Workforce Development Group| 20 June 2024 | 13:00-14:00

Welcome & Introduction

Ioan Bishop (**IB**), Policy and Parliamentary Lead at Care England, welcomed attendees to the meeting.

Supporting this meeting:

- Hannah Bollard (**HB**), Associate at Anthony Collins Solicitors
- Richard Ayres (**RA**), Social Care Advisor at Care England

Meeting Notes

General Election – Major party commitments

IB provided an overview of the major parties' commitments on adult social care. Key points include:

- Conservatives – Give local authorities a multi-year funding settlement; take forward the 'People at the Heart of Care' reforms; implement planned reforms to cap care costs from October 2025; attract and retain a high-quality care workforce; increase all visa fees to raise more money for public services.
- Labour - Create a National Care Service underpinned by national standards; enhance partnership working across employers, workers, trade unions and government; establish a Fair Pay Agreement that will set fair pay, terms and conditions, and training standards; task regulators with assessing the role social care workers can play in basic health treatment and monitoring.
- Liberal Democrats - Introduce free personal care; create a social care workforce plan, akin to the NHS England workforce plan; introduce a Carer's Minimum Wage at £2 above the minimum wage; establish a Royal College of Care Workers to improve recognition and career progression; creating clear career pathway linked to recommended pay scales; creating a career ladder to allow flexibility to work across the NHS and social care; expanding the NHS Digital Staff Passport to include the care sector; establish a cross-party commission to forge a long-term agreement on sustainable funding for social care; reverse the ban on care workers bringing dependants to UK.

More details can be found in manifestoes which can be found here: Conservative, Labour, Lib Dem.

Labour's plans for the workforce

HB noted that Labour's manifesto is light on details, with most details for today's meeting coming from *Labour's Plan to Make Work Pay: Delivering A New Deal for Working People*.

1. Ban on zero-hour contacts

HB noted that Labour has said "we will ban *exploitative* zero hour contracts". It's not clear what *exploitative* means exactly – it may mean all zero-hour contacts, or only certain zero-hour contacts. There will be an obligation on employers to at least offer a contract with more predicable hours.

HB recommended that providers begin thinking about what a ban on zero-hour contacts would mean for their organisation:

- How many of your employees are on zero-hour contacts?
- Out of those, how many are essentially carrying out predictable hours?
- If forced to, what could you offer your employees by way of more predictable hours, guaranteed-hours contacts or annualised-hours contracts?

- Are there individuals on your books but not doing any work for you?

IB noted Labour seem intent on ending "one-sided flexibility".

Member noted that they use zero-hour contacts, but only in a bank capacity and where employees say they want the flexibility. Some of these individuals are of a retirement age, and it allows them to remain in the workforce. Employees move on and off this arrangement according to their preference. If zero-hours were banned completely, it would be at a disadvantage to employees rather than the provider. Noted that, as an employer, they encourage people to take on permanent contracts.

Member agreed. Noted that they reduced bank contracts significantly. Noted that some members of staff go on to become nurses, but want to remain on a zero hour contact to do occasional work. This helps them deliver good quality care. Noted that they also have university students who have holiday periods and would be unable to commit to regular hours. Noted that the flexibility is requested from the employee side.

Member agreed. Noted that some children of staff members want work during the holiday period, which needs to be flexible. Noted that they have some workers who also work in schools, who want additional work during the holiday period. This helps supplement permanent staff members with the same individuals each time, rather than agency staff.

Member noted that some zero-hour staff help with occasional events, food and beverage activity, etc.

Member noted that a total ban on zero-hour contracts would introduce additional barriers at an already challenging time, and would be disastrous for staff numbers.

HB agreed that the proposals would be a barrier to recruitment. Noted that Labour recognise workforce challenges, but this proposal would discriminate against staff with other commitments in their life, including childcare commitments.

Member noted that for someone new to care, a zero hour contract is a comfortable way into the sector for them. Often these individuals go on to full time roles.

Member asked HB about what "exploitative" practice might mean.

HB noted that exploitative would probably be informing an employee that a zero-hour contract is their only option. Noted that Labour will likely want to introduce checks and processes to ensure there is an opportunity for employees to have more hours, and a more stable working pattern, if that is something that they want.

HB noted that, in theory, and employer could offer a 1-hour per week contract.

Member noted that many staff, such as university students, wouldn't be able to commit to an hour a week.

HB noted that employers could offer short 1- or 2-month fixed-term contract.

2. Day one rights

HB noted Labour's proposals to make certain rights "day one" rights for employees, including parental leave, sick pay and protection from unfair dismissal. Currently, there is a two year continuous employment requirement for bringing an unfair dismissal claim. Under Labour's proposals, after one day of employment an employee could bring an unfair dismissal claim.

HB noted that these proposals would not affect fair dismissal, which includes for reasons of capability, conduct, redundancy or probationary periods with fair rules and processes. Labour's aim is that employers can continue to offer probationary periods, but that new workers are not fired without reasons or cause.

HB noted that providers shouldn't see the change as a reason not to dismiss someone. If you're following internal processes and have a good reason to dismiss someone, this can be evidenced and your organisation shouldn't be at risk.

HB noted that the change could lead to further litigation and increased costs for providers in dealing with unfair dismissal claims. Individuals will still have to go through ACAS, so there is always the opportunity to resolve it at that stage.

Member noted that when the requirement was reduced to one year, it led to a huge backlog at the employment tribunals. Enquired whether this has been considered.

HB noted that the tribunal system is already under huge pressure post-pandemic. Depending on what tribunal the claim goes to, it could be two years before it gets to final hearing. Without additional resources, Labour's proposals would likely have an impact on the backlog.

Member noted an increasing trend over the past 12-months in people looking to claim interim relief. If successful, that person would remain on the payroll whilst we wait for the tribunal to come forward. Enquired whether this may increase.

HB noted that she hadn't seen any interim relief applications in the context of dismissal. People who bring tribunal claims will be waiting a long time, and in the meantime there is a duty on them to mitigate their losses and continue earning money in that period.

Member noted that if successful in the 7 day claim, there is more cost to the employer.

HB agreed.

RA enquired about the impact on insurances. Noted recent instances with international recruitment where inappropriate claims have been made an the underwriters want to settle.

IB enquired about how Labour's proposal might affect recruitment decisions for members.

Member noted that they are already reviewing their hiring process, introducing different stages and people into the process, more rigorous referencing criteria, etc. This will likely slow down hiring.

IB emphasised the importance of values-based recruitment.

RA highlighted some helpful resources:

- Care England's recent publication: *Building the Future Care Workforce: an end-to-end solution for recruiting and retaining care staff*,
- Skills for Care: Values-based recruitment
- Cohesion: Care Character

Member noted that slowing down the recruitment process means candidates are more likely to accept a job elsewhere.

Member noted that Labour's proposals will ensure line managers are fully up to speed and accountable for monitoring conduct, capability and development of the new starter during their probationary period.

HB agreed. Emphasised importance of finding issues at an early stage.

3. Single status of employees

HB noted that there are currently three statuses for workers – "employee" (the "gold standard", with the most rights and protections), "worker" (the "silver standard", without protection from unfair dismissal) and "self-employed" (no entitlement to protections or rights under employment legislation).

HB noted that Labour is proposing to remove the "worker" status, leaving just "employee" and the genuinely "self-employed". This would align employment legislation with tax legislation – when you're assessing whether someone is an employee for tax purposes you have to ask 'are they an employee, or are they a self-employed individual?'.

HB noted that people currently "workers", would suddenly become "employees" and be entitled to greater rights in terms of unfair dismissal. It's something to be aware of if you do have people working for you under "worker" status.

Recommended that members review worker arrangements and whether people who would be considered "employees" are currently "workers". This is something that needs to be particularly considered for bank staff.

HB noted that Labour will consult on this proposal and it would not be an immediate change.

Member enquired about the status of agency workers.

HB noted that agency workers would likely be employees of the agency, although this is not yet clear from what Labour has said.

RA agreed with HB's assumption.

Member noted that their agency staff are currently classified as "workers".

4. Pay: National Minimum Wage and Collective Bargaining

HB noted Labour's commitment to ensuring the minimum wage is a genuine living wage that people can rely on. Labour want to remove the age bands that currently apply, which they say are "discriminatory". Labour will change the remit of the Low Pay Commission (LPC) so that it accounts for the cost of living.

HB noted that in social care, Labour will establish a Fair Pay Agreement (FPA) agreed by employers and trade unions.

HB noted that an increased minimum wage, without age-related pay bands, would increase costs for employers.

HB noted that Labour will consult widely on an FPA and will ensure there is adequate representation and accountability.

HB noted that Labour will clamp down on underpayment of the National Minimum Wage (NMW), particularly in terms of travel time between jobs. Recommended that where providers operate domiciliary care services, all payroll process ensure employees are paid NMW including travel time.

HB noted that Labour has recognised low pay as a challenge in the sector. Enquired about how providers feel about the proposals, particularly considering the range of different businesses that operate in the sector.

IB noted that the LPC joined a recent WDG meeting. In that meeting, it was noted that the current Government has used the NMW as a lever to increase pay without delivering commensurate funding. It also fails to give the care sector a competitive advantage against other low-paying sectors such as retail and hospitality.

RA noted that NMW age bands are not commonly adopted by care providers.

Member agreed with RA. Agreed that paying people differently based on age is discriminatory.

Member noted that collective bargaining has been productive in the past. The challenge is negotiating at a national level when there are large regional variances in pay.

IB noted that the stakeholders involved in collective bargaining would likely be employers, trade unions, local government and national government. Noted challenges in representing the views of a sector with 18,000 care providing organisations.

Member noted that funding for increased pay would need to account for pay differentials.

RA noted the role of cross subsidisation in securing the funds to pay the workforce.

Member noted that if the Government expects providers to openly apply a cross subsidy to increase pay, that in itself is an act of exploitation. That process is unregulated and exploits those at their most vulnerable in need of care.

RA noted that the October 2025 reforms on the cap on care costs would mean losing a significant proportion of the funding available from self-funders.

AoB

Member enquired about the sickness policies of other members on the call – is it just SSP or contractual sick pay?

Members generally operate with just SSP.

End of meeting.