

Ethical Employment Policy

Policy information

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People, Organisational Development & Culture Committee (PODCC)

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Summary of document:

Hywel Dda University Health Board (HDdUHB) as a major public sector employer and commissioner of services is committed to eradicating unlawful and unethical employment practices and to ensure all workers at every stage of the supply chain are treated fairly. This policy aims to achieve this by ensuring organisational compliance with the Welsh Government Code of Practice on Ethical Employment in Supply Chains designed to eliminate modern slavery and support ethical employment practices.

Scope:

This policy applies to all employees, agency workers, bank workers, suppliers and contractors. It is of particular relevance to staff involved with procurement and recruitment.

To be read in conjunction with:

[435 - All Wales NHS Staff to Raise Concerns Procedure](#) – opens in a new tab

[868 - All Wales Safeguarding Procedures \(sharepoint.com\)](#) – opens in a new tab

[608 - Risk Management Framework](#) - opens in a new tab

[674 - Risk Assessment Procedure](#) - opens in a new tab

[Procurement Manual.pdf \(sharepoint.com\)](#) - opens in a new tab

[NHS Wales Standard Terms and Conditions for Supply of Goods and Services V4 August 2023](#) -

opens in a new tab

[Sustainable Procurement Code of Practice](#) – opens in a new tab

[Working for Us - Hywel-Dda-Managers-Guide---Interviews-Appointments-and-PECs---May-2022.pdf](#) -

[All Documents \(sharepoint.com\)](#) - opens in a new tab

[1030 - Tax Status of Workers Financial Procedure](#) – opens in a new tab

[815 - Counter Fraud Bribery and Corruption Policy](#) - opens in a new tab

[248 - Standards of Behaviour Policy](#) – opens in a new tab

Patient information:

Owning group:

T&F Group

Executive Director job title:

Huw Thomas, Director of Finance

Reviews and updates:

Version 1 New Policy - 17/12/20

Version 2 Amended for – updated guidance and links to supporting materials 11.12.2023

Keywords

Ethical Employment, Modern Slavery

Glossary of terms

NWSSP - NHS Wales Shared Services Partnership

TISC - Transparency in Supply Chains

Keypoints:

Hywel Dda University Health Board has signed up to the Welsh Government Code of Practice on Ethical Employment in Supply Chains and is committed to embedding the principles of the Code to eradicate unlawful and unethical employment practices and to ensure all workers at every stage of the supply chain are treated fairly.

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Introduction

Hywel Dda University Health Board (HDdUHB) as a major public sector employer and commissioner of services is committed to eradicating unlawful and unethical employment practices and to ensure all workers at every stage of the supply chain are treated fairly. HDdUHB has signed up to the Welsh Government Code of Practice on Ethical Employment in Supply Chains (the Code). The Code covers –

- Modern Slavery and human rights abuses
- Blacklisting
- False self-employment
- Unfair use of umbrella schemes and zero hours contracts
- Paying the living wage.

In signing up to the Code, HDdUHB is showing its intention to ensure that workers in public sector supply chains are employed ethically and in compliance with both the letter and spirit of UK, EU and international laws.

This policy sets out how HDdUHB aims to achieve compliance with the Code by raising awareness both internally with the workforce and with suppliers and contractors. Success is also dependent on close working with NHS Wales Shared Services Partnership given its intrinsic link with HDdUHB in the provision of procurement and recruitment services.

Policy Statement

Hywel Dda University Health Board has signed up to the Welsh Government Code of Practice on Ethical Employment in Supply Chains and is committed to embedding the principles of the Code to eradicate unlawful and unethical employment practices and to ensure all workers at every stage of the supply chain are treated fairly.

Scope

This policy applies to all employees, agency workers, bank workers, suppliers and contractors. It is of particular relevance to staff involved with procurement and recruitment.

Aim

The aim of this policy is to ensure organisational compliance with the commitments set out in the Welsh Government Code of Practice on Ethical Employment in Supply Chains designed to eliminate modern slavery and support ethical employment practices. Compliance will enhance HDdUHB's reputation as a values based organisation and minimise the risk of potential legal challenge and financial penalties.

Objectives

The aim of this document will be achieved by the following objectives:

- Appointing an Anti-Slavery and Ethical Employment Champion
- Proactively reviewing compliance against the commitments in the Code identifying foreseeable risks and putting in place controls to minimise or prevent incidents of non-compliance
- Establishing or adapting current procedures to ensure the commitments are adequately reflected
- Raising awareness of the Code to all staff and contractors
- Providing specific appropriate staff training to those involved with procurement and recruitment including senior managers

- Monitoring compliance on an annual basis and reporting on it as part of the HDdUHB Annual Reporting Process

Anti-Slavery and Ethical Employment Champion

HDdUHB has nominated the Director of Finance as its Anti-Slavery and Ethical Employment Champion. The Champion will look to reflect HDdUHB's values in the delivery of this policy. The organisational values are:

- Putting people at the heart of everything we do
- Striving to deliver and develop excellent services
- Working together to be the best we can be

Complying with the Code will help the Board in bringing the values to life by building the structures, processes and policies which enable the organisation to be a place which embodies these values.

Ethical Employment issues covered by the Code - definitions

The Welsh Government Code of Practice on Ethical Employment in Supply Chains (the Code) covers the following ethical employment issues:

- Modern Slavery and human rights abuses
- Blacklisting
- False self-employment
- Unfair use of umbrella schemes and zero hours contracts
- Paying the living wage

Further details can be found in [Appendix 1](#)

Policies and Procedures

HDdUHB has policies and procedures and risk assessment processes in place detailing employment policies, procurement, risk management, raising concerns, counter fraud and safeguarding.

All staff complete mandatory training on induction with refresher updates in accordance with specific professional and role requirements. All policies are available on [HDdUHB's intranet site](#).(opens in a new tab).

HDdUHB has adopted [435 - All Wales NHS Staff to Raise Concerns Procedure](#).(opens in a new tab). The procedure encourages staff to discuss concerns and safety issues, and to report more serious concerns and suspected wrongdoing, as soon as possible, in the knowledge that their concerns will be taken seriously and acted upon or investigated as appropriate, and where requested that their confidentiality will be respected. It also provides staff with guidance on how to raise genuine concerns without fear of reprisals, even if these turn out to be mistaken.

Raising awareness of the Code to all staff and contractors Staff

Staff awareness and training will be undertaken via publicising the policy on the website with targeted training provided for relevant groups ie Workforce & Resourcing including Bank Administration and Procurement teams. Recruitment Training is available to all staff who have responsibility for the selection, appointment and recruitment of staff within HDdUHB. Reference to the Code will be included in the Value Based Recruitment Training.

Contractors

Procurement services are provided to HDdUHB through a Service Level Agreement with the NHS Wales Shared Services Partnership (NWSSP). NWSSP is a signatory to the Code and has embedded the Code within standard operating procedures and is included as a matter of course within procurement activity. This includes signposting suppliers to the Transparency in Supply Chains (TISC) register as a part of invitation to tender and encouraging existing suppliers to register.

Training

Level 2 safeguarding training is mandatory for all staff which covers the definition of an adult at risk of abuse or neglect, the different types of abuse and their signs and individuals' roles and responsibilities with regard to suspicion or disclosure of abuse. All staff within the Health Board who have regular and/or direct contact with adults at risk of abuse also undertake more detailed training. Similarly Level 2 safeguarding children training is mandatory for all staff and provides information regarding key duties/responsibilities in relation to safeguarding children. Further mandatory training is provided for all clinical staff working with children, young people and/or their parents/carers as appropriate.

All staff have access to the Safeguarding Team for support and advice if they have a concern. Further information can be found at [HDUHB - Safeguarding - Home \(sharepoint.com\)](#) (opens in a new tab).

Modern Day Slavery Awareness is incorporated into safeguarding training and a specific module facilitated by the Safeguarding Team available to all employees throughout HDdUHB that have contact with service users to have an awareness about modern slavery and the exploitation of human beings and to understand their personal and the organisation's role and responsibility in tackling slavery. There is also an e-learning module available via ESR.

Further information can be found at [Modern Slavery and Trafficking \(sharepoint.com\)](#) (opens in a new tab).

The HDdUHB local procurement team (which is part of NWSSP) is provided with specific training via NWSSP.

An e-learning module 'Ethical Employment in the Supply Chain' is available via [Learning@Wales](#) (opens in a new tab) and all staff involved in recruitment and procurement should undertake this module.

Compliance monitoring

The Code of Practice sets out 12 commitments; how we will monitor them is set out below:

Commitment	Compliance Monitoring
1. Ethical Employment Policy	
Produce a written policy and monitor its effectiveness.	Policy made active 05/01/2021
Appoint an Anti-Slavery and Ethical Employment Champion.	Director of Finance is the nominated Champion.
2. Whistle Blowing Policy	
Produce a Whistle Blowing Policy to empower staff to raise suspicions of unlawful and unethical employment practices.	All Wales Raising Concerns Policy (opens in a new tab) in place.

	<p>Policy applies to all employees, officers, consultants, contractors, students, volunteers, interns, casual workers and agency workers.</p> <p>In the event that an incident of Modern Slavery is suspected, contact the Health Board Safeguarding Team for advice or refer directly to the Local Authority Safeguarding Team.</p>
Provide a mechanism for people outside our organisation to raise suspicions.	<p>A number of external resources are also available to raise concerns for example</p> <p>Welsh Government Guidance - Reporting modern slavery</p> <p>Call 999 if it's an emergency or you're in immediate danger. Modern slavery helpline Report a case of modern slavery online on the modern slavery helpline website.</p> <p>Modern slavery helpline Telephone: 0800 0121 700 Rydym yn croesawu galwadau yn Gymraeg / We welcome calls in Welsh. Available 24 hours a day, 7 days a week. Free from landlines and most mobile phones.</p>
3. Training	
Provide training for those involved in buying and recruitment of workers on modern slavery and ethical employment practices.	Monitor training compliance of relevant staff groups - eg number of staff undertaking Value Based Recruitment Training.
4. Ensure employment practices are considered as part of the procurement process	
<p>Include a copy of Policy in all procurement documentation. Include appropriate questions in tenders.</p> <p>Incorporate where appropriate elements of the Code as conditions of contract.</p> <p>Ask bidders to explain impact of low cost on workers if quote abnormally low.</p>	<p>For new all Wales contracts via sourcing, when tenders are published suppliers are directed to a set of questions on the 'Sell to Wales' site (European Single Procurement Document).</p> <p>Reference to the Code of Practice is included in the Procurement Manual.</p> <p>All abnormally low cost tenders are investigated.</p> <p>Work will be undertaken in conjunction with NWSSP to review compliance. We cannot guarantee assurance but will take reasonable steps to ensure suppliers comply.</p>
5. Working with suppliers	
Ensure undue cost and time pressures are not applied to suppliers that could	Work will be undertaken in conjunction with NWSSP to review compliance. We cannot

result in unethical treatment of workers.	guarantee assurance but will take reasonable steps to ensure suppliers comply.
Ensure suppliers are paid within 30 days.	This target is monitored via Public Sector Payment Policy in the monitoring returns submitted to WG.
6. Supplier sign up to Code	
Expect suppliers to sign up to help ensure ethical employment is carried out throughout the supply chain.	<p>NWSSP is working with suppliers to on-board to the Code. NWSSP-Procurement Services now includes commitments to the principles of Welsh Government's Code of Practice for Ethical Employment in Supply Chains as a mandatory requirement for those responding to above-OJEU tenders. Suppliers are also required to produce slavery and human trafficking statements regardless of the size of the organisations involved, which goes beyond the legal requirements of the Modern Slavery Act. Furthermore, suppliers are requested to sign up to the Transparency in Supply Chains (TISC) reporting website where they are encouraged to publish their slavery and human trafficking statements within three months of contract award. The NWSSP Sustainable Development Group has agreed standard questions around these requirements that are to be imported within Bravo, as well as having updated the planning template in order that staff are encouraged to consider these matters.</p>
7. Assess spend to identify and address issues of unethical employment.	
<p>Carry out regular reviews to assess areas at high risk.</p> <p>Investigate high risk suppliers.</p> <p>Work with suppliers to rectify any issues.</p> <p>Monitor employment practices of high risk suppliers through contract management meetings.</p>	<p>NWSSP undertake research on potential issues through the procurement planning process and qualification and management of suppliers. NWSSP is working with Sell2Wales to amend the content of the Sustainable Risk Assessment to incorporate suitable questions regarding anti-slavery and ethical employment. It is being addressed in coordination with the WG Lead for Ethical Employment.</p> <p>High risk areas have been identified as:</p> <ul style="list-style-type: none"> • Construction industry • Non-contracted food suppliers • Care home industry • Courier services <p>Work will be undertaken in conjunction with NWSSP to review compliance. We cannot guarantee assurance but will take reasonable steps to ensure suppliers comply.</p>
8. False self-employment/umbrella schemes/ zero hours contracts	
Ensure that employment mechanisms do not allow for avoidance of tax and	High risk areas are as in commitment 7 therefore same approach should be applied.

<p>NI contributions; unduly disadvantage workers in terms of employment rights; avoid health and safety responsibilities.</p>	<p>For workers directly engaged by HDdUHB –</p> <ul style="list-style-type: none"> • In order to ensure no tax/NI avoidance, the Tax Status of Workers Financial Procedure – opens in new tab, provides instruction to managers on the procedures to follow in considering the employment status for tax purposes of directly engaged workers, as well as the IR35 status of workers engaged indirectly. Tax status assessments performed are reviewed by the Finance Business Partner for Compliance and Tax. • Workforce policies in place to address other issues.
<p>9. Trade Union membership and blacklists</p>	
<p>Ensure workers are free to join Trade Unions and undertake related activities. Not make use of blacklists.</p>	<p>No issue internally.</p>
<p>Ensure suppliers do not use blacklists; not contract with suppliers who have used blacklists and failed to put things right; expect suppliers to ensure TU representatives can access members and workers.</p>	<p>High risk areas are as in 7 and 8 therefore the same approach should be followed.</p> <p>Work will be undertaken in conjunction with NWSSP to review compliance. We cannot guarantee assurance but will take reasonable steps to ensure suppliers comply.</p>
<p>10. Living Wage</p>	
<p>Consider paying all staff the Living Wage and becoming an accredited Living Wage Employer.</p>	<p>The Health Board as an employer is compliant where Living Wage and National Living Wage applies. (There are some exceptions where the Living Wage does not apply such as modern apprenticeships.)</p>
<p>Encourage suppliers based overseas to pay a fair wage and UK staff are at least paid the minimum wage.</p>	<p>Every tender is different so difficult to provide absolute assurance eg for office cleaning can ensure UK living wage is applied but where work is outsourced this is more challenging.</p> <p>Work will be undertaken in conjunction with NWSSP to review compliance. We cannot guarantee assurance but will take reasonable steps to ensure suppliers comply.</p>
<p>11. Annual Statement</p>	
<p>Produce an annual written statement outlining the steps taken to ensure unethical employment is not taking place in any part of the supply chain. Statement must be signed off at Board level and published on website.</p>	<p>This will be reviewed by the Audit and Risk Assurance Committee on behalf of the Board.</p> <p>Statements will include the reporting requirements of Section 54 'Transparency in Supply Chains' of the Modern Slavery Act 2015 once these are clarified for public sector bodies.</p>
<p>12. Outsourcing</p>	

<p>Ensure all those working on an outsourced contract are treated fairly; public sector staff who transfer to an outsourced third party retain their terms and conditions of employment.</p>	<p>Transfer of Undertakings (Protection of Employment) (TUPE) would apply for any affected HDdUHB staff.</p>
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Roles and Responsibilities

Chief Executive

The Chief Executive has overall accountability for the effective implementation of this policy and for ensuring that all reasonable steps are taken to prevent unlawful and unethical employment practices in the way HDdUHB discharges its duties as an employer and commissioner of services.

Director of Finance

The Director of Finance has responsibility for championing this policy, ensuring, in conjunction with NWSSP procurement that policies and procedures promote the commitments set out in the Code and that effective systems are in place to adequately monitor the policy's effectiveness.

Director of Workforce & OD

The Director of Workforce & OD has responsibility for ensuring that employment policies and practices are fair and equitable.

Senior Managers

Senior Managers are responsible for implementing the policies of the Health Board within their span of control and for ensuring that staff understand and apply the policy.

All Staff

All employees have responsibility for adhering to this policy and putting it in to practice.

References

Further information can be found in –

- Code of Practice – Ethical Employment in Supply Chains Crown Copyright 2016
- A Toolkit Guide Code of Practice – Ethical Employment in Supply Chains May 2017
- www.gov.wales/code-of-practice

Appendix 1 - Modern Slavery and human rights abuses

Modern Slavery involves one person denying another person his or her freedom, and can take a number of forms, including:

- the buying and selling of people;
- holding people in captivity;
- human trafficking – the recruiting, transporting, transferring, harbouring or receiving of a coerced person for exploitation, or deceiving a person into travelling;
- child labour; and
- other forms of exploitation where people are forced to work against their will, held in debt bondage or controlled by violence. These can include:
 - withholding of an individual's passport or identity documents
 - excessive recruitment fees and/or loans which workers are required to pay back before they can leave
 - withholding of wages
 - withholding/delaying of work permits
 - threat of reporting an individual's immigration status to the authorities
 - preventing free movement outside the organisation's premises and/or preventing communication with others
 - using a position of power or authority to control free movement which results in workers living or working in a situation that they would not freely choose

Human rights are the basic standards that all people are entitled to in order to live in dignity. Children are entitled to additional rights as they need extra protection that adults do not. The presence of modern slavery in business operations and supply chains needs to be understood in the wider context of human rights abuses. Within the workplace, these can include:

- Physical abuse
- Humiliation, harassment and intimidation
- Child labour
- Excessive working hours
- Low wages
- Poor and/or unsafe working standards and conditions
- No, or minimal, breaks
- Deprivation of food, shelter etc
- Unequal treatment based on factors such as race, gender, religion, migrant status etc

Blacklisting

Blacklisting, or use of prohibited lists, is the unlawful practice of compiling information on employees on their Trade Union membership and related activities, in order to discriminate against them.

Blacklists can also potentially contain further details on individuals who have reported concerns, for example, regarding health and safety and/or environmental matters.

False self-employment

Self-employment is where individuals work for themselves rather than working as employees and being paid a salary by an employer. This is different to agency workers who are engaged by an employment business (typically referred to as an employment agency) under a contract and then placed on a

temporary basis with other client businesses who supervise their work. This is also known as 'temporary agency work' or 'temping'.

False self-employment concerns employment where the contract of employment with the worker does not properly reflect the reality of the relationship. The problems that false self-employment causes can be summarised as follows:

- Unfair competitive advantage for those businesses who disregard their Pay as You Earn (PAYE) and National Insurance (NICs) obligations and other costs related to direct employment when they engage workers, and a corresponding disadvantage for those businesses which properly engage their workers as employees
- Loss of entitlement for the worker to Jobseekers Allowance and State Second Pension and loss of redundancy pay, maternity/paternity leave and pay, sick pay, holiday pay, overtime premium payments, travel allowances
- Lack of long term job security and career opportunities
- Loss of revenue to the Exchequer, as the correct amount of income tax and NICs may not be paid
- Health and Safety provisions deteriorate when workers work on falsely employed terms

Workers engaged on this basis may be unaware that they are being treated as self-employed.

Alternatively they may be aware of their employment status but feel they have little choice than to accept it or risk losing their job.

False self-employment is primarily an employment law matter, and workers will have recourse to remedies to address any instances of "false self-employment" through the employment tribunal service.

Unfair use of umbrella schemes and zero hours' contracts

An **Umbrella Company** is a business that directly employs contractors and freelancers who typically work through recruitment agencies. It provides accountancy based services, such as calculating PAYE and National Insurance (NI) contributions, client invoicing as well as paying the contractor/freelance employee. Organisations may use Employment Businesses who in turn may outsource their responsibilities – for recruitment and payment of temporary staff and managing PAYE and NI contributions – to Umbrella Companies.

End User → Agency → Umbrella Company/Intermediary Business → Worker

Whilst umbrella schemes have their place, some schemes are unfair in how they operate, impacting negatively upon the worker. These practices also result in a loss of revenue to the Exchequer, as the correct amount of income tax and NICs may not be paid. Examples of unethical practice through the use of unfair umbrella payment schemes include reduced pay where employer NI contributions and various administration fees and equipment fees are deducted from the workers' pay. In addition, holiday pay may come out indirectly when the pay is rolled up in the regular pay, creating a situation of workers working 52 weeks of the year save for time off on bank holidays (for which they receive no pay). Travel and subsistence expenses have often been used as part of umbrella arrangements to

reduce pay and tax. In April 2016, travel and subsistence rules changed for those workers who are deemed to be under “Supervision, Direction or Control”.

Zero-hours contracts (as defined by the Small Business, Enterprise and Employment Act 2015) means a contract of employment or other worker’s contract under which:

- the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker; and
- there is no certainty that any such work or services will be made available to the worker.

For this purpose, an employer makes work or services available to a worker if the employer requests or requires the worker to do the work or perform the services.

Zero-hours contracts are used to set out casual agreements between an employer and an individual. Generally, under a zero hours contract, employers do not guarantee to provide any work and pay only for work undertaken. The worker/employee is not obliged to accept any work offered by the employer.

A zero-hours contract is one type of flexible employment practice which can be more broadly defined as arrangements which do not provide individuals with guaranteed hours or permanent roles. Individuals on such an arrangement will be either workers or employees. All will be entitled to the National Minimum/Living Wage, paid annual leave, rest breaks and protection from discrimination. If they are employees, they will also be entitled to statutory employment rights including (but not limited to) statutory maternity/paternity/ adoption pay and leave, statutory redundancy pay, the right not to be unfairly dismissed and a statutory minimum notice period.

Used appropriately such arrangements can support the effective and efficient delivery of services and can provide benefits for both employers and employees.

- For the employer - they can offer flexibility to cope with fluctuations in staffing requirements by providing a pool of individuals who can be called upon in addition to the main workforce. This can help meet peaks in demand or provide cover for periods of high annual leave and sickness.
- For the employee – they can offer the flexibility to accept and reject work in line with personal requirements. For example, where individuals have care responsibilities, where they have another permanent role (possibly with the same organisation) or where they wish to gain experience in a specific field of industry.

However, they can be used inappropriately for example if the employer uses them to:

- pay lower rates of pay and evade employer obligations such as payment of sick pay, holiday pay, workplace pension
- penalise individuals who reject offers of work and/or favour those who readily accept work
- give insufficient notice of upcoming work and/or give little notice of the cancellation of work

These arrangements have also been used to prevent individuals accepting work with other employers through exclusivity clauses.¹

¹ (Section 153 of the Small Business, Enterprise and Employment Act 2015, inserts two new sections, 27A and 27B, into the Employment Rights Act 1996 making exclusivity clauses in zero hours contracts unenforceable.)

For public sector organisations – it is expected that organisations adopt the principles and guidance developed by the Public Services Staff Commission in conjunction with the Workforce Partnership Council to support the appropriate use of non-guaranteed hours arrangements (including zero-hours arrangements) in public services in Wales. It is also expected that organisations commissioning services seek agreement from their contractors to adopt the principles and guidance.

Paying the living wage

In the UK there are two different 'Living Wages':

- The Living Wage (set by the Living Wage Foundation)
- The National Living Wage (the National Living Wage and the National Minimum Wage)

This Policy refers to the former.

The Living Wage: The Living Wage is a voluntary hourly rate that is set by the Living Wage Foundation based on the cost of living. The Living Wage Foundation encourages organisations across the UK, in all sectors, and of all sizes, to become accredited Living Wage employers.

The wage level is set annually and is based on the cost of living in the UK (the level is different in London). The Living Wage is calculated by research that includes consultation with members of the public about what is needed by households to have the minimum acceptable quality of living. The incomes required by families of different sizes are calculated separately and then a single Living Wage is calculated from these figures.

The National Minimum Wage/ National Living Wage (new minimum wage for people aged over 25): The National Living Wage was introduced by the UK Government in July 2015 and must be paid to all workers over the age of 25. It is a criminal offence for employers to not pay someone the National Minimum Wage or National Living Wage. The National Minimum Wage is the minimum pay per hour that almost all workers are entitled to. The National Living Wage is higher than the National Minimum Wage - workers get this rate if they are over 25. It is set at the same level throughout the UK and is effectively the new Minimum Wage for over-25s. It is not connected to the cost of living, but is linked to average earnings. It is a criminal offence for employers not to pay someone the National Minimum Wage or National Living Wage, or to fake payment records.