

The Care Act, a statute of austerity?

The implications of fragmented control over caring labour

Dr Lydia Hayes, Cardiff Law School

Since the financial crisis there have been substantial cuts in the financing and provision of adult social care. There are approx half a million older people who would, prior to 2008, have been eligible for homecare services, but are now rendered ineligible for support. The state has re-defined the meeting of their needs to be a private family matter. Local authorities have absorbed a 26% cut in funding for adult social care and this has negatively impacted on pay, particularly in the homecare sector. Homecare workers need to work longer hours if they are to maintain their income levels. Hundreds of thousands of women are known to be paid less than the national minimum wage and zero-hours contracting is standard practice within the homecare industry. The increased prominence of non-payment for travelling time suggests that a greater proportion of homecare workers' time is unpaid and this damages their ability to support their own families. Austerity is backed by all three main political parties and there is little to suggest that budgets will not be further reduced in the next Parliament.

Meanwhile, pressure on homecare employers to comply with National Minimum Wage law appears to be at a tipping point. Recent decisions of the Employment Appeal Tribunal, more targeted enforcement by HMRC, and pronouncements by government ministers, suggest that the days of swindling homecare workers out of their lawful entitlements must come to an end. As the Care Act 2014 passed through Parliament, it was debated as an opportunity to address poor terms and conditions of employment in homecare work. The government claimed that specific measures to protect working time and wages were unnecessary and employment issues would be addressed in forthcoming statutory guidance.

My presentation offers an overview of aspects of The Care Act which have the potential to detrimentally impact on terms and conditions of work in homecare. In particular I focus on the duty to promote well-being duty, local authority market shaping duties and the inadequacy of statutory guidance on commissioning.

The Care Act 2014 represents a step change in social policy developments since the 1990s which have encouraged service-user choice through direct payments. It is now a statutory duty that local authorities actively promote service-user control over the provision of care service, regardless of whether service-users take up the offer of direct payments. Herein lies the potential to undermine the earnings of homecare workers through the continuation of zero-hours contracts, the use of 'daily average' agreements for unmeasured work, exacerbating the rising problem of 'fake' self-employment and encouraging live-in 'family' employment. I characterise the Care Act 2014 as a statute of austerity because it provides statutory justification for further fragmenting and informalising the employment of homecare workers in ways which will frustrate access to basic employment protections, including entitlement to the National Minimum Wage.