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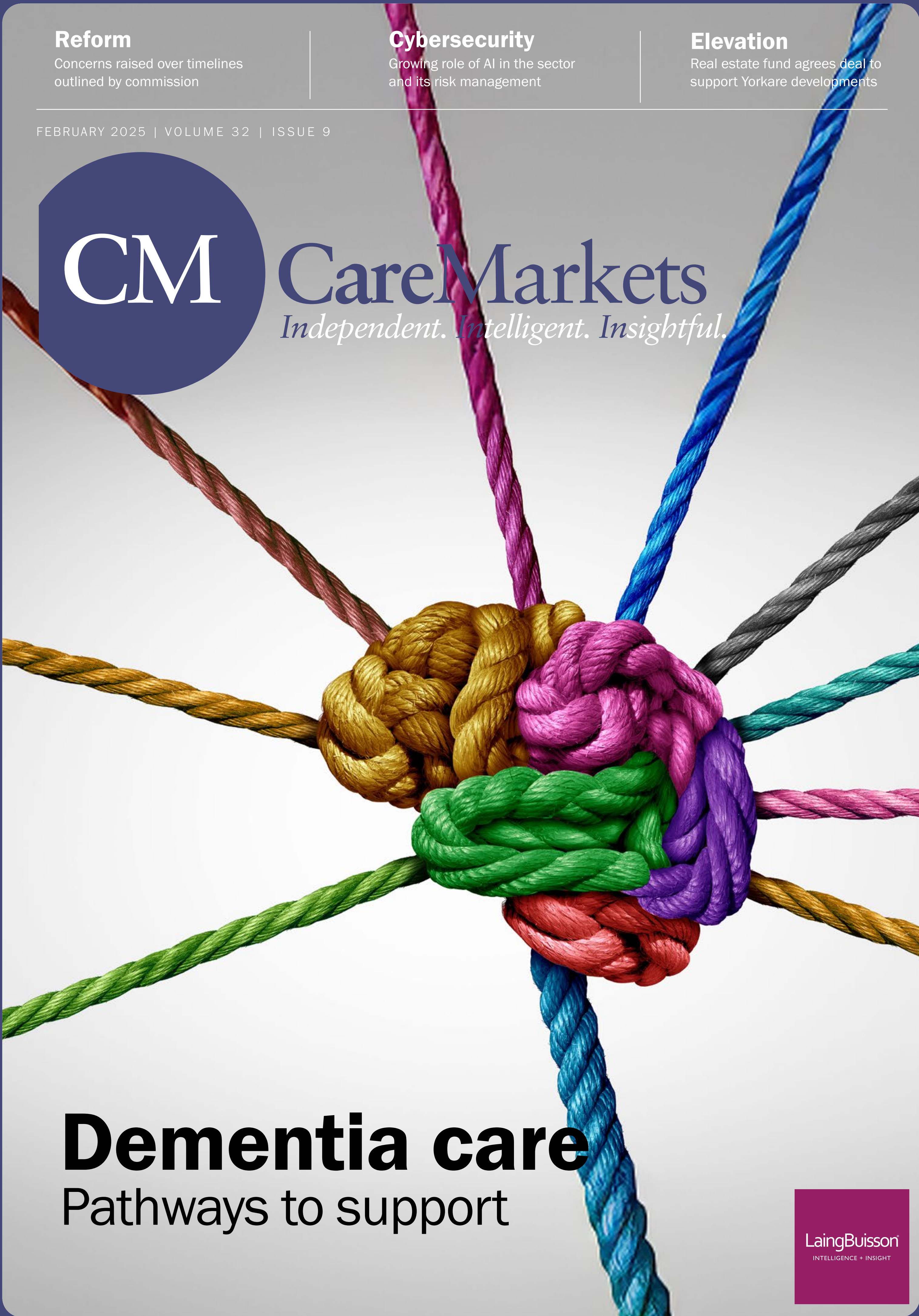

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The Employment Rights Bill sets out to overhaul worker protections, but where are we now and what does this mean for social care providers? The bill's implications could be far-reaching as employment partner **Stuart Craig** and senior associate **Francesca Clowes-Fellows** explain

Striking a **balance**

The date 16 January 2025 marked a key milestone for the Employment Rights Bill in that it completed its progress through the committee stage in the House of Commons. While the bill still needs to complete its progress through the commons and then navigate an equivalent process in the House of Lords before it is added to the statute book, we explore below the main proposed measures due to impact the care sector in the coming months and years. Most of the measures in the bill extend to the whole of Great Britain, but not to Northern Ireland.

Many of the headline measures – including greater regulation of zero hours contracts and protection against unfair dismissal as a day one right – will need regulations setting out the detail before they can be implemented. Though some measures can be brought into force significantly earlier, proposals that need regulations are unlikely to become law before late-2026. Most of the provisions employers are likely to be worried about fall into that category.

As we explore below, while the prospect of greater labour market regulation has affected business sentiment, current estimates of the likely cost to businesses need to be treated with a degree of circumspection.

Already priced in rises in NMW rates and employers' NICs

Regarding likely cost to businesses, readers will be aware that two significant changes were announced last autumn, both of which will add significantly to employment costs in the care sector.

The first is the annual rise in national minimum wage (NMW) rates that takes effect on 1 April. The national living wage for workers aged 21 and over will rise to £12.21 an hour and the minimum rate for 18- to 20-year-olds to £10. Although not a surprise, since they followed a trajectory set by the previous government, they still represent real terms increases, particularly for workers aged under 21.

> IT IS HARD TO SEPARATE WAGE SETTING IN THE SOCIAL CARE SECTOR FROM THE AVAILABILITY OF PUBLIC FUNDING TO COVER AT LEAST SOME OF THE ADDITIONAL COSTS

The second change is the increase in employers' National Insurance contributions announced in the Autumn Budget. From 6 April the rate of employers' NI contributions is due to rise by 1.2 percentage points to 15% and the level at which employers start paying NICs for each employee will fall from £9,100 to £5,000.

Although some mitigation measures were announced for small businesses, the combined effect of these changes will have a disproportionate impact on low pay sectors like social care, where employers face a higher percentage rise in wage costs because of the Budget than in sectors where the average wage is higher. Although this change has led to key concerns being raised by CEOs of social care organisations via the letter sent to Rachel Reeves MP titled 'The Impact of the Budget on Specialist Care', it remains a planned change.

Employment rights measures to watch out for

Top of the list of concerns for the care sector are the zero-hours contracts provisions. According to the government's impact assessment, just over a fifth of the social care workforce is employed on these contracts. However, more than any other measures in the bill, we need the regulations before we know exactly how they will work. It is too early to say whether the more pessimistic assessments of their impact are accurate, though it is probably true that they are likely to have the greatest direct financial impact of any measures in the bill, with the possible exception of the reforms to statutory sick pay.

Among other measures, the changes to the unfair dismissal regime have rightly been singled out as significant, but their financial impact is likely to depend on how well employers are able mange the new statutory probationary period which are likely to be nine months moving forward. Linking back to possible additional costs that will arise out of this change.

There are arguments that the incentives it will create to be more rigorous about recruitment and performance management will generate productivity

gains that will outweigh any additional compliance costs. The same could be said of the equality-related measures in the bill. These include re-introducing workers' protection against third party harassment and strengthening the new requirement for employers to prevent workplace sexual harassment, which came into effect last October.

Social care negotiating body

Measures that would establish a framework for an adult social care negotiating body in England are set out in a dedicated part of the bill. The idea is to boost wages in the social care sector to help deal with its well-publicised recruitment and retention issues.

Regulations will ensure the voices of both trade union officials and employers' bodies will be represented. Although sector-based pay bargaining in the private sector has largely been replaced by the NMW, this kind of regulation has been tried before in the UK, most recently through wages councils, the last of which were abolished in the early-1990s.

However, it is hard to separate wage setting in the social care sector from the availability of public funding to cover at least some of the additional costs. As the Institute for Fiscal Studies put it: 'It is difficult to see a path to a successful fair pay agreement that does not include some additional public funding for councils to increase fees paid to care providers.'

Trade union rights

Another component of the bill that has received less publicity than it probably merits is its provisions on trade union rights. These start with the repeals of most of the last government's trade union legislation, which, unlike most other measures in the bill, are likely to take effect later this year.

Union membership density is typically lower with private sector employers, so most care providers are unlikely to be much affected by a series of measures that will make it simpler for unions to ballot for industrial action. However, plans to increase workplace access for unions are likely to be more significant. Most importantly, there will be a new statutory process for unrecognised unions to enter into 'access agreements' with employers so they can meet with and organise workers.

While the impact of these measures will differ according to the workforce profile of each care provider, all will be impacted by a new requirement to inform workers of their right to join a trade union and to make them aware of the statutory protection against detriment and dismissal on trade union grounds (which is being strengthened by the bill).

Conclusion

It is a long time since the UK has had a government that actively supports extending employment and trade union rights. However, it is becoming clear it is increasingly aware of the need to temper this agenda to reconcile it with other pressing priorities, of which the most important is the need to secure economic growth.

Given how long it will take for most of the measures in the Employment Rights Bill to become law, there is plenty of time for adjustments and compromises to be made, particularly around matters of detail on which the government has promised to consult.

It is to be hoped a balance can be struck so that labour market regulation protects workers from abuse by a minority of unscrupulous employers, without acting as a break on job-creation and economic growth.