



# Low Pay Commission 2008

The TUC Submission

## **1: Introduction and summary**

The TUC is the national trade union centre. Our 59 affiliated unions represent 6.5 million members.

This paper sets out the TUC's evidence to the Low Pay Commission's 2008 review. It takes into account the whole range of views and experiences across all sectors of the economy. The submission looks at:

- the potential impact of the minimum wage on jobs, inflation, investment, productivity, entrepreneurship and the low paying sectors;
- the minimum wage and equality issues;
- Setting the minimum wage rates for 2009 and 2010 for adults, 18-21 year olds and young workers aged 16 and 17; and
- Improving enforcement.

In formulating our recommendations, we have taken account of the following key points:

- We believe that the minimum wage has not yet reached its highest sustainable level relative to average earnings. We have previously argued that the adult rate should increase to £6.00 in October 2008;
- It has been widely predicted that the current economic slowdown will reach its lowest point fairly early in 2009. It follows that the LPC's recommendations are most likely to apply to a period of recovery and growth;
- The low paying sectors have so far performed rather better than the wider economy in terms of employment growth.

We argue that although economic conditions are becoming more difficult, the economy is largely sound enough to weather what most commentators think will be a short sharp slowdown followed by an early recovery. Most predictions say that the economy is likely to recover later in 2009 and return to stronger economic growth in 2010.

Given that the minimum wage has never had any detrimental side effects on the UK economy, that the LPC's next increases are likely to apply to a period of growth, and given that a freeze in the minimum wage would have strong detrimental effects on low paid workers at a time when food and fuel prices are rising sharply, the TUC would argue that further increases to the adult rate of the minimum wage for 2009 and 2010 are essential. In addition, the adult rate should be paid from the age of 21, and that the rates for younger workers should increase somewhat faster than the growth in average earnings.

### The TUC's minimum wage rate recommendations

- The adult rate of the minimum wage should be more than £6.10 by October 2009 and at least £6.50 by October 2010.
- The adult rate should be paid at 21.
- The LPC should recommend an increase to the rate for 18-20 year olds that exceeds the predicted growth in average earnings.
- A series of increases in the rate for 16 and 17 year old workers that exceed the growth in average earnings are needed. The rate should be more than £4.00 per hour by October 2010.

This submission also recommends a number of measures to protect particular groups of vulnerable workers, and to improve enforcement.

### **2: Ten years of the national minimum wage**

This year marks the tenth anniversary of the National Minimum Wage Act. The Low Pay Commission was already engaged in its first inquiry by then, having held its first meeting in July 1997. The first LPC recommendations for the national minimum wage took effect in April 1999. The completion of the first decade of the minimum wage should be marked both by celebration of its success and by a restatement of its rationale, which is to make life at work fairer for those at the bottom end of the labour market, and to ensure that employers play their proper part in combating low pay and poverty.

#### ***The role of the Low Pay Commission***

The LPC members and secretariat past and present should be congratulated for their efforts, skill and judgement, which have been rewarded both by the successful establishment of the minimum wage and by its substantial improvement during the past decade.

The TUC continues to believe that the Low Pay Commission process as a whole has shown that involving the social partners can add a great deal of value to the process of making decisions. The quality of the LPC's recommendations so far has reflected the rigour of its enquiries, which are the epitome of the phrase "evidence based policy".

Whilst the LPC will always want to take account of movements in economic indices, they should therefore resist any calls for their decisions to be tied to a simplistic formula.

In short, the TUC thinks that the LPC process has generally worked well for all the parties involved and that its decision making model could usefully be extended to other areas of policy making.

### ***The role of the minimum wage in creating fair employment***

The minimum wage has been a vital component of the Government's strategy of combating poverty and making work pay. After a decade of the minimum wage it is instructive to cast our minds back to the mid-1990s, when low pay was completely unregulated.

In the decade following the abolition of the Wages Councils, which had formerly set minimum rates in a number of low paying industries, pay at the bottom end of the labour market fell sharply relative to average earnings. Just before the minimum wage was introduced at £3.60 per hour, it was quite common to find adults who were paid £1 per hour or less, and this situation was perfectly legal. Clearly without any regulation some employers would pay as little as they could get away with. In some low paying sectors, once a significant number of employers had cut their rates, other would be forced to do the same in order to compete, fuelling an unhealthy race to the bottom.

The pernicious effect of low wage exploitation at the bottom end of the labour market was compounded by cuts in the real value of social benefits, and by privatisation and marketisation, which also drove the bottom rates down in the affected industries. Women workers in part time and insecure jobs were hit hardest by the downward pressure on wages.

Setting a decent legal floor on wages is a necessary part of establishing a fairer system of work in this country, with more than a million people gaining from most minimum wage increases. It has also made work more attractive to people who are considering entering the labour market and helped to keep people in work.

The minimum wage has also helped to ensure that all employers play their proper part in fighting against low pay, which would have been difficult without legislation. Better in-work benefits and tax credits have also improved the standard of living of many people on low incomes. These improvements rest in part on the minimum wage, which improves the tax/ benefit equation, and thus benefits us all.

Much has been achieved, but the TUC believes that the minimum wage has not yet fulfilled its full potential. We argue below that there will be room for further increases in 2009 and 2010 that exceed the growth in average earnings by a modest amount.

### **3: Campaigning beyond the minimum wage and the fight against poverty**

The Government has striven hard to reduce poverty, but more still needs to be done. Setting the highest levels of minimum wage that can be sustained without adverse side effects will be a vital part of the broader fight against poverty.

Trade unions are also working hard to try to eliminate low pay. Collective bargaining has been an important factor in increasing wages above the minimum wage and fighting low pay more generally. Some progress has been made in negotiating improvements to the bottom rates in pay scales and despite the Government constraints on public sector pay, negotiated rates in the public sector are well above the minimum wage.

An important campaigning benchmark has been the development of the concept of a “living wage”. This is commonly based on estimates of the basic living costs for a family and what sort of hourly wage will deliver an income sufficient to meet those costs. The calculation is commonly made at the level of the local authority area.

The most famous example has been in London, where the Greater London Authority established its own living wage under Mayor Livingstone, which applies to its employees and contractors. The living wage has also been adopted, on a voluntary basis, by at least 26 other public and private sector organisations, and the campaign has also persuaded a number of other organisations to increase their pay rates. This campaign has been a real benefit to a number of workers facing the high cost of living in the capital.

Trade union campaigning as part of a broadly based community alliance has entrenched the idea of the London living wage. Indeed, Mayor Johnson has recently honoured the election pledge to increase the living wage to £7.45.

Living wage campaigns are a powerful reminder of the need for further progress in fighting low pay. Whilst we need to maintain a truly national minimum wage that is set at the highest level that can be sustained, there is also a clear role for campaigns that go beyond the minimum. The Government could help concerned local authorities to fight poverty by legislating to give them clear powers to set living wage rates in their procurement and labour contracts.

#### **4: Low Pay Commission Remit 2008/9**

"The Low Pay Commission is asked to:

- Monitor, evaluate and review the national minimum wage and its impact, with particular reference to the effect on pay, employment and competitiveness in the low paying sectors and small firms; the effect on different groups of workers, including different age groups, ethnic minorities, women, people with disabilities, migrant workers; and the effect on pay structures.
- Review the levels of each of the different minimum wage rates and make

recommendations for October 2009. The Commission is also asked to make provisional rate recommendations as appropriate for October 2010.

- Review the current apprentice exemptions and advise whether they are still appropriate. The Commission is asked to bear in mind the Government's ambition to increase the number of apprentices to 500,000 and the need to ensure that sufficient employed places are available when the education participation age is raised in 2013.
- Report to the Prime Minister and Secretary of State for Business Enterprise and Regulatory Reform by the end of February 2009. (1)"

## 5: The impact of the minimum wage

This section looks at the most up to date economic data available to check that the previous increase of the minimum wage has been absorbed without difficulty. As in previous years, this does not reveal any detrimental impact.

### **Employment**

The UK Statistics Authority reports that there were 300,000 more employee jobs<sup>2</sup> in summer 2008 than one year earlier. The total in the latest quarter has fallen back by just 9,000 jobs from the all time record employment levels reached in spring 2008.

Most importantly for our purposes, the official statistics also report that the number of employee jobs in sectors with a high concentration of low pay has increased by 96,000 during the past year. This increase is largely due to an increase of 51,000 jobs in the retail sector (see table 2 below), whilst social care and hospitality together accounted for an increase of 39,000.

**Table 1: GB Employees in Low Paying Industries (thousands)**

Industry	June 2007	June 2008	Change
Agriculture, hunting and forestry*	221	232	+11
Textile, clothing and leather goods manufacture	107	103	*
Retail trade (not motor vehicle)	2,917	2,968	+51
Hotels & restaurants	1,782	1,802	+20
Social work activities	1,144	1,163	+19
Investigation and security services	167	168	*
Industrial cleaning	446	453	*
Hairdressing & other	129	120	*

<sup>1</sup> Written Ministerial Statement on the National Minimum Wage, 5 March 2008, Hansard

<sup>2</sup> ONS Labour Market Statistics First Release, September 2008, table 3.

beauty treatment			
Total employee jobs	6,913	7,009	+96

Source: UK Statistics Authority GB Employer Jobs Survey (Economic & Labour Market Review table 6.05). Notes: Employees only (excludes self employed). Total of main jobs and second jobs combined. Not seasonally adjusted. Changes of less than 10,000 (marked with an asterisk) are not reported as they are not statistically significant.

The number of employee jobs in the low paying sectors as a whole increased by 1.4 per cent last year, which compares well enough with the 1.2 per cent increase in employee jobs across the whole economy.

As the LPC's remit includes looking at the impact of the NMW on low-paying sectors, they will be heartened by the recent jobs growth record in the low paying industries. It is certainly clear that the minimum wage has not hindered job creation. Rather, increases in the minimum wage have coincided employment growth in the low paying sectors that has been stronger than employment growth in the broader economy.

### ***Differentials***

It has always been clear to the TUC unions that a strategy of combating low pay will involve some compression of differentials at the bottom end of the pay scale. In the overwhelming majority of cases, unions have been very careful to avoid calling for the restoration of differentials. In the few cases where unions have referred to the minimum wage in negotiation, it has been as part of an attempt to increase the rates of those whose pay rates are just above the statutory minimum.

In addition, as we report below, it is quite common for unions involved in collective bargaining to ask for an extra amount for the bottom grades in order to help to eliminate low pay.

Unions report that they have rarely heard employers complain that pay compression has caused difficulties, and compression does not seem to be causing any substantive problems. There is no evidence that compressed differentials are stopping workers from accepting extra responsibilities, training and promotion, or that compression is depressing morale or productivity.

### ***Inflation***

The recent increase in inflation has certainly not been driven by wage increases. Rather, rising energy prices are leading to increases in basic essentials including food. In August 2008 a further increase in inflation was fuelled by "...a rise in average gas and electricity bills this year ... There were further large upward pressures from food and non-alcoholic beverages where prices rose by more than

last year <sup>(3)</sup>". These rises in the price of essential goods have a disproportionate impact on the low wage workers.

Although the increase in the cost of oil has now started to slow, the latest statistics still report that the average cost of crude oil acquired by refineries in September 2008 was 66.0 per cent higher than a year ago<sup>4</sup>.

People in the bottom ten per cent of the income distribution pay a higher percentage of their income for domestic energy, housing and food costs<sup>5</sup>. In short, the low paid are chasing price rises, not causing them.

### ***Profitability***

The rate of profitability has held up well in most sectors. The net profitability of UK private non-financial corporations in the first quarter of 2008 was 15.3 per cent, compared with a rate of 15.1 per cent for the whole of 2007<sup>6</sup>.

Since energy prices have been driving inflation, it is also worth noting that the net rate of return for oil and gas extraction companies increased in the first quarter of 2008 to 57.6 per cent, compared with a rate of 35.2 per cent for 2007.

However, there are grounds for concern in manufacturing, where the net rate of return was had fallen to 4.9 per cent in the first quarter of this year, compared with an average of 6.6 per cent for 2007. However, there is no evidence that the minimum wage has made a measurable contribution to the problems in the manufacturing sector. Minimum wage workers are distributed thinly in the sector, where they largely work in contracted-out roles such as security and cleaning.

In contrast, service companies, which employ most minimum wage workers, had an average rate of return of 21.1 per cent in the first quarter of 2008. This figure was down on the 21.4 per cent average recorded for the whole of 2007, but still a very healthy profit.

### ***The stock of businesses and entrepreneurship***

The rate of business start-ups and survivals can be used to check that past increases in the minimum wage have not squeezed the low paying sectors. New figures will be published in November 2008.

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<sup>3</sup> National Statistics Website, "Inflation – August" - <http://www.statistics.gov.uk/cci/nugget.asp?id=19>

<sup>4</sup> "Quarterly Energy Prices", BERR, September 2008, p7

<sup>5</sup> Ibid, p9.

<sup>6</sup> ONS Labour Market Time Series Data.

The table below looks at the latest figures for business creation and the net change in the total number of businesses in the five low paying sectors that can be identified from the VAT statistics. The figures show that 41,990 new businesses started up in the five sectors during 2006. This increase was partly driven by the high rate of start ups in bars and restaurants.

The survival rate for low paying business remained very good in 2006, leading to a net increase of 8,835 businesses across the five sectors. This compares very well with the 7,105 increase in 2005 and the 2,105 increase in 2004.

It is particularly worth noting that the 11.0 per cent rate of start-ups and the 2.3 per cent increase in the total number of businesses have been greater for these low paying industries than for the whole economy, where the comparable figures were 9.3 per cent and 2.0 per cent respectively.

Furthermore, the evidence also shows that the small business sector was continuing to thrive. The latest figures available show that enterprises employing 1-49 employees were holding their own in terms of both their share of overall employment and their share of overall turnover<sup>7</sup>.

**Table 2: Vat registered businesses in the low paying sectors:  
January 2007**

Sector	Stock of VAT registered businesses	Start-ups in previous 12-months	Start-ups as a percentage of stock	Change in previous 12 months	Change in previous 12 months as a percentage of stock
Retail	210,550	20,085	9.5%	+3,390	+1.6%
Hospitality	141,910	19,175	13.5%	+5,260	+3.8%
Cleaning	11,915	1,170	9.8%	+315	+2.7%
Textiles, leather and footwear	9,735	650	6.7%	-210	-2.1%
Security	6,130	710	11.6%	+80	+1.3%
Identifiable low-pay sectors <sup>8</sup>	380,240	41,990	11.0%	+8,835	+2.3%

<sup>7</sup> BERR website SME statistics report that the employment the share of total employment accounted for by small businesses increased slightly from 27.2 per cent in 2006 to 27.3 per cent in 2007.

<sup>8</sup> Note that data on social care and hairdressing cannot be identified from the published BERR VAT statistics as they are based on 3-digit ONS industry codes.

All UK economy	1,956,800	182,200	9.3%	+39,1000	+2.0
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Source: BERR Small Business Service VAT statistics to January 2007 (published Nov 2007).

The VAT statistics up to the start of 2007 show that the UK economy was sustaining a record number of business as well as record levels of employment. Clearly the minimum wage had not had a negative effect on the UK's entrepreneurial spirit nor the ability of businesses to succeed.

### **Conclusion**

Our conclusion is that the most recent increases in the minimum wage have been absorbed with generating any adverse economic side effects. A key point is that employment in the low paying sectors has grown faster than employment in the general economy (see table 1).

### **6: Impact on equalities**

The minimum wage has so far always had a beneficial effect on equalities. Women workers, ethnic minority workers and workers with disabilities have been overrepresented amongst the low-paid. Consequently they have been disproportionately represented amongst the beneficiaries of the minimum wage. In addition, their employment rates have improved during the last decade, suggesting that the minimum wage may be encouraging more people from these groups to enter the labour market<sup>9</sup>.

As a result, the minimum wage has narrowed the gap between the average earnings of women, members of ethnic minorities and disabled workers and white male employees, although the effect has been a relatively modest one.

For example, two thirds of the jobs benefitting from the 2007 uprating were held by women, and there is some evidence that the minimum wage has helped to close the gender pay gap in the bottom half of the earnings distribution<sup>(10)</sup>.

The minimum wage cannot of itself close the pay gap, which has been largely driven by the growth in male earnings at the top end of the income distribution. Nevertheless, the minimum wage has clearly led to greater equality in the jobs at the bottom quarter of the income distribution, and it is important that this improvement is maintained.

### **7: Prospects for the UK economy**

<sup>9</sup> National Minimum Wage, The LPC Report, 2008, pps 69-77.

<sup>10</sup> At the fifth percentile the gender pay gap has closed from 10.5% in 1998 to 3.8% in 2007, whilst at the median the gap has closed from 16.8% to 11.2% (LPC Report 2007, p71).

We are currently beset by predictions of doom and gloom for the UK economy. There are indeed real grounds for concern about the immediate future, and it is clear that the long feared economic slowdown has finally started in earnest.

However, it is still unlikely that fears of the worst case scenario will be realised. The TUC echoes the views of the CBI and the Bank of England by stating again that the UK is relatively well placed to ride out the current economic problems.

The UK economy has certainly proved to be much more robust than some commentators would have allowed, with employment growth in particular proving to be stronger than the pundits could foresee.

There are still some grounds for optimism. For example, a summer 2008 survey of 1,121 employers found that 29 per cent of employers expected to increase staff in the next three months. Whilst this is patently lower than the 38 per cent recorded one year earlier, it is certainly not a sign that the rate of hiring is set to collapse<sup>11</sup>.

Moreover, although many of the low paying sectors are quite pessimistic about the immediate future, most of them have still been reporting growth. The following facts suggest that slowdown has yet to bite on some of the key low paying sectors:

- The retail sector has been somewhat volatile in recent years, but it has continued to grow, albeit in rather variable fashion. The latest figures show that the volume of retail sales is down 0.8 per cent on the previous quarter but 1.2 per cent higher than one year ago<sup>12</sup>.
- The hotel sector reports that it is concerned about the future. However, it is currently still enjoying historically high returns: *“London hotels boosted revenue per available room (revpar) by 11.96% in the week ending 27 July, according to figures from hospitality research company STR Global. Revpar increased to £124.34, up from £111.05 during the equivalent week of 2007<sup>13</sup>.”*
- Members of the British Security Association reported a respectable 2.9 per cent increase in turnover last year, taking the annual turnover of the sector to £4,455million<sup>14</sup>.

Furthermore, the value of sterling has been falling against both the Euro and the US dollar, which is good news for both manufacturing and inbound tourism. If

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<sup>11</sup> CIPD/KPMG Labour Market Outlook survey of UK employers, spring 2008, CIPD press release 14 May 2008.

<sup>12</sup> Retail Sales: August 2008, National Statistics Website.

<sup>13</sup> ‘Revpar grows by nearly 12% at London Hotels’, Caterer Search, 18 August 2008, <http://www.caterersearch.com/Topics/181/industry-data.html>

<sup>14</sup> BSA website

the UK becomes relatively more attractive as a destination for tourists then this will help to offset the effects of the slowdown in the hospitality sector.

However, in truth, the latter half of 2008 and the early part of 2009 is likely to be a difficult time for the UK economy. The high price of energy is bolstering inflation, there is a credit crunch, and it seems likely that house prices will continue to fall. These conditions are likely to have a detrimental effect on both consumer confidence and economic growth.

The average economic predictions suggest that next year there will be very slow economic growth, a fall of 0.6 per cent in overall employment and an increase of 177,000 in claimant unemployment (see table below).

There should be better news to come though, as forecasters also believe that economic growth will improve by 2010. Indeed, the Bank of England's August 2008 report<sup>15</sup> suggests that the bottom of the current slowdown will be reached early in 2009.

This is an important consideration. The LPC is currently formulating recommendations for minimum wage rates to apply from October 2009 to September 2010 and possibly also to September 2011. Therefore, whilst it would be very wise to take due account of the current economic uncertainty, and predictions have been worsening, the greater part of the next recommendations are likely to apply to the period of recovery rather than the current slowdown.

**Table 3: Economic indicators 2008-2010**

	Whole year 2008 forecast	2009 forecast	2010 forecast
GDP growth	1.1	0.5	2.2
Employment growth	+0.5%	-0.6%	n/a
Claimant unemployment (millions)	0.940	1.170	1.29
Average Earnings Index	3.8	3.8	n/a
CPI Inflation	4.6	2.1	2.3
RPI-x inflation	4.8	2.1	2.8

Source: HMT roundup of independent economic forecasts for the UK Economy (September 2008) for 2008/2009 median forecasts made in the last 3 months. The latest forecasts for 2010 were published in HMT's August roundup.

<sup>15</sup> Bank of England Inflation Report, August 2008, pps 6&7.

## **8: Unions are playing their part in the fight against low pay**

The minimum wage is a very important part of the fight against poverty. However, it is not the only instrument used in this battle. Trade unions lobby government and support initiatives to create more jobs in higher-paying industries, to equip workers with more ‘human capital’ by improving their skills and training, and to ensure that there are decent in-work benefits and tax credits for those who are struggling.

Trade unions also play their part through collective bargaining for higher wages. Of course they do not succeed in every case, and public sector pay is currently labouring under an unwarranted constraint put in place by the Government. Nevertheless, unions report a number of notable agreements that exceed the growth in average earnings (see table below).

In addition, some agreements have an extra element for the low paid, including the local government pay claim, the Severn Trent Water Agreement and the agreement for civil servants working for the Welsh Assembly

In local government there was a strike over pay on 16/17 July. At the time of writing it has just been announced that talks will re-start in late August. This dispute shows that trade unions are prepared to prioritise ending low pay. This is no small matter, given that the negotiations cover 1.4 million employees.

The trade union claim is for a one-year increase on all pay points of 6% or 50 pence an hour, whichever is the greater, with a view to making progress to a bottom rate of £6.75 pence.

The latest pay offer from employers is for 2.45 per cent plus £100 per annum extra for the 3 lowest grades. This would equate to a minimum rate of £6.20 per hour.

### ***Notable union agreements 2008***

Median pay settlements are currently running at 3.8 per cent. Whilst collective bargaining will by its very nature always produce a range of results, trade unions continue to have a large number of bargaining successes. The table below shows a selection of notable recent private sector agreements.

**Table 4: Notable trade union private sector agreements 2008**

	Union/s	Date effective	Percentage increase/s
Severn Trent Water	UNISON/ GMB/ Unite	1 July	4.3 plus £130 per annum consolidated to top of the grading bands

Imperial Tobacco	Unite/ GMB	1 May	4.8
Grow How (Fertiliser)	Unite	1 May	4.5
Western Power Distribution	Unite/ GMB/ Prospect/ UNISON	1 April	5.1
First Scotland (Rail)	ASLEF/RMT/Unite/TSSA	1 April	5.0
Babcock Engineering Services	CSEU/ Prospect	1 April	4.6 + 3.0 for productivity gains.
Barclays Retail Bank	Unite	1 April	4.97
VT Shipbuilding	CSEU/ Prospect	1 April	4.7
BMI British Midland Engineering	Unite	1 April	4.63
Cummins Engine Company	Unite	1 April	4.5
Anglesey Aluminium	Unite	1 April	4.25
Engineering and construction JNC	Unite/ GMB	28 January	4.4
Plumbing and Mechanical JIB	Unite	7 January	4.5
Thermal Insulating contracting JNC	GMB/ Unite	1 January	7.0
Innospec Specialty chemicals	Unite	1 January	5.29
Institute of British Organ building	GMB	1 January	4.5
Lafarge Cement	Unite/ GMB	1 January	4.38

Source: IDS, TUC affiliated trade unions.

### ***The bottom rates in the public sector***

The table below sets out the bottom pay rates in the public sector, which accounts for about one quarter of the UK employees. All the rates in this sector have been agreed through trade union collective bargaining, with the result that they are all well above the current minimum wage.

### ***Table 5: Public Sector bottom grade pay rates***

	Starting date	Minimum rate
Higher education	May 2008	£6.48
NHS – years 2 and 3 of a 3 year deal.	April 2008	£6.40
	April 2009	£6.77
Local Government (England and Wales) - see below	April 2007	£6.00

Source: IDS, public sector trade unions

The civil service has long been split into a large number of ministries and agencies, each with their own pay scales. The lowest rates in the civil service are higher than £6.00, whilst the bottom rates in the best paying ministries are more than £7.00 per hour. Unions are working to coordinate pay bargaining throughout the civil service. This year has seen the first national cross-departmental civil service pay talks for more than a decade.

### ***The agricultural wages board proposals for 2008/2009***

Agriculture is unique in that it is the only sector that still retains a Wages Council - the old system that used to apply to a wide range of low paid industries. The Agricultural Wages Board was retained because it had the broad support of both employers and employees.

The farming sector has had a difficult time during the last decade. As well as fierce competition from imported produce it has also faced a number of serious problems including the 2001 foot and mouth epidemic.

Despite these problems the AWB has continued to set a range of minimum pay rates that use the national minimum wage as the bottom rung. The 2008 AWB proposals, which will take effect in October 2008, are that the minimum new starter's rate for labourers should be £5.74 per hour, whilst established workers will get £6.26 per hour and skilled workers will get much higher rates.

Of course the LPC cannot simply copy what the AWB has done, but the work of the AWB does show that it is possible for employers and unions to agree higher pay rates in a sector where trading conditions have been difficult.

### **9: The TUC's rate recommendations for the 2008 LPC review**

This section sets out the TUC's targets for the minimum wage from October 2009 and 2010.

As we have now entered a somewhat more difficult economic period it is worth restating what the TUC wants from the minimum wage. Our goal is that the minimum wage should be set at the highest level that can be sustained without

causing significant negative side effects, such as net job losses, adverse regional impacts or loss of productivity.

No doubt there will be some voices saying that the LPC should not recommend an increase in the minimum wage at all this year, or that they should recommend only very modest increases.

As always, the LPC will want to proceed with due caution, and it is obvious that a recommendation that turns out to be too high would have detrimental effects.

However, it is also worth spelling out that a recommendation that is too low would also have serious detrimental effects, as it would impose a significant cost to low paid workers and their families. Increases in the price of basic essentials like food are impacting most severely on low income families.

An undershoot would also leave more of the cost of fighting low pay on the shoulders of the tax payer than is necessary.

Furthermore, it would have economic side effects, as it would miss the opportunity to provide the recovering UK economy with a fiscal stimulus, particularly in terms of consumer demand.

Employers' surveys have always been too pessimistic in their predictions of the impact of the minimum wage on employment. Clearly any minimum wage that is worth its salt will cause inconvenience to some employers. It follows that employers' claims need to be continually tested against reality by examining the impact of the minimum wage at both the macroeconomic level and the sectoral level. The LPC should not be overly concerned if an individual firm cites the minimum wage as a source of difficulty as long as the sector and the locality as a whole continue to provide a healthy range of employment opportunities.

Turning to the question of two-year recommendations, the LPC's remit asks it to make recommendations for 2009/2010 and to consider making provisional recommendations for 2010/2011. The TUC believes that provisional recommendations can be very problematic, as there is a strong expectation that they will not be altered once announced. However, there may well be merit in making firm recommendations for the next two years, in order to give both employers and workers certainty about what they can expect from the minimum wage. Indeed many unions seek two year collective bargaining deals for just this reason. With this in mind, the TUC has recommended figures for both years.

### ***The adult rate***

The TUC does not believe that the minimum wage has yet reached its optimum position relative to average earnings. The LPC has displayed understandable caution in its recent recommendations. There is no absolutely foolproof way of predicting the full economic effects of increasing the minimum wage to a particular level. However, the economic record of the minimum wage has been very good in the UK.

The TUC believes that the LPC could have recommended a rate for 2008/9 that was somewhat higher than its actual recommendation of £5.73. As we said in our submission last year, we believe that the adult rate could have been increased to “more than £6.00” for the coming year without causing any detrimental side effects.

In setting our targets for the next period we have also taken account of the economic predictions discussed above, which suggest that the UK will be entering a period of recovery by the time the next recommendations take effect.

A reasonable increase in the minimum wage in October 2009 would be likely to help the recovery by increasing labour supply and, given the high propensity of low earners to spend any wage increases here in the UK, give a boost to consumer demand.

The most recent LPC recommendation for the adult rate represented an increase of 3.8 per cent, which was broadly comparable with the growth in average earnings. In making our recommendations, the TUC has taken into account reports (see table above) that average earnings are expected to grow by up to 4.0 per cent in both 2009 and 2010.

With these considerations in mind, the TUC believes that the UK economy could sustain an adult minimum wage of £6.50 by October 2010 without any significant adverse side effects.

As the UK will have an adult minimum wage of £5.73 from October onwards, it might make sense to set the 2009 target near to the mid-point between the 2008 minimum wage and the 2010 target. This would imply a 2009 rate of around £6.10.

However, if the LPC does indeed decide to make recommendations for 2010 as well as 2009 then they will want to take into account the economic predictions for each of these years, which may lead them away from recommending two increases of equal value.

Ireland, France, Australia and Luxembourg currently have minimum wage rates that are higher than the UK minimum wage. The TUC predicts that the target suggested in this paper it would mean that the NMW would be broadly in line with the highest minimum wages achieved in other countries.

***Recommendation - The adult rate of the minimum wage should be more than £6.10 by October 2009 and at least £6.50 by October 2010.***

### **18-21 year old workers**

At the moment the full adult rate of the minimum wage must be paid from age

22. The TUC believes that this threshold is unnecessarily high. In the medium term we would like to see the adult rate paid from age 18, but in the first instance the threshold should be lowered so that adult rate is paid at age 21. There is also room to recommend increases for 18-20 year olds that exceed the predicted growth in average earnings.

Whilst many of the countries with the highest minimum wages set special rates for younger workers, none of them feel it necessary to make young people wait until the age of 22 before granting them entitlement to the full minimum wage. For example, the full adult rate is paid at the age of 21 in Australia, at age 20 in Ireland and at age 18 in France, all of which countries set higher adult rates than the UK.

The Employers Forum on Age, which advises the government on age related policy issues, has said on a number of occasions that the threshold for the adult rate is too high:

*"We are frustrated by the refusal to address the fact that under the current bands, 18-21 year olds are paid less, simply because of their age and irrespective of their capabilities or responsibilities."<sup>16</sup>*

The LPC has, quite rightly, called on a number of occasions for the adult rate to be paid at age 21 but the Government has always rejected this recommendation.

The TUC has examined these objections and believes that the Government has been overcautious. It is clear from the data on employment and earnings that that the position of 21 year olds in the labour market is increasingly becoming more like that of 22 year olds. In addition, the number of 21 year olds paid below the minimum wage is only around 50,000. Furthermore, this figure includes some young workers who would be subject to the exemptions from the full adult rate for apprentices in the first year of their apprenticeship and for those who receive accommodation from their employer.

Taken together, these facts explain why the impact would be minimal. Employer's organisations also say that they would be relaxed about lowering the threshold for the adult rate to age 21.

The TUC does not believe that any special measures would be needed to protect the employment position of 21 year olds if they were entitled to the full adult rate of the minimum wage, especially as so few 21 year olds are currently paid less than the adult minimum wage. However, it would be open to the government to put such measures in place if they believe that they are needed.

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<sup>16</sup> EFA press release 27 March 2007

**Recommendations:**

**The LPC should restate its recommendation that the adult rate should be paid at 21.**

**The LPC should recommend an increase to the rate for 18-20 year olds that exceeds the predicted growth in average earnings.**

**In the medium term the development rate should be phased out and the full adult rate paid at age 18.**

**16-17 year old workers**

The TUC believes that there is also some room to narrow the gap between the youth rate for 16 and 17 year old workers and the adult rate.

Our goal is to see the rate for this age group set at a level that will be high enough not only to prevent exploitation but also to send the message to young workers in their formative years that employment brings worthwhile rewards.

The labour market position of 16 and 17 year olds has improved slightly during the last year, although it still gives grounds for concern.

The table below shows that the share of 16 and 17 year olds employed increased by 1.1 per cent during the past year, which amounts to 18,000 extra jobs for young people. Conversely, the share of young workers who were unemployed under the ILO definition has fallen by 1.5 per cent during the past year.

**Table 6: labour market position by age**

	May 2007	May 2008	Change
	Employment		
16-17 year olds	32.9%	34.0%	+1.1%
18-24 year olds	64.6%	64.1%	-0.5%
All aged 16-59/64	74.5%	74.8%	+0.3%
	ILO unemployment		
16-17 year olds	27.4%	25.9%	-1.5%
18-24 year olds	12.4%	12.4%	nil
All aged 16-59/64	5.5%	5.5%	nil

Source: ONS website

Furthermore, a recent DCFS announcement showed further progress in encouraging 16-18 year olds to take part in education and training. The participation rate was 78.7 per cent in 2007, which was an increase of 1.6 per cent on the previous year.

There has also been a reduction in the number of 16-18 year old NEETs (those not in education, employment or training). The 9.4 per cent figure for 2007 represents a reduction of 1.0 percent compared with the previous year <sup>(17)</sup>.

The situation would be greatly improved if the increases were supported by further measures to improve the employment prospects of young workers. In particular, the public sector should take steps to employ more young workers. There are some moves in this direction, including a modest revival of the apprentice programme in local government.

If the current 16 and 17 year olds rate were to increase in line with predicted average earnings growth it would rise from to £3.67 in 2009 and £3.81 in 2010.

It seems likely that setting a somewhat higher minimum wage for this age group would tempt more young people who are not in education or training (NEETs) to enter the labour market and would aid employers' retention of young workers.

The TUC therefore argues that there is room for the LPC to recommend a rate that is somewhat ahead of the predicted growth in average earnings.

***Recommendation – The LPC should recommend a series of increases in the rate for 16 and 17 year old workers that exceed the growth in average earnings. The rate should be more than £4.00 per hour by October 2010***

## **10: Apprentices**

The TUC has been calling for a review of the apprentice exemptions for a number of years, so we were pleased to be able to respond to the LPC's earlier consultation. In brief, the TUC's view is that all apprentices should be covered by the minimum wage, which should be paid at a small discount from the established rates in order to recognise the value of training. Furthermore, the new rates should be enforced by HM Revenue and Customs.

## **11: Seafarers**

At the moment the national minimum wage only applies to UK registered ships when they are in port or in internal UK waters. The TUC believes that the format of the law encourages avoidance by employers.

The current exemptions from the minimum wage exclude many seafarers who do not live in the UK but work for UK companies, even when their work regularly brings them to UK ports.

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<sup>17</sup> "Post-16 Participation Rate at Highest Level Ever", DCFS press release, 19 June 2008

The extent to which the current law is unfair is demonstrated by that fact that such seafarers may be excluded from the minimum wage even when they are solely engaged in trading between two UK ports, or are working between one UK port and the UK offshore oil and gas exploration sector. We believe that the law could be easily amended to close these loopholes without generating any problems with either EU competition law or international maritime law.

*Recommendation: The Government should take the earliest possible opportunity to close the current minimum wage loopholes that exclude many seafarers from its protection*

## **12: The National Minimum Wage and the voluntary sector**

The TUC is strongly in favour of developing volunteering and community action. In 2007 we contributed to the Commission on the Future of Volunteering, and we also combined with the main players in the voluntary sector to launch a campaign for a new Community Day bank holiday in the autumn, which would celebrate and promote community and voluntary activity.

The Government has decided to exempt full-time voluntary workers in the National Youth Volunteering Framework from the minimum wage in order to allow them to be paid an allowance of £60 per week. As the TUC feared, a number of individual voluntary sector organisations are currently campaigning to have this exemption extended to allow them to treat other voluntary workers in a similar way.

The TUC is strongly opposed to these claims, largely because we believe that they would lead to the substitution of £60 per week voluntary workers for minimum wage employees.

No more exemptions for voluntary workers should be created. In the long run it benefits community and voluntary organisations, employees, and voluntary workers alike to maintain clear rules about the application of the minimum wage.

*Recommendation: The LPC should oppose the creation of any further exemptions to the minimum wage in the voluntary sector.*

## **13: The abuse of unpaid work experience**

In our 2007 submission to the LPC the TUC brought forward evidence that many employers in the so-called glamorous careers such as the media, journalism, public relations, politics and prestige retailing were exploiting young people seeking work experience by demanding a period of unpaid work as the price of a job. In some cases, unpaid work had lasted for a full year.

The TUC continues to strive to ensure that there are genuine opportunities for young people to gain from properly structured work experience. However, we are also determined that those who seek to exploit young people should not be allowed to get away with it.

An important consideration is that the requirement to undertake unpaid work was discriminating against less well off applicants, including those from ethnic minorities.

In some of the most striking cases reported to the TUC in the past year, young people undertaking work experience have been asked to read the news on commercial radio. In one instance, a young person was offered a placement for Christmas Eve and New Years Eve only. These cases appear to be nothing more than a ruse to avoid the minimum wage.

The LPC recommended that BERR publish updated guidance on unpaid work<sup>18</sup>. At the time of writing, BERR officials are still working on a draft, although publication is expected in the autumn.

It is important that the new guidance is supported by dissemination and enforcement.

***Recommendation: The LPC should reiterate its support for new guidance on unpaid work, and recommend strong dissemination and enforcement.***

#### **14: 'Up front fees' charged by casting agencies in the media**

Employment agencies are, quite rightly, banned from charging a fee to workers by section 6(1) of the Employment Agencies Act 1973. However, section 3 of the Conduct of Employment Agencies and Employment Business Regulations 2003 allows casting agents in the media and performing arts to charge up-front fees and commission to performers. Deducting upfront fees often means that low paid performers, such as those in 'walk-on' roles, receive less than the minimum wage. The law should be amended to ensure that the minimum wage must always be paid in these cases.

A new matter of concern emerged this year when a television company advertised for professional entertainers only to offer them parts in a 'talent show', in which only the winners would be paid.

As well as the agents who actually do provide work, there are also a number of widespread scams that exploit people's dreams of stardom by charging fees without any prospect of providing work.

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<sup>18</sup> Low Pay Commission Report 2008, p100

In sum, this sector seems to be grossly under-regulated, with the result that many illegal and morally questionable practices are thriving. The Government should take steps to deal with the cheats in the industry.

*Recommendation: The Low Pay Commission should recommend that the law should be amended to ensure that the minimum wage rules are applied in full to casting agents, and the rules should be rigorously enforced.*

### **15: Other enforcement issues**

Due to the delay in getting the Employment Bill through parliament the new penalty and fair arrears regimes have been rescheduled to take effect in April 2009. The planned changes will be an important step forward that will address some of the TUC's key concerns about enforcement.

#### ***Closer working between enforcement agencies***

In last year's submission to the LPC we called for government agencies to work more closely together to enforce workers' rights. The TUC has welcomed the recommendations of the Government's Vulnerable Workers Enforcement Forum, which has pledged to:

- remove the legal barriers which currently prevent government agencies from sharing information about illegal practices, and
- establish a single point of contact for workers claiming multiple abuses of their rights.

The LPC should continue to monitor the development of closer working to ensure that it is rigorous enough to help workers enforce their right to the national minimum wage.

However, there are a number of other areas where it is important that further progress should be made during the coming year.

#### ***Enforcing the rules on the accommodation offset***

The TUC is still receiving reports that the accommodation offset is abused, especially for migrant workers. The LPC should recommend that BERR institute a special project to ensure that the guidance on accommodation is being followed. This project should be used to direct further action on enforcement.

#### ***Enforcing statutory holiday pay to ensure that the NMW is not undermined***

The Government has, quite rightly, increased the minimum statutory holiday entitlement. It is very important to ensure that workers can actually take the paid leave that is due to them.

HMRC compliance officers should be able to ensure that statutory holiday pay is enforced. The TUC's view is that withholding holidays can be used as ways to claw back some of the minimum wage. Clearly the attraction for some employers is simply that the enforcement regime for statutory annual leave is very weak in comparison with the NMW regime. Workers are often reluctant to take employment tribunal cases against employers who will not pay up, since to do so would be to sour their employment relationship.

The enforcement of holiday pay would benefit from dual channel enforcement, which is the model that already applies to the minimum wage.

### ***Protecting domestic workers***

The TUC would argue that the rules on domestic workers are being widely abused. At the moment, those who live as part of the family are exempt from the minimum wage. There are a number of legal tests for living as part of the family, including whether the worker in question shares meals and family outings. However, it has now become clear that these tests of legal status are deeply flawed. The problem is simply that evidence must usually depend solely on the testimony of one worker against two or more family members. In this situation it is obvious that workers will not be able to enforce their rights.

Domestic workers and au pairs are amongst the most vulnerable workers. Their testimony includes tales of assault, sexual abuse and false imprisonment<sup>19</sup>, yet convictions have been almost impossible to secure.

Ensuring that these workers have the right to the minimum wage would help to redress the extreme imbalance of power in their employment relationship.

### ***The payment of employment tribunal awards***

All the agencies who work on enforcement, including trade unions, report that rogue employers often simply ignore their awards. The net result is that enforcement agencies have to undertake a long drawn out process to try to enforce ET judgements. Clearly rogue employers use this tactic in the hope that if they hold out long enough the creditor will simply give up.

The TUC's goal is to ensure that all workers can enforce their right to be paid at least the minimum wage, so steps should be taken to ensure that employers pay tribunal awards promptly.

### ***Recommendation- The LPC should make further progress on the following***

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<sup>19</sup> See report of the TUC Commission on Vulnerable Employment + Kalian (ADD REFS)

**enforcement issues:**

- **Misuse of the accommodation offset;**
- **The enforcement of statutory holiday pay by HM Revenue and Customs**
- **Abuse of the exemption for domestic workers who are said to live as part of the family; and**
- **The payment of employment tribunal awards**

**16: The treatment of tips paid through the payroll**

The Government has agreed to change the treatment of tips paid through the payroll so that they cannot count towards the minimum wage<sup>20</sup>. The TUC has backed this initiative, since it is clearly unfair that workers should have to rely on their customers' charity in order to receive the minimum wage.

Furthermore, it is not uncommon for the basic wage to be set below the National Insurance threshold in order to avoid paying the employers contribution, which will have serious implications for the benefit and pension entitlements of those who pursue a long-term career in the industry.

It is heartening to see that the ministerial statement clearly includes service charges in the new regime. If service charges were excluded, then there would be a strong danger that employers would use them to avoid the new rules.

The next step will be to draft the new rules. It would be useful for the LPC to consider at an early stage how the new regime should work.

***Recommendation: LPC should consider how the commitment to exclude payroll tips from the minimum wage will be implemented and enforced.***

**17: Review of Fair Piece Rates**

In July BERR followed up a recommendation from the LPC<sup>21</sup> by launching a review of the implementation of Fair Piece Rates. The TUC has found it very difficult to get access to homeworkers who may be paid in this way, but we still have strong concerns that they are extremely vulnerable to exploitation.

There is also a broader point which is that there is a clear temptation for 'low-road' employers seeking to cut costs to try to avoid the minimum wage by setting

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<sup>20</sup> Hutton Serves up a Fair deal on tips', BERR press Release, 31 July 2008

<sup>21</sup> LPC 2008, p102

up other 'output-only' arrangements. As well as the direct use of Fair Piece Rates, there is also the use of room rates in hotel cleaning<sup>22</sup>, and piece rate payments for door to door salespeople and those conducting surveys. There is also the use of questionable self-employment status in sectors such as parcel delivery.

The TUC's conclusion is that BERR is unlikely to get to the bottom of the issue on the strength of a single consultation. What is needed is a broader research project to map the scope of the abuse of 'output-only' work in general, followed by appropriate steps to stamp out abuse.

***Recommendation: The LPC should continue to monitor the use of Fair Piece Rates, and should take an interest in bogus self employment where it is used to avoid the minimum wage.***

### **18: Quality of UK Statistics Authority data**

The LPC spent a long time working with the Office of National Statistics to ensure that improvements were made to the quality of official pay data. Unfortunately the Annual Survey of Hour and Earnings, which is the main pay survey, has since been scaled down, which makes the results less reliable. We agree with the LPC's view that this change will impede their ability to make good policy recommendations (<sup>23</sup>)

***The TUC's recommendation – We echo the LPC's call for the 20 per cent cuts in the sample size of the ASHE survey to be reversed. The ability to base policy on evidence rests on the availability of good quality data.***

### **19: Summary of the TUC's Recommendations**

The TUC's minimum wage recommendations for 2009 and 2010 are set out below. We ask the LPC to recommend the following measures:

#### Minimum wage rates

- The adult rate of the minimum wage should be more than £6.10 by October 2009 and at least £6.50 by October 2010.
- The adult rate should be paid at 21.
- The LPC should recommend an increase to the rate for 18-20 year olds that exceeds the predicted growth in average earnings.

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<sup>22</sup> Reported by UNISON, Ibid p101.

<sup>23</sup> LPC, 2008 para 2.26.

- A series of increases in the rate for 16 and 17 year old workers that exceed the growth in average earnings are needed. The rate should be more than £4.00 per hour by October 2010

#### Protecting vulnerable groups of workers

- The Government should take the earliest possible opportunity to close the current minimum wage loopholes that exclude many seafarers from its protection
- The LPC should oppose the creation of any further exemptions to the minimum wage in the voluntary sector
- The LPC should reiterate its support for new guidance on unpaid work, and recommend strong dissemination and enforcement.
- The LPC should recommend that the law should be amended to ensure that the minimum wage rules are applied in full to casting agents, and the rules should be rigorously enforced.

#### Improving enforcement

- The LPC should make further progress on the following enforcement issues:
  - misuse of the accommodation offset;
  - the enforcement of statutory holiday pay by HM Revenue and Customs
  - abuse of the exemption for domestic workers; and
  - the payment of employment tribunal awards

#### Making sure that past recommendations have worked

- The LPC should consider how the commitment to exclude payroll tips from the minimum wage will be implemented and enforced.
- The LPC should continue to monitor the use of Fair Piece Rates, and should take an interest in bogus self employment where it is used to avoid the minimum wage.

#### Ensuring that the LPC has the tools to do its job

- We echo the LPC's call for the 20 per cent cuts in the sample size of the ASHE survey to be reversed. The ability to base policy on evidence rests on the availability of good quality data

We have also argued, in response to a separate LPC inquiry, that the current exemptions for apprentices should be replaced with special minimum wage rates. Our goals are to ensure that apprenticeships deliver the high quality training that this country needs, and to protect young workers from exploitation by rogue employers.