influential representation at a national level’.¹⁹ They currently organise representation of their interests through membership of employers’ associations such as the United Kingdom Homecare Association, Care England and the National Care Association. Sectoral collective bargaining would provide a formal platform for employers’ associations to negotiate with trade unions so that the workforce could benefit from strong and influential representation across the industry. Sectoral collective bargaining would provide the industrial recognition that adult social care workers need. It would begin to address the massive challenge of co-ordinating improved standards across an industry which is hugely fragmented.

hands-on care work is highly skilled and increasingly complex

“ One lady is in a wheelchair. Every manoeuvre she needs, you’ve got to do it for her. You get her up in the morning; it’s all ceiling hoists; all sling work. Hoist her to her chair; wheel her to the bathroom, which again is a hoist job to get her on the toilet. Then she will want her breakfast sat on the toilet. She can’t hold things very well enough in her hands, so cups of tea you’ve got to feed her fingers through the handle. She wants her medication sat on the toilet, and that’ll be her tablets and her insulin, I inject her. And then it’s hoist into the shower. Get her dressed in the bathroom and then put her back in the wheelchair and put her splints on her hands to keep her hands straight. It would take you two hours to get her up and dressed in the morning. It is extremely hard work. What we do is probably not a lot different from nursing.”

Sasha, care worker,
Stories of Care (2017)

Workers in the adult social care industry support people with an array of different health conditions and respond to their increasingly complex care requirements. ‘Care worker’ is a generic term but much of care work is specialised, for example caring for young adults with paraplegia, people with mental health problems or those who have cancer. In care homes, residents have much higher levels of physical and mental impairment than in the past and the work of caring for them is consequently more challenging.²⁰ About half of all workers across the care industry now provide care and support to at least one person with dementia and dementia is the leading cause of death for older people.²¹ If we are to properly address the actually existing needs of 21st century communities, individuals and families, we cannot continue to ignore the skills of care workers and must recognise them as highly accomplished professionals.

However, there is currently nothing to prevent employers from hiring workers who have no previous experience of caring for older and

disabled people. Untrained workers are preferred by some employers because they are less likely to challenge poor practice.²²

.....

A care worker I spoke with told me how hard she found her new job, "It was scary at first. Dead scary. I was shitting myself thinking 'Oh my God! What have I got to do with you then?'. New recruits are frequently surprised at the technical ability needed to do a care job well because recruitment adverts state 'no experience or qualifications required'.²³

.....

Employers are desperate for new staff but many workers leave in the first few days because the job is physically, emotionally and intellectually tough. The adult social care sector has the highest rate of staff turnover in the whole of the UK labour market. For workers who are able to cope with the first few weeks, there is a dawning realisation that they are 'cheap nurses' because the skill needed to do care work well is made to appear invisible in order to maintain low pay in the sector.

Although a Labour government set out a statutory scheme of national minimum standards, including requirements for training and criminal record checks, huge numbers of organisations failed to comply and after seven years of mandatory requirements the industry regulator reported that 20% of employers were in breach of the law.²⁴ There were plans to introduce a professional registration scheme for care workers but these were slow to materialise and later scrapped by the Conservative-led Coalition government in 2010. Care standards inspectors now report that about a third of care workers do not even get basic induction training when they start a new job and research has found instances where managers claim to provide training but workers say there is no training at all.²⁵

The UK needs a care workforce that is 'competent and adequately skilled to care for an ageing population'.²⁶ Being a care worker is not a 'one-size-fits-all job' and it is certainly not unskilled. By embedding sectoral collective bargaining in the adult social care industry, the skills necessary for care work would begin to be recognised in negotiations over pay and career progression. Through a collective agreement, care workers' talents could be aligned with service-users' needs and increased competence and experience could be fairly rewarded.

REASON 3

terms and conditions of work are unacceptable and work is precarious

Stories about poor quality employment in adult social care are frequently in the news. For more than ten years there has been a shocking but steady flow of evidence published by academics, by think-tanks, by charities, by the Equality and Human Rights Commission, by the Low Pay Commission, by trade unions, by employer associations, by MPs and parliamentary committees, by the HMRC which enforces minimum wage law, by special inquiries and by investigative TV programmes like the BBC's Panorama.²⁷ Most recently, experts suspect forced labour, people trafficking and other examples of modern slavery are taking root in parts of the UK's adult social care sector.²⁸

.....

It is clearly unacceptable that many thousands of care workers are subject to exploitative, unlawful, and sometimes criminal practices by employers. Paying workers less than that to which they are entitled in minimum wage law is commonplace, entitlements to paid holiday are often not honoured and travelling time and expenses are routinely unpaid.

.....

Yet breaches of law are not the only problem. Care workers' terms and conditions should not be based on the absolute minimum and bare legal compliance is not good enough to establish decent work. Many of the women participating in the author's research for *Stories of Care* said they loved their jobs and were proud to give hands-on care. Many also said their jobs made them cry with exhaustion at the end of a shift. They felt ashamed about rushing service-users and not having enough time to make the care they gave as good as it ought to be. Fear of arbitrary dismissal was a common and constant concern.

four types of employment in social care

There are four different ways in which adult social care workers are employed. Some work **directly for local authorities**, but there are now few jobs like this.²⁹ The large majority of care workers are **employed by care companies or trading charities** that have won contracts with local authorities to deliver care services or provide residential care. A more recently established section of the adult social care workforce is comprised of **personal assistants** who are directly employed by people in need of care or their families. The fourth type of employment relationship is that of **self-employment** and its frequency and significance in the adult social care sector is increasing.

“It is disconcerting that you might not get so many shifts from one week to the next you know. It is a bit tough ... I am so flexible that what happens is Tempco might phone me and I'll be in bed and they'll say 'can you get to this place as soon as possible', and I just say 'well, yeah give me chance to get dressed' I have literally jumped up, got dressed and zoomed over to somewhere.”

Heather, care worker,
Stories of Care (2017)

Terms and conditions of work in adult social care have been formally described as ‘among the worst of any’, ‘illegal’ and ‘shoddy’.³⁰ In employment with care companies and trading charities, the use of zero-hours contracts continues to increase and represents the industry norm.³¹ Allegations of bullying are associated with zero-hours employment and other studies report a profound sense of insecurity and feeling ‘threatened’.³² In homecare, many employers pay only for time spent inside service-users’ houses; and in residential care, workers can be sent away mid-way through a shift, be starved of work or be offered very little pay for overnights. Low pay is a major cause of stress and, when combined with insecure hours of work, workers experience pressure which borders on coercion.³³ Zero-hours contracts increase anxiety and there is growing evidence of negative impacts on mental health.³⁴

A third of adult social care workers quit their jobs each year and for fresh faces, the figures are staggeringly high, with some reports suggesting half of all new recruits last for less than a year.³⁵

.....
*The undervaluation of care work has become embedded in the organisation of the industry.*³⁶
.....

The industry appears to be caught in a vicious circle in which job quality is so poor that the exploitation of people who remain in post can be wrongly excused on the assumption that they are working for 'love' and therefore have the 'right attitude' to tolerate poor terms and conditions.³⁷ Sectoral collective bargaining would raise the quality of employment in adult social care by setting minimum standards which are better than the bare legal minimum and are tailor-made. It would be an important initial objective to create terms and conditions of work good enough to prevent the stress and financial insecurity that currently causes high labour turnover.

“ I looked after Amelia for three years, up until she died. During that time, lots of other service-users I visited through my work said they would have me privately, but only if I was self-employed. The responsibility of it worried me. ”
Rosa, care worker,
Stories of Care
(2017)

“ I have heard horrendous stories of personal assistants getting hurt when they are manually lifting people. There is nothing to protect people and they could really injure themselves. But then maybe I am just as bad. With one client I won't use the hoist because he says it makes him feel like a piece of meat. He is not a piece of meat, he is a person. ”
Carrie, personal assistant,
Stories of Care (2017)

Care staff who are directly employed by the people for whom they care often develop very close personal relationships. Employing a personal assistant can massively improve a disabled person's quality of life.³⁸ However, the picture is not always rosy. There are considerable public funding pressures on direct payments. Older and disabled people can face the prospect of recruiting care staff without adequate resources to pay for the level of care they require.³⁹ ACAS guidance recognises that directly employed care staff can find it hard to leave a 'bad job' because they fear that the person for whom they care will be offended, suffer from a lack of personal contact or even face neglect.⁴⁰ Should these care staff try to individually enforce their rights through a tribunal, they face a legal dispute with the same person that they might also help to use the toilet, take to the cinema or put to bed at night. It is not hard to see why problems become very hard to resolve when employment rights are not respected. In addition, minimum wage rights can be unclear and many workers in direct employment, as well as the self-employed, are excluded from

the protection of the Health and Safety at Work Act 1974.⁴¹

Self-employment is rapidly on the rise but it is not always a matter of worker choice. In the research undertaken by the author for *Stories of Care*, some care workers felt forced to become self-employed in order to access work. Alongside concerns about their loss of legal entitlements, they were at an increased risk of sustaining back and limb injuries which they knew could end their careers. This was a frightening prospect.

There is a common thread running across the different types of employment relationships in which adult social care workers are engaged. Whether working for care companies, directly for care recipients, or as self-employed, workers are engaged on a highly individualised basis in which they have no contractual guarantee of work or they enter into arrangements which are entirely private. Yet if care work is to be valued fairly, jobs which are essentially the same should be underpinned by the same set of minimum employment standards, regardless of the circumstances of employment. It is also clear that problems of low pay are inseparable from those of employment insecurity, high labour turnover and growing risks to workers' physical and mental health. By putting sectoral collective bargaining into practice, the adult social care industry could break its deadlock over poor terms and conditions of work. It is only through establishing an open and representative forum for national level negotiations that employers' needs for flexibility, and care recipients' needs for choice about their care, can be properly balanced with workers' needs for security of hours, income and safety at work.

“ I got a phone call from the charity to say that the service-user's wife did not want me to go there anymore; she said that because I am gay, my being in their house might have a negative influence on their daughter. I was devastated, I'd lost my work, and I cried for four days because of that bigot. ”

Kim, self-employed
personal assistant,
Stories of Care
(2017)

poor quality jobs mean poor quality care

Reports have linked concerns about worker exploitation to concerns about falling standards of care and a lack of regard for the human rights of older and disabled people.⁴² There is conclusive evidence of a strong connection between the wellbeing of workers and the quality of care that people receive.⁴³

.....

Two-thirds of older people think that the standard of social care in the UK is inadequate and an even higher proportion believe that politicians consider the needs of older people to be a low priority.⁴⁴

.....

The UK was the first state in Western Europe to build a competitive market in social care.⁴⁵ Reforms were dominated by the introduction and consolidation of market-based provisions, in which a narrow focus on cost reduction came to overshadow broader notions of public accountability.⁴⁶ As early as 1996, research indicated that privatisation did not improve care quality.⁴⁷ However, the opportunity for short-term cost-cutting proved ‘irresistible’ to the state.⁴⁸ What we have seen since then is little short of a national disgrace. Despite massive investment in a host of care standards inspectors, training organisations, statutory support for minimum care standards and criminal measures to prevent abuse, one in five organisations are officially rated by the Care Quality Commission as failing (including one in three nursing homes).⁴⁹ The advances in longevity that the UK population has enjoyed for over a century have gone into reverse.⁵⁰ The abuse of vulnerable people is a growing problem and there is not enough public money being invested in services to make care safe and effective. In addition, deficiencies in the supply and quality of adult social care impact severely on the quality of care that older people receive in NHS hospitals.⁵¹

Sectoral collective bargaining would deliver care quality benefits to service-users and residents of care homes. With nationally applicable minimum standards set out in a collective agreement, the basis of competition between care companies and trading charities could

shift away from labour-cost reduction and move towards the delivery of quality care. The calculations used by local authorities to allocate funding to care recipients with direct payments would need to be underpinned by the minimum terms and conditions set out in relevant collective agreements. The effect would be to give older and disabled people a genuine choice about who they were able to employ and reduce the incidence of forced self-employment.

Although the government is most often not a direct provider of adult social care, public funding available through local authorities has a huge influence on wages and service quality. Since 2010, adult social care funding has been cut more harshly than any other essential public service.⁵² Sectoral collective bargaining would provide a necessary framework for the effective joint lobbying of government for industry-wide investment and adequate funds to support decent jobs and high-quality provision.

“ I couldn't watch that TV programme about the care workers torturing people in a care home; I just found it so devastating. It really upset me, knowing all us carers cannot get away from that. It should never have happened, it disgusts me ... but because of the things that have happened, and the TV programmes, all carers get a bad name. ”

Nadine, care worker,
Stories of Care (2017)

REASON 5

individual rights are an insufficient remedy for these problems

Problems with employment standards in adult social care are not individual, they are industry-wide and that is why workers' ability to bring individual legal claims is insufficient to achieve necessary and urgent change.

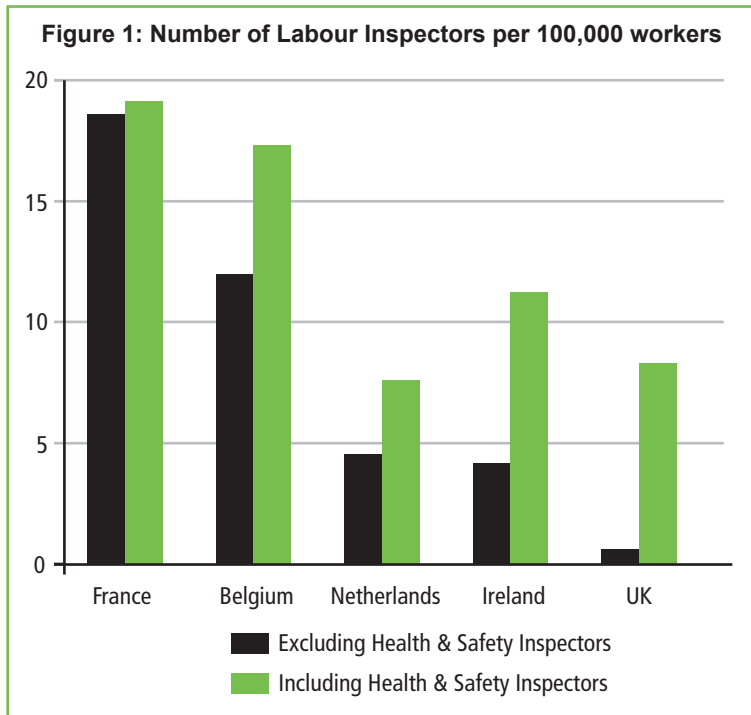
.....
*'Do not ask for holiday as refusal often offends!'
This was the sign on the wall behind the front desk at a homecare company office located on a trading estate. Care workers were routinely denied paid holiday by an employer who told them that they had no legal entitlements.*⁵³
.....

For UK workers, lack of employment rights awareness is a general problem.⁵⁴ Employment law is highly technical and eligibility depends upon a legal determination of the type of contractual relationship in which a potential claimant is engaged and it is often tied to length of service qualification periods. Some companies seize upon public confusion as an opportunity to avoid obligations. In adult social care, the variety of employment situations and complexity of employment relationships means it is very difficult for employment rights to be individually enforced.

In recent years, employment tribunal fees have placed additional hurdles in the path of workers seeking access to justice. After a five-year legal battle by trade union Unison, the Supreme Court unanimously declared that the fees were unlawful in July 2017.⁵⁵ This was an important victory which showed how tremendously effective trade unions can be. However, the removal of fees does not resolve the main problem, which is that a system based on the piecemeal enforcement of minimum standards by individual claimants is wholly inadequate as a means of enforcing labour standards in the care sector. Low-waged workers are highly unlikely to pursue individual

claims and depend instead on state-led enforcement.⁵⁶ For example, HMRC has overall responsibility for enforcing minimum wage law and it has been accepted by both Labour and Conservative governments since 1998 that relying on the individual tribunal claims of low-waged workers would be insufficient to enforce such an important protection against exploitation.

Yet Britain has one of the weakest employment law enforcement structures in Europe and *Figure 1* shows how far the UK falls behind other European countries in labour standards inspection.⁵⁷



The limitation of individual legal rights for adult social care workers is ably demonstrated in relation to the case of *Whittlestone v BJP Home Support*.⁵⁸ Elaine Whittlestone was paid a miserly ‘flat-rate’ for her overnight work on sleep-ins at the homes of her service-users. With union support, she brought a tribunal claim for statutory minimum hourly pay. When claims are upheld, employers must pay up to six years’ worth of arrears to individual workers and HMRC can additionally apply penalty fines.

In *Whittlestone*, the judge declared that even if a care worker spent much of her time sleeping through a night shift, she was ‘working’ within the meaning of minimum wage law for the whole of that shift if she was contractually prevented from leaving the house and her presence was required to meet service-users’ assessed care needs. Although Elaine Whittlestone was entitled to be paid the minimum wage for all the hours of her shift, her case did not *change* the law. Rather, it helpfully provided a clear explanation that the minimum wage must be paid for overnight shift working in adult social care.

Five years have passed since *Whittlestone*, yet thousands of care workers continue to receive ‘flat-rate’ payments for overnight shifts at rates which are well below the legal minimum (typically equating to £2.50 – £3.50 an hour). The HMRC minimum wage enforcement unit did not begin to require social care employers to abide by this aspect of the law until 2016. However, unlawful wages have been so commonplace, for so many years, that care companies and trading charities have made representations to government, claiming they will be put out of business if the law is fully applied. As a consequence, the full enforcement of minimum wage law in adult social care has been suspended by HMRC (at the time of writing, until the autumn of 2017).⁵⁹ This is a powerful example, demonstrating that individual rights cannot be relied upon as a remedy for poor-quality employment in circumstances where problems are both industry-wide and deeply entrenched.

.....

When I interviewed Lucy, I shared with her my concern that wage levels at the company she worked for fell below the amount prescribed in national minimum wage law. She explained, ‘The office knows for a fact the girls won’t say anything to them, (a) because jobs are really hard to come by and (b) the good carers, you can’t do it for love of the money, you just can’t do it, because you’re in the wrong job if you’re after the money because there’s just no money in the job.’⁶⁰

.....

Poor terms and conditions are routine in adult social care, the industry has come to depend for its survival upon low pay, breaches of employment law and corner-cutting. Employers have written to the prime minister, telling her that current arrangements are ‘unworkable’.⁶¹ Local authority Directors of Social Services have

stated that they cannot pay ‘an hourly rate sufficient to make the care market sustainable’, and they report that in 74% of local authority areas, it is questionable whether care companies and trading charities can deliver acceptable standards of care.⁶²

The current UK system of labour market regulation has clearly failed in the adult social care industry. Public funds are too often being used in support of labour exploitation and individual legal rights are a woefully inadequate tool with which to remedy the collective problems of underpayment and devaluation of work. Decent conditions of work and fair pay cannot be established without an industry-wide approach. Sectoral collective bargaining is urgently needed to identify the shared interests of employers, care recipients, and the adult social care workforce. This industry-wide, democratic and representative approach to setting minimum standards would provide a much more effective system of enforcement because the adult social care workforce, trade unions, contracting local authorities, employers associations and responsible employers would all be parties to enforcement. By creating a level-playing field based on sectoral collective agreements, the industry could begin to put its house in order, focus any competition on issues of care quality rather than cheap labour, and strengthen its capacity to plan and prepare for the future.

REASON 6

care workers have been silenced by the structure of the care market

UK governments have known about care quality problems for many years, but the situation has been allowed to deteriorate. It is important to ask:

- Why have governments not made sure that workers in adult social care are sufficiently well-paid as to lead a decent and healthy life?
- Why are care homes understaffed and care workers stressed and given insufficient time to do their jobs well?
- Why are the economic interests of care workers not taken seriously in the shaping of public policy?

It is people with power who are listened to in public debates. In the absence of sectoral collective bargaining, care workers are ignored.⁶³ Governments design laws and manage public finances in ways which respond to the interests of the powerful. Historically, it is through membership of trade unions that working people have been able to build the power needed to achieve social change. For adult social care to be sustainable, the opinions and interests of care workers must be heard and respected by their employers, across the care industry and by government. The best way to achieve justice at work for care workers and justice for people in need of care is through sectoral collective bargaining.

There are strong international norms in support of collective bargaining including International Labour Organization (ILO) Conventions, the European Convention on Human Rights, the European Social Charter and the Charter of Fundamental Rights of the European Union. As part of its legal obligations, the UK has a duty imposed by ILO Convention 98 and Article 6(2) of the European Social Charter to *promote* collective bargaining. Law can and should be used to create fairness and justice, and to secure democratic and productive conditions of work.

the Institute of Employment Rights' recommendations for sectoral collective bargaining

Authored by 15 of the UK's top employment law experts, the IERs' *Manifesto for Labour Law* establishes that it is now time for fundamental legal reform. It sets out a clear agenda for the regulatory change needed to address the realities of a 21st century labour market marred by income inequality and wage stagnation. Establishing sectoral collective bargaining across the UK's economy is a central and crucial requirement. Every worker and every employer should be covered by a sectoral collective agreement. Sectoral collective bargaining needs active state support and new laws to promote and support worker voice. Trade union laws need to be rewritten so that unions have effective access to workers, genuine autonomy and can rely on freedom of association protections in line with the international norms that respect the right to strike.

The IER's experts recommend the establishment of a dedicated Ministry of Labour with a legal mandate to establish Sectoral Employment Commissions (SECs) in support of collective bargaining. Each SEC would bring together employers' associations and representative trade unions to negotiate sectoral collective agreements that lay down minimum terms and conditions and mechanisms for the resolution of collective and individual disputes. Sectoral collective agreements could also address the erosion of occupational pension schemes, lack of apprenticeship opportunities, protect health and safety, devise equality strategies and provide for future skills, education, training and flexibility. Each agreement would be legally enforceable and apply automatically to each individual employment relationship across the relevant industry. All government contractors would be required to comply with industry terms, as would all suppliers and users of agency workers. Where agreements made by unions and employers at a local level represented an improvement on the national minimum, these would apply instead and no contract of employment could set worse terms than the best that could be set out in an applicable collective agreement.

why sectoral collective bargaining makes economic sense

The current widespread absence of collective bargaining in the UK causes direct economic harm because wealth is concentrated in too few hands and the spending power of the majority of people is reduced. The value of our wages has not increased for more than a decade and GDP is increasingly apportioned to private profit rather than to improving average pay. The best way to redress this balance is not via the free market nor by adjusting the minimum wage but by establishing collective bargaining across the economy. Collective bargaining is a means of achieving justice at work and a key instrument for addressing wage inequality. There is strong evidence to show that collective agreements lift low wages. Collective bargaining addresses concerns about cheap labour that can often find expression as immigration concerns. With collectively agreed minimum terms and conditions for each industry, the incentives for wage undercutting fade away and migrant workers are better protected against exploitation. With a progressive economic policy based on raising wages, the economy would be stimulated, demand for state subsidy of low wages such as tax credits would reduce and greater tax receipts would enable renewed investment in public services.

government must act to raise the quality of employment across the adult social care sector

For adult social care to thrive, it must be celebrated as a public good. Every person in the UK has a stake in its future because anyone can become disabled and we all want dignity in our old age. Adult social care was a significant electoral concern in 2017 and is likely to be so again. The problems of adult social care are political and long-standing, but they are not inevitable. The socialisation of adult care developed out of the upheaval of the Second World War and was a major political advance for people of ordinary means. Generations of men and women have no longer been tethered to the communities where their parents live, and the availability of adult social care has relieved pressure to have children or get married in order to be cared for in old age. Particularly since the 1970s, the availability of adult social care has changed the life opportunities of millions of women who were historically expected to provide unpaid care for others and remained economically dependent throughout their lives. Adult social care has also been essential for the liberation of disabled people who are no longer confined to institutions, independent living is possible and many older and disabled people exercise choice in decisions about how they are cared for and by whom. Yet the political project of social care cannot be fully realised while employment in the adult social care industry is devalued, underfunded and derided.

It is the role of 21st century government to develop policies which acknowledge that adult social care is imperative for the contemporary organisation of families, for our economy, for social well-being, and for the health of relations between men and women across society. The task of doing so requires a 21st century renewal of the structures and substance of UK labour market regulation. Recognising the problems with present-day arrangements must go hand-in-hand with recognising that there is no glorious past to which we can return. Nevertheless, collective bargaining has a track record of achieving better terms and conditions which, in the past, considerably improved working lives and living standards.

The Institute of Employment Rights has provided strong, evidence-led recommendations for the establishment of a Ministry of Labour, tasked with putting the interests of working people at the heart of government.⁶⁴ The benefits of such an approach for the adult social care industry would be enormous. Government action is needed to connect the economic and social interests of the adult social care workforce with the care needs of our older and disabled populations. Decent employment must be promoted, and the problems of employment insecurity must be strategically addressed. The Ministry of Labour would plan for a workforce with the right skills, training and flexibility to meet the care needs of the present and the future. It would supervise labour standards, monitor the scope of workers' rights, ensure standards are improved and extend the UK's systems of labour inspection. Most significantly, it would carry responsibility for promoting sectoral collective bargaining and for establishing the framework through which trade unions and employers could co-operate.

sectoral collective bargaining would create decent work and raise care quality

Anyone who is concerned about care for elderly and disabled people ought to put centre-stage a concern for poor-quality jobs and disrespect of the economic and social interests of the workforce. In considering how to meet the challenge of reaching collective agreements, there are lessons to be learned from other countries. Collective bargaining in adult social care in Australia produced considerable improvements in pay when trade unions and employers' associations were able to acknowledge, and carefully evidence, that care work was undervalued, largely due to low levels of government funding and industry features.⁶⁵ Employers, unions and business associations agreed that the state had historically benefitted from low pay because it had failed to pay the true costs of service provision. Working together, parties to collective bargaining were successful in arguing that the costs of remedying the undervaluation of care workers should be borne by government. Prioritising collective bargaining as a system for setting terms and conditions of employment has made positive changes to gender equality in the Australian care sector.⁶⁶

In Canada, collective bargaining in adult social care has sought to focus on bringing security to both workers and service-users.⁶⁷ This has been a hard task because Canadian labour law makes it difficult for some care workers to be represented by trade unions and it is particularly those in precarious employment who can fall outside the scope of collective bargaining organised at an enterprise level. The Canadian example shows that collective bargaining in adult social care cannot be maximally effective unless it is industry-wide and includes all care workers without prejudice to those who are working in private homes, or on casual contracts, or employed directly by older and disabled people or those who are classified as self-employed even though they provide a personal service.

In the United States, unions have worked with state agencies to create innovative solutions to the problem of self-employment amongst

a care workforce who are routinely employed ‘on the cheap’.⁶⁸ In California, trade unions formed alliances with disability activists and found ways forward in which service-users retained the right to ‘hire, fire and supervise’ and workers gained the benefits of collective bargaining coverage and full legal recognition of their employment. A new public authority was created to provide training for care workers. It also kept a register to match workers with service-users and engaged in collective bargaining as an employer.⁶⁹ Similarly in Oregon, workers joined trade unions and their representatives teamed up with older people’s campaigning groups to lobby politicians for increased funding and greater security. They recognised that collective bargaining in adult social care should not be limited to concerns about dignity for care workers but should also engage with the wider policy question: how will we care for older and disabled people?

In the UK, sectoral collective bargaining would seek to revalue social care, for the benefit of the adult social care workforce and the older and disabled people for whom they care. It is in the relationship between care workers and care recipients that care work is performed. Service-users and residents are not passive recipients, but are co-producers of care. Service-users have a role to play in establishing the safety of their living spaces as a workplace, and issues such as racism and homophobia can arise in relational interactions and must be addressed. Additionally, in agreeing how care tasks should be performed, care workers and care recipients jointly determine matters of personal hygiene, manual handling and infection control.

.....
Sectoral collective bargaining offers a democratic, participative, multi-party solution to contemporary economic and social problems.
.....

Labour standards are fundamental to the future of adult social care. There is considerable evidence that higher labour standards and greater respect at work encourages greater commitment to the job.⁷⁰ The commitment and motivation of the adult social care workforce is key to the provision of high-quality services. Wide-ranging transformation is required in which the state, employers’ associations and trade unions work together to establish sectoral collective bargaining.

Although collective bargaining is historically a two-way process between employers and workers, caring relationships are uniquely

complex and it would be valuable to find a way for service-users to input into negotiations over matters of mutual concern. While many service-users and their families are either direct employers or clients of self-employed care workers, sectoral collective bargaining must respect and recognise the rights of *all* care recipients to make choices about their care. In turn, the interests of people in need of social care must be advanced in ways which promote, rather than undermine, the employment and income security of care workers. They must not deny the case for decent work on grounds that higher labour costs reduce the number of hours of care for people in need.

There is no reason why the contemporary plurality of the adult social care industry cannot be embraced through sector-wide recognition of collective agreements. It would mean that every care worker (whether employed by a local authority, independent contractor, individual care recipient or operating on a self-employed basis) was covered by a sectoral collective agreement and entitled to fair terms and conditions based on industry-wide minimum rates commensurate with their work and specialisms. The introduction of collective bargaining across the sector would affirm the link between labour standards and care standards to secure the dignity of socially valuable caring relationships and the future of adult social care in the UK.

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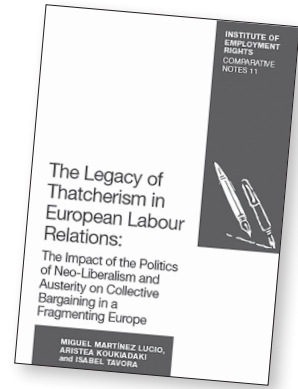
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The Legacy of Thatcherism in European Labour Relations:

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For over a decade, there has been a steady stream of evidence that employment in the social care sector comes with poor-quality terms and conditions, low pay, and in too many cases, exploitation. This not only devalues and degrades the skills and labour of the industry's two million-strong workforce, but is well-evidenced to have a dangerous impact on the care that some of our most vulnerable citizens receive. The sector also employs the largest number of women in low-paid jobs, adding to the gender pay gap. Despite countless inquiries and investigations, the same issues persist. It is clear that the industry is in dire need of reform.

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