Low Pay Commission

TUC response 2017

Summary

This paper sets out the TUC's response to the Low Pay Commission's current inquiry. The LPC is will be making recommendations to government on the National Minimum Wages (NMW) rates that will apply from 1 April 2018.

The TUC's response argues for strong increases in the NMW rates and for better enforcement.

The National Minimum Wage is a key plank in the incomes of many low paid workers and their families. While it alone cannot perform all of the heavy lifting of preventing family poverty, it can make a real difference.

The need for that difference is striking. Research by the Joseph Rowntree Foundation published this year showed a working family on the National Minimum Wage with two kids would still not reach the level of income required to achieve a minimum acceptable standard of living.[1] Even more strikingly, official statistics show that in 2015/16, the majority of households living below the poverty line were in working families.[2]

In this submission we make the economic case for why increases in the National Minimum Wage are both affordable and desirable. It is also important to remember the broader case for developing the NMW as strongly as possible, which is that workers deserve decent rates of pay that allow them to live a decent life. A wealthy country like the UK should be able to put an end to in-work poverty.

Our call for higher minimum wage rates rests on the following economic and labour market evidence

The economy has, so far, survived the impact of the Brexit vote

- Employment is at record levels, and we note that youth employment is growing.
- Big businesses are seeing high levels of profitability and are holding very high levels of reserves. Furthermore, there are a record number of small businesses. There is no case that employers, as a whole, cannot afford to pay their workers more.

However, this economic performance has not translated into higher wages, except where the bottom rates have been pushed up by the NMW.

- Real wages are currently falling again, as inflation has once again overtaken the growth in average earnings.
- Part of the problem has been caused by the fall in Sterling, which has resulted in higher inflation.

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[1] Joseph Rowntree Foundation (2017) *A minimum income standard for the UK, 2017* https://www.jrf.org.uk/report/minimum-income-standard-uk-2017

[2] DWP (2017) *Households Below Average Income: An analysis of the UK income distribution: 1994/95-2015/16* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/600091/households-below-average-income-1994-1995-2015-2016.pdf

- But the rate of increase in wages has also fallen. Private sector employers seem to be sticking firmly to a 2% ceiling on nominal pay increases. This is in stark contrast to the 4% norm that prevailed before the recession.
- Some of the problem may be due to growing insecurity at work, meaning that workers are less willing to demand higher pay.

Low wages are not only bad for workers but could also pose risks to the wider economy

- Historically, growing wages have helped to support demand.
- Low wages may now be depressing demand, as evidenced by weak business investment.
- Lack of investment by both business and government means that the economy is very reliant on consumer spending. This approach is unsustainable when real wages are falling and household debt levels are increasing.
- Stronger wage rises are not only affordable by business, but can help ward off the risks of weakening consumer demand, as NMW workers tend to spend any wage increases in the local economy.
- Increasing the NMW is a signal of continuing government confidence in the UK economy.

Enforcement matters

Higher rates of the National Minimum Wage need to be enforced to be meaningful. While we have welcomed the additional resources put into NMW enforcement over the course of the year, there is clearly more to do. The TUC estimates, on a conservative basis, that underpayment affects at least 250,000 workers. HMRC action helped just over a fifth of this number last year.

Priorities to ensure everyone receives the pay they are entitled to include:

- Government should guarantee NMW arrears when employers have dissolved in order to avoid their responsibilities.
- Ensuring that enforcement continues to see an increase in budget to cope with the enhanced coverage of the NMW.
- A workable prosecution strategy, and an increase in the maximum fine for NMW offences.

The NMW and insecure work

The TUC understands that Matthew Taylor's review of modern employment practices will make a number of recommendations around how the national minimum wage and the Low Pay Commission could help to address insecure work. With the Commission's permission, we will submit a separate note on these proposals once we have had a chance to consider them.

The TUC's recommendation on the main rates of pay

- **The National Minimum Wage rate for those aged 25 and above (the "national living wage") should at least continue to rise in a steady fashion to meet the target of 60% of median earnings by 2020. However, the LPC should be more ambitious and focus on getting the rate to £10 as quickly as possible.**
- **21-24 year olds should be paid the full NMW rate including the "national living wage" supplement.**
- **The rates for younger workers should narrow the gap between adults and younger workers as quickly as can be sustained.**
- **The apprentice rate should be raised to the level of the young workers rate.**
- **The apprentice rate should only apply to those undertaking intermediate level apprentices who are aged 16-18 and to 19-20 year olds in the first year of their apprenticeship.**

1: The role of the LPC and the nature of the current consultation

The TUC strongly supports the LPC, where trade union representatives and business voices both have a say in the NMW, in the context of an evidence-driven process. The LPC retains an authoritative voice on all matters pertaining to the NMW and we expect that it will continue to address the key challenges in developing and enforcing the NMW as they arise.

The surprise General Election means that this is the first time that the LPC has held a consultation without being directed by a remit from an incumbent minister. The Commission is to be congratulated for bridging this gap effectively.

The LPC's consultation letter gives the following guidance[3]:

"We are seeking evidence of the impact of the most recent increases to inform thinking about future upratings, with initial views sought by 7 July.

The LPC undertakes consultation on the effects of the minimum wage each year and future rates with a view to building the evidence base and providing recommendations to the Government. The Government decides whether to accept or reject the LPC's

[3] LPC, *Evidence on the National Minimum Wage*, April 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/610184/Low_Pay_Commission_consultation_letter_2017.pdf

recommendations. Because of the forthcoming election on 8 June these decisions and the LPC's terms of reference will fall to the Government formed after this date.

What we would like evidence on

The National Living Wage, the rate applying to workers aged 25 and over was introduced subject to a relative target -60 per cent of median earnings by 2020 – so its value changes in line with economic circumstances.

We are particularly interested in:

- *Evidence of the impact of past increases in the NMW (both the 2016 introduction and the latest April 2017 increase) on workers, employers, the labour market and the economy – including how firms are adjusting and impacts on pay, terms and conditions, income, hours, employment, investment, productivity, prices and profits.*
- *Evidence on the economic outlook following the vote to leave the EU (including effects on the labour market and workers such as weaker currency, higher inflation, and possible changes to the labour supply).*
- *Views on the affordability and effects of possible future increases, particularly for 2018 (we projected in the autumn a rate in the range £7.80-£7.91 under the NLW target, assuming a straight line path).*

The other rates – those affecting workers under 25 and apprentices – have previously been set on the basis of "helping as many low paid workers as possible without damaging their employment prospects".

We are particularly interested in:

- *Evidence on the impact of the rates on younger workers employment prospects, including how widely the new 21-24 Year Old Rate is used, and what effect, if any, the gaps between the different rates have upon different age groups' labour market performance.*
- *Arguments for and against faster increases in these rates.*
- *Views on affordability and effects of possible future increase particularly for 2018."*

2: The economic situation

This section sets out the economic situation. The TUC concludes that the evidence demonstrates that the labour market will bear a further increase in the NMW. Indeed, there are also strong grounds for assuming that a pay increase would be good for the economy.

Employment, GDP and earnings

The table below shows that employment is predicted to increase by about 200,000 during 2018, whilst unemployment continues to fall. In addition, the number of unfilled vacancies has risen to record levels.[4]

GDP growth is expected to slacken slightly, but inflation is expected to be brought down to meet the Bank of England's targets.

Forecasters also predict higher earnings growth next year, as we might expect following increases in inflation. Many employers have been pretty determined to stick to their 2% wage increase norm, but they may find this position hard to maintain if the labour market continues to tighten. At the time of writing the long-running pay cap in the public sector has come under greater political scrutiny and there are some signs that the government may intend to loosen this restraint. This is likely to reinforce the revival of some degree of pay pressure in the private sector.

Current economic indicators and forecasts

	Figures one year ago	Latest figures	2017 (forecast)	2018 (forecast)
GDP growth	1.8%	2.1%	1.7%	1.3%
Employment (millions)	31.6	31.9	32.0	32.1
ILO Unemployment rate	5.0%	4.6%	*4.9%*	*5.3%*
Average weekly earnings increases	2.2%	2.1%	2.4%	2.7%
RPI	1.4%	3.7%	3.7%	3.3%
CPI	0.3%	2.9%	3.0%	2.5%

Latest figures; GDP Q1; inflation to May; employment Feb-April; earnings Feb to May. Sources: ONS, HMT round-up "Forecasts for the UK Economy" June 2017 (median of forecasts made in last 3 months).

With real wages continuing to fall, and personal indebtedness on course to reach record levels[5], it is unsurprising that domestic demand is forecast to weaken[6].

Breaking out of the vicious circle of week wages and demand will require a broad response, including an industrial strategy which drives up productivity and pay for the lower paid industries. However, one side-effect of a further increase in the NMW rates

[4] There are currently 682,000 unfilled vacancies, 24,000 more than last year. This is the highest number since the series began in 2001. Source, ONS, *UK labour market: statistical bulletin*, June 2017: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/june2017

[5] TUC, *Household debt will reach record high in first year of new government, says TUC*, 25 May 2017: https://www.tuc.org.uk/economic-issues/economic-analysis/britain-needs-pay-rise/household-debt-will-reach-record-high-first

[6] HMT round-up, *Forecasts for the UK Economy*, June 2017

is certain to be a modest but useful boost in both confidence and spending, which could help the economy move on from its current low wage, low investment trap.

Profitability

2016 saw the general rate of return for UK corporations fully recover from the recession and it continues to be healthy. Indeed, the net rate of return for UK corporations is close to record levels[7]

Net profitability of UK private non-financial corporations

	All private non-financial	Service sector
2007	11.9%	13.9%
2010	10.8%	14.0%
2015	12.1%	19.1%
2016	12.3%	17.7%

Source: ONS "Profitability of UK companies October-December 2016" (published April 2017) https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/bulletins/profitabilityofukcompanies/octtodec2016

The rate of profit for service sector companies is of particular interest, since it is in this sector of the economy that most minimum wage jobs are found. Profits in this sector are now 3.8 percentile points higher than they were before the recession, raising the real rate of return by about a quarter. In fact 2016 saw the fourth highest annual rate of return in the service sector since the ONS index started 20 years ago. Changes to the business tax regime have been a contributory factor.

General UK corporate profitability is also somewhat above pre-recession levels, and the 2016 net rate of return ranks as equal fourth best in the twenty year series.

As a class, UK corporations are clearly doing very well in terms of net profits and can afford to grant better pay rises.

Corporate reserves

UK corporate reserves (cash and bank deposits) increased by 28.7% in the past 5 years in real terms (accounting for CPI inflation). The current figure of £655 billion reserves is nominally £182 billion higher than 5 years ago.

Last year's nominal increase alone added £68 billion to reserves (+9.0% in real terms). In contrast, average pay grew by about 2%[8].

[7] Figures exclude the finance sector.
[8] ONS Statistical bulletin, *Quarterly national accounts Jan-March 2017*, table 3.39, AF2, total currency and deposits of multinational private non-financial corporations: https://www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/quarterlynationalaccounts/jantomar2017

Clearly employers are holding more deposits because they are worried about the future. However, with average pay lagging behind inflation it is no surprise that market conditions are week. Investing more in pay would boost consumer demand, thus breaking out of the grip of the vicious circle.

Business formation

Business formation figures are not very timely, as the latest available statistics apply to March 2016. However, it's worth reporting that these show no sign of business formation slowing after the autumn 2015 announcement of the decision to introduce the "national living wage" rate for those aged 25 and above.

There were 2.5 million business registered for VAT and/or Pay as you earn in the UK in March 2016, a rise of about 105,000 businesses compared with the previous year

Neither has there been any shift in the relative share of employing businesses and non-employing businesses such as sole traders. Both types saw total numbers increase by 3.0 per cent[9].

Another series, the ONS Annual Business Population Estimate, which also includes non-VAT registered small businesses shows a marginally smaller increase (+92,000), but it also reports that the number of employing small businesses continued to increase[10].

Productivity

The chart below shows that productivity has grown beyond pre-recession levels.

The whole economy productivity per worker index increased by a modest 0.6 percentiles last year. However, looking at the service sector, where the highest concentrated of NMW jobs is to be found this was outstripped by a 2.0 percentile increase in the service sector index and even more so by the 2.3 percentile increase in productivity per hour in the service sector.

Furthermore, the manufacturing sector, which has some NMW jobs, saw productivity per hour increase by a healthy 4.3 percentiles.

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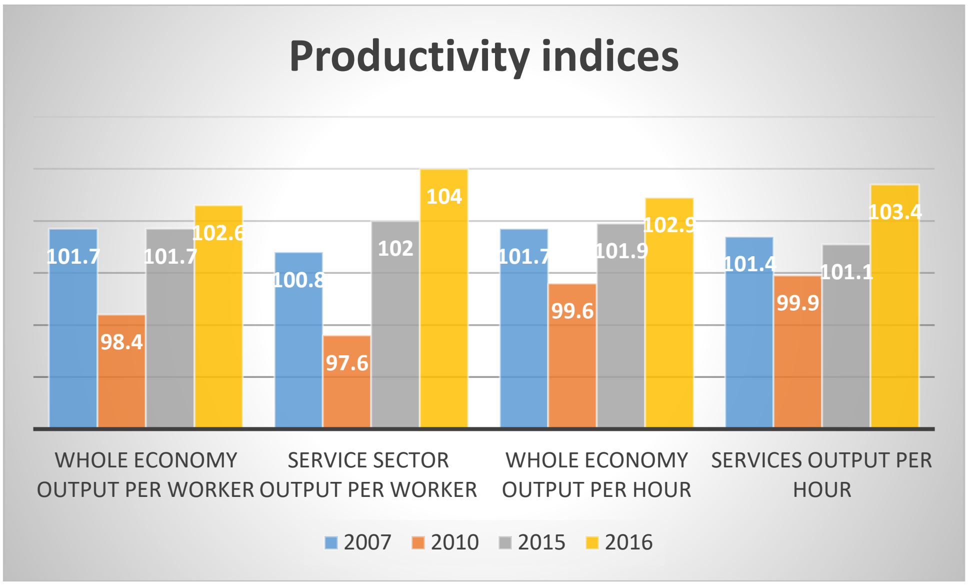
[9] ONS statistical bulletin, *UK business, activity, size and location*, October 2016 https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/bulletins/ukbusinessactivitysizeandlocation/2016

[10] BEIS, *Business population estimates*, 2016: https://www.gov.uk/government/statistics/business-population-estimates-2016

Labour productivity 2007-2016



Source: ONS: Historical series of labour productivity April 2017. Figs for fourth quarter. Whole year 2013=100.0
https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/labourproductivity/datasets/historicalseriesoflabourproductivity

3: Employment in the low paying industries

Employment in the low paying industries (as defined by the Low Pay Commission) has continued to increase during the past year, broadly keeping pace with the rate of employee growth across the whole economy. The table below shows the latest data available, which includes the first quarter of 2017. With the obvious qualification that this precedes the latest NMW increase, this is a reassuring finding, since there is no sign that the introduction of the national living wage in April 2015 or the autumn increases to the other rates have held back jobs growth in these sectors. This is an important finding, since we might expect these sectors as a whole might be the most susceptible to the risk of any negative side-effects.

Sectors with a high concentration of low pay - change in employees (thousands)

Sector	Employees 2016	Employees 2017	change
Agriculture hunting and forestry	168	166	-2
Primary food processing	114	108	-6
Textile and clothing manufacture	144	100	-44
Retail (not motor vehicles)	2,633	2,666	+33
Hotels and accommodation	313	324	+11
Food and beverage services	1,207	1,242	+35
Residential care and social work activities	1,720	1,741	+21
Services to buildings and landscape activities	402	412	+10
Recruitment and employment agencies	215	217	+2
Security	158	201	+43
Hairdressing and beauty	156	120	-36
All low paid sectors	***7,230***	***7,297***	***+67 (+0.9%)***
All non-low paid sectors	***19,345***	***19,541***	***+196 (+1.0%)***

Source: LFS microdata Jan- March quarters. Employees (main job only). Figures below 10,000 are not statistically significant.

Self-employment – changes in the low paid sectors and occupation

There has been concern that a rising minimum wage might push more people into false self-employment.

The TUC's analysis is that the vast majority of the increase in self-employment last year was indeed in the low-paying sectors (as set out in the table below). No less than 78,000 out of the total increase of 79,000 in the past year was in the sectors set out in the low paying industries.

Sectors with a high concentration of low pay - change in self-employment 2016-2017 (thousands)

Sector	2016	2017	change
Agriculture hunting and forestry	165	201	+36
Primary food processing	7	2	-5
Textile and clothing manufacture	20	27	+7
Retail (not motor vehicles)	238	237	-1
Hotels and accommodation	36	58	+22
Food and beverage services	101	111	+10
Residential care and social work activities	139	141	+2
Services to buildings and landscape activities	247	237	-10
Recruitment and employment agencies	25	37	+12
Security	14	20	+6
Hairdressing and beauty	159	158	-1
All low paid sectors	*1,151*	*1,229*	*+78 (+6.8%)*
All non-low paid sectors	*3,561*	*3,562*	*+1 (0.0%)*

Source: LFS microdata Jan- March quarters. Employees (main job only) Result smaller than 10 are not statistically significant.

However, looking at an occupational breakdown, the table below reveals that most of the increase was accounted for by a 68,000 rise in the number of self-employed managers. There were also 23,000 more self-employed people in the skilled trades.

Self-employment fell sharply in sales occupations and slightly in both professional and secretarial occupations. Taken together, this amounted to a decline of 51,000 self-employed people

Some concern may still be warranted over self-employment in the caring, elementary and process occupations though, which together increased by 30,000 since last year.

However, in contrast, the total self-employed in administration and sales fell by 40,000.

On the basis of these figures there is little evidence of any rush to self-employment in low paid jobs last year in response to the introduction of the national living wage.

Changes in self-employment by occupation 2016-2017 (thousands)

	2016	2017	Change	Per cent increase
Managers	747	815	+68	+9.1%
Professionals	773	762	-11	-1.4%
Associate professionals	751	760	+9	+1.2
Admin and secretarial	154	137	-17	-11.0%
Skilled trades	1,221	1,244	+23	+1.9%
Caring and leisure	320	332	+12	+3.7%
Sales and customer service	98	75	-23	-23.5%
Process plant and machinery	362	373	+11	+3.0%
Elementary	286	293	+7	+2.4%
All self employed	*4,712*	*4,791*	*+79*	*+1.7%*

Source: LFS microdata Jan- March quarters. Employees (main job only) Results smaller than 10,000 are not statistically significant.

4: Young workers

It is very important that younger workers can find jobs. New entrants to the labour market have less experience of working life and limited resources to fall back on.

It is therefore reassuring that labour market position of most young workers has continued to improve through the past year.

In addition, the latest figures show that number of young people not in education, employment or training (NEET) has fallen by 43,000 during the past year, whilst the incidence of NEETs has fallen by 0.6 percentiles, down to 11.1%[11].

[11]DoE, *NEET statistics quarterly brief (England),* January- March 2017": https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615427/SFR21-2017_NEET_Statistics_Quarterly_Brief_Q1-2017.pdf

Employment and unemployment by NM age-bands (thousands)

		2015	2016	2017
21-24 year olds	Employment	2,337	2,390	2,418
	Unemployment	273 (10.4%)	248 (9.4%)	219 (8.3%)
18-20 year olds	Employment	1,112	1,136	1,094
	Unemployment	290 (19.6%)	234 (17.1%)	189 (14.7%)
16-17	Employment	345	366	363
	Unemployment	129 (27.2%)	112 (23.4%)	120 (24.8%)

Source: Labour Force Survey, Jan-March quarters. Main job only. Unemployment rate in brackets

The table above looks at the position of young people in more detail by NMW age band.

- The number of 21-24 year olds in employment has increased by 28,000 in the past year, with a similar decrease in unemployment. The unemployment rate for this age group has continued to fall, down by 1.1 percentile points to reach 8.3%.
- Unemployment is falling fast for 18-20 year olds is improving fastest this year, with the fall of 45,000 amounting to a decline of almost a fifth (-19.3%).
- 16 and 17 years olds are more stuck, although their position is still markedly better than it was two years ago.

The situation of these youngest workers bears some further examination.

First, the background is that 87.95 of 16-17 year olds are in full-time education, with the remainder totalling 173,000 young people in this age group.

This comprises 82,000 in employment, 34,000 unemployed and 56,000 inactive people. These figure are very similar to those from a year earlier, when the relevant numbers were 81,000, 37,000 and 58,000.

Furthermore, a further 57,000 of those not in full-time education are enrolled in part-time study. On this broader measure, only 117,000 16 and 17 year olds are not in training or education , of which 60,000 are in employment, 26,000 are unemployed and 31,000 are inactive.

It is clear that this group is very small and could be supported by apprenticeship and other programmes.

In particular, the squeeze on the public sector has led to it employing less than its fair share of 16 and 17 year olds. The public sector account for 25.4% of employees but only

6.1% of employees aged 16 and 17. This amounts to just 21,000 young people, and 17,000 of those are also full-time students.

Surely there should be more room for young apprentices and training in the public sector? There are about 2,750 separate local authorities, hospital trusts, government departments and agencies in the UK. If each of those were to take on just five young people as part of the apprentice programme then the 26,000 who are currently unemployed and not in full or part-time education or training would fall to just 12,000.

The employment position of the majority of 16 and 17 years olds who are in full-time education is also important, but is often somewhat more complicated than the raw statistics would suggest.

5: Apprentices

The Conservative Party's 2017 general election manifesto reaffirmed their commitment to create three million new apprenticeship starts in England between 2015 and 2020[12].

The government has not yet been on course to hit this target. To do so would require 600,000 starts a year, which would be an increase of 20% on the 500,000 a year base. The latest figures, for the year 2015/2016, reported just 509,400 starts[13].

However, the latest data does show that the number of people undertaking apprenticeships reached the record level of 899,400 in the year to July 2016, an increase of 3.1% on the previous year[14].

Crucially, the situation is likely to have changed radically when new figures are released. All the current data precedes the introduction of the Apprentice Levy, which took effect from April 2017. This requires the larger employers in England with a paybill of three million or above to pay a levy of 0.5%. Thus an employer with a paybill of exactly three million must pay £15,000, for example. This can be reclaimed in order to fund the training of apprentices.

Our labour market intelligence suggest that some firms have been waiting for these arrangements to take place before recruiting apprentices. It is very hard to see how this can fail to increase apprentice numbers significantly during the coming year.

Whilst the number of apprenticeships has greatly increased over the past decade, and looks set to continue to do so, with the added incentive of the new levy, the TUC is still very concerned about the quality of some apprenticeships and it is clear that a significant number are not paid the relevant NMW rate (see enforcement section below).

[12] Conservative Party Manifesto 2017, *Forward together*, P53. http://www.general-election-2010.co.uk/2017-general-election-manifestos/conservative-manifesto-2017.pdf

[13] DEE/SFF, *National statistics: further education and skills March 2017* (published June 2017), table 7. https://www.gov.uk/government/statistics/further-education-and-skills-march-2017

[14] Ibid, table 2.

The TUC strongly supported the revival of the apprenticeship model over the past decade, although we have continued to be concerned about both the quality of training on offer and fair pay.

Even when the NMW is paid, the NMW apprentice rate has set a low pay norm.

In particular, we continue to be concerned that employers can use advanced apprentices for key business roles and still pay them the apprentice rate of £3.50 an hour. This is an arrangement that is highly skewed in favour of employers at the expense of advanced apprentices.

Here are three of the latest job descriptions for apprentice vacancies paying £99 for a 30 hour week posted on the Apprenticeships Service section on Gov.UK.

The following are all advanced level apprenticeships. The purpose of reporting these details is to show that advanced apprentices who are paid £3.50 per hour are undertaking roles that are an integral part of the revenue generating operations of the relevant businesses, from acting as a cleaner to teaching classes, and in one case whilst also promoting the "spirit of concord".

1: Apprentice Personal Trainer - qualified fitness instructor (£105 per 30 hour week)[15].

"The successful candidate will be handed the responsibilities of:

- *General maintenance and cleaning around the gym and changing facilities*
- *Instructing classes*
- *Assisting the sales team with Customer Relationship Management tasks*
- *Assisting the sales team on outreach activities around the city.*

Qualification required – level 2 fitness instructor"

2: Dental nurse apprenticeship (£131.25 per 37.5 hour week)

"The duties included in the role of Dental Nurse are listed below:

- *Chairside support for the Dentist and Hygienist*
- *Assisting the Dentist with procedures*
- *Ensuring the surgery is clean and tidy and ready for the patients*
- *Making sure the health and safety of the practice is not compromised, all used equipment to be cleaned and stored correctly*
- *Greeting customers*
- *Taking payments*
- *Completing forms*

[15] https://www.findapprenticeship.service.gov.uk/apprenticeship/-126460

- *Making appointments*

……Please take into account that this is an advanced apprenticeship and your application should reflect this.[16]”

3: Childcare apprenticeship (£129.50 for a 37 hour week)

Responsibilities:

- *“Provide care giving activities.*
- *Use a wide range of teaching methods (stories, media, indoor or outdoor games, drawing etc.) to enhance the child’s abilities.*
- *Evaluate children’s performance to make sure they are on the right learning track.*
- *Remain in constant communication with parents and update them on the progress of their children.*
- *Observe children’s interactions and promote the spirit of concord”*

Other requirements – interested in learning the school philosophy, own car desirable, no jeans[17].

6: TUC targets for minimum wage rates

Based on the data reported in sections 2-5 above, the TUC believes that the UK economy, and especially the low paid sectors, are robust enough to cope with a further significant increase in the NMW rates. Indeed, we argue that a well-pitched increase is likely to be good for the economy by helping to extract us from the current situation, where the value of real pay is continuing to fall, placing pressure on households, consumer spending, and the wider economy

In addition, we have given special consideration to the employment position of young people, which is generally improving, and to apprentices, many of whom we believe to be exploited.

The TUC rate targets for 2008:

- **The National Minimum Wage rate for those aged 25 and above (the “national living wage”) should at least continue to rise in a steady fashion to meet the target of 60% of median earnings by 2020. However, the LPC should be more ambitious and focus on getting the rate to £10 as quickly as possible.**

[16] https://www.findapprenticeship.service.gov.uk/apprenticeship/-101551
[17] https://www.findapprenticeship.service.gov.uk/apprenticeship/-96665

- **21-24 year olds should be paid the full NMW rate including the "national living wage" supplement.**
- **The rates for younger workers should narrow the gap between adults and younger workers as quickly as can be sustained.**
- **The apprentice rate should be raised to the level of the young workers rate.**
- **The apprentice rate should only apply to those undertaking intermediate level apprentices who are aged 16-18 and to 19-20 year olds in the first year of their apprenticeship.**

7: An industrial strategy that will lift the low paid sectors

The TUC believes that tackling low pay is vital to the government's agenda around developing an industrial strategy. While the leading focus of industrial strategy is concentrated on sectors that are generally well-paid, a comprehensive industrial strategy should also give attention to improving the performance of the low paying sectors, which account for more than a third of employee jobs.

Our vision is for a new model. What is needed now is a set of sector-specific bodies, which we call Modern Wages Councils, bringing together unions and employers to bargain to solve problems and charged with increasing pay, efficiency and general business success in each of the low paid industries.

A short-coming of past initiatives is that none of them combined a vision of business success with a strategy to improve wage-setting and create better jobs. Yet improving pay and conditions is a necessary condition for raising productivity in these sectors, since low wages are often associated with poor productivity, low quality work, low skills, poor staff motivation and high turnover.

It is certain that the low paid industries cannot deal with these issues on their own, particularly as services like contract cleaning have a dependent relationship with other sectors. Rather, government would need to take a tripartite approach in bringing together employers with staff and their trade unions in order to move forward, bargaining to reach agreement. The LPC, with its wealth of experience on low-paying sectors, would obviously have a lot to contribute, and we would welcome its support for this measure.

8: The real Living Wage voluntary standard

The real Living Wage is a widely supported voluntary standard based on a calculation of what workers need to live on. The current hourly rates are £9.75 in London and 8.45 in the rest of the UK. The independent Living Wage Foundation accredits employers who adopt the Living Wage[18].

The Living Wage voluntary standard has achieved a great deal of support, with the number of accredited employers has continued to increase strongly, with 3,249 employers accredited by June 2017, an increase of 629 on the June 2016 figures .

One reason why so many employers are willing to pay the living wage is that the business narrative around the Living Wage delivers multiple benefits. Paying the living wage is good for brand reputation and the cost is offset by the personnel, productivity and improved quality of work that comes from retaining and motivating employees. In addition, being a living wage employer has some marketing benefits

The TUC General Secretary continues to sit on the Living Wage Commission, which oversees the governance of the living wage.

Trade unions representing low paid workers make the Living Wage voluntary standard the minimum rates in their pay claims[19].

The TUC continues to campaign for the adoption of the real Living Wage across the public, private and voluntary sectors, and for the adoption of the real Living Wage in public procurement.

The government should actively promote the real Living Wage. Broader adoption could help millions of workers, stimulate the economy, and improve the tax-benefit ratio.

TUC living wage target

- **The government should actively promote the real Living Wage and more employers should adopt it.**

[18] http://www.livingwage.org.uk/

[19] See, for example, the Unison, GMB, Unite joint pay claim for local government in England and Wales, 2016/17, which calls for an end to pay scales below the real living wage: https://www.unison.org.uk/content/uploads/2015/08/NJC-Pay-Claim-2016-17_FINAL.pdf

9: Improving enforcement of the NMW

Some welcome progress

Successive governments have made progress in strengthening the enforcement regime, incorporating some elements of the TUC's 2015 10-point plan[20]. We have welcomed some of these developments, including increased funding for enforcement and advertising, improved guidance, more effective civil penalties, and naming and shaming – all of which were targets in the TUC's enforcement plan.

We have continued to keep in close contact with HMRC and to exchange what information we can. We note that HMRC's results have strongly increased, both in terms of the number of workers helped and the amount of back pay recovered.

In addition, unions are taking a number of cases in key areas. Many are settled out of court, such as those brought in theatre sector, whilst others are redefining relationships through case law, such as the cases in the gig economy.

Underpayment hard to measure but much more needs to be done

The extent of underpayment is hard to measure in a robust way, partly because most of the common scams do not show up in the official statistics at all. For example, the records appear correct in cases where working hours are unrecorded, which is a practice that is common in both the retail sector and manufacturing sweat-shops. Similarly, false self-employment and internships cannot be detected at all from pay statistics.

The TUC's most conservative estimate is that underpayment affects at least 250,000 workers, although the true figure may be considerably higher[21]. In any case, HMRC report that they helped 53,000 workers last year[22], which equates to about a fifth of the lowest estimate of underpayment.

Thus there are no grounds for complacency. Further increases in the national living wage are set to double the number of NMW workers by 2020. Higher rates are likely to increase the incentive for employers to evade their responsibilities, thus further increases in the NMW enforcement budget will be essential.

[20] TUC, 2015: https://www.tuc.org.uk/economic-issues/labour-market-and-economic-reports/labour-market/economic-analysis/keep-pressure

[21] The TUC's estimations subtract from the ONS Low Pay Estimates those workers who are likely to have legitimate exemptions from the NMW, as identified by LFS data. The following estimates are then added to the residue, as they are not counted in the ONS figures: false employment status, recording of hours worked, informal employment in the grey economy. No method of estimating underpayment can be exact, but the TUC has done its best to take account for the realities on the ground.

[22] DBEIS, *National minimum wage: government evidence for the Low Pay Commission's autumn 2016 report*, October 2016, p50: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/561779/beis-16-37-national-minimum-wage-government-evidence-for-lpc-autumn-2016-report.pdf

Employers must not be able to invent ways of avoiding the NMW

Furthermore, the issue has to be viewed against growing public concern about the rise of insecure jobs, zero hours contracts, agency work and false self-employment of various kinds, including the technology-driven form known as the "gig economy".

Last year Sports Direct was in the news. In March 2017 Unite reported to BEIS Select Committee that the agency workers supplied to Sports Direct by Transline had still not reviewed NMW arrears, with amounts of up to £1,000 owing.[23]

In the following month Transline announce that it was preparing for insolvency[24], but in May it was sold to a rival company and its workers were transferred across[25]. Transline, which was a private company limited by guarantee, has now been dissolved.

It is not clear on what the terms Transline staff joined the new employer, but no employer should be able to avoid their moral responsibility to pay the NMW.

Government should guarantee arrears when employers can't be made to pay.

There are lessons to learn from the cases where employers have simply walked away from their debts. The TUC estimates that up to a quarter of NMW arrears identified are not received because the employer has either gone bankrupt or has simply vanished.

As the NMW is both a vital minimum, standard and an important government policy, the TUC argues, as part of its 10-point NMW enforcement plan, that the government should guarantee arrears in cases where they cannot be recovered from the employer.

There is some precedent in the redundancy rules, as the government guarantees statutory redundancy pay if employers cannot meet their obligations.

Some big employers fail to pay the NMW

Some major retail employers have been caught underpaying this year, although there does seem to be a growing tendency for their public relations teams to blame "payroll errors", which suggest unwarranted carelessness at best.

The TUC is concerned that some household names with well-developed personnel functions have failed to meet the minimum legal standard on pay. We know that in some cases it is because regional or line managers have, apparently on their own initiative, taken cost-cutting measures like charging staff for uniforms.

This does suggest a lack of sufficient awareness of the NMW rules, even though they are actually quite easy to understand. Clearly there is a need for more advertising,

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[23] The Guardian, 28 March 2017, *Sports Direct workers paid less than minimum wage yet to get back pay*: https://www.theguardian.com/business/2017/mar/28/sports-direct-workers-yet-to-receive-backpay-transline-mps-told

[24] The Guardian, 26, April, 2017, *Sports Direct agency Transline preparing for insolvency*: https://www.theguardian.com/business/2017/apr/26/sports-direct-transline-shirebrook-warehouse-minimum-wage

[25] The Daily Telegraph, 18 May 2017, *Sale agreed for Sports Direct Agency Transline*: http://www.telegraph.co.uk/business/2017/05/18/sale-agreed-sports-direct-warehouse-agency-transline/

dissemination, and education, and therefore HMRC's programme of online seminars for employers has been welcome. The other lesson to be learned is that as the national living wage is increased we must not assume that the big corporate in sectors like retail and hospitality will automatically comply with the NMW.

LPC should continue to push for tighter enforcement

The LPC plays an important part in urging better NMW enforcement. The forthcoming LPC report should recommend the following:

- Continue to increase funding for enforcement strongly year on year through to 2020 at least. Funding for enforcement has already increased significantly for the last three years and the results are starting to be seen. HMRC must have a budget for this work that is sufficient to meet the increased risk from the doubling of the numbers covered by the NMW.
- Continue to develop sectoral guidance for atypical industries. It is hard to understand from the general guidance how the NMW rights and duties apply to some industries such as theatre, film and broadcasting.
- More proactive targeted work and inspections. The budget for enforcement must be sufficient that targeted work can continue in sectors like social care and internships, but there is also capacity to educate and enforce in the sectors like retail, where the practice of requiring unpaid hours at the start and end of the day is widespread.
- The apprenticeship sector is ripe for targeted enforcement. The Apprentice Pay Survey gives strong grounds for concern, and apprentices are identified as a reason for underpayment on 26% of underpayment cases[26]. The LPC should check that the relevant government agencies are doing all that they can to ensure that the NMW rights and responsibilities are widely known and understood. The introduction of the Apprentice Levy is likely to increase the number of apprentices and thus the risk of non-compliance.
- Naming and shaming should be carried out on a fixed timetable and be tied into compliance campaigns in order to gain maximum impact.
- A workable prosecution strategy for the worst cases. Prosecution leads to the details of the offence coming into the public domain, which does not happen in cases where civil penalties are imposed. HMRC agreed a new prosecution strategy[27] for NMW Act offences last year. This has so far yielded two prosecutions. Even a relatively modest increase in the number of successful

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[26] Government final evidence to the Low Pay Commission, January 2016, table 16: https://www.gov.uk/government/publications/national-minimum-wage-final-government-evidence-to-the-low-pay-commission-2016

[27] HMRC enforcement strategy. Revised April 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512908/BIS-16-186-policy-on-enforcement-prosecutions-and-naming-employers-who-break-National-Minimum-Wage-and-National-Living-Wage-law.pdf

prosecutions to, say, 6 to 12 per year would provide a stronger deterrent for employers.

- The maximum fines for NMW offences should be increased. The average civil penalty imposed last year was around £2,200[28]. However, the average fine in prosecution cases has been a similar amount. In order to make prosecutions into an effective deterrent, the maximum fine must be significantly increase from the current £5,000, and guidance around sentencing must lift fines accordingly.

Fair pay for sleep-ins

The TUC is aware that a number of employers have been lobbying to weaken the application of the NMW to sleep-ins. A typical sleep-in arrangement would be that a worker has to remain in a care home in order to provide night-care when it is needed, but may sleep during quiet periods. Such work must be paid at least the NMW.

We believe that it would be deeply unfair to cut pay for sleep-ins. In a tightening labour market such a short-sighted move would also be likely to reduce the quality of care and would thus be bad for business.

Seafarers and the NMW

Long-running discussions with the relevant government departments on the application of the NMW of seafarers have continued all year. It is said that these are likely to make progress on UK port-to port routes. The TUC finds it disappointing that the crew of ships who's only job it to carry goods and passengers between UK ports are not currently protected by the NMW, so speedy progress is now needed.

The LPC should also check that the protocol between HMRC and the Maritime and Coastguard agency is leading to effective inspection on wages.

The LPC's two recommendations where government action has yet to take place

The TUC is also concerned that there are two recommendations from the LPC's 2015 report that have yet to be implemented:

Payslips

- "We recommend that the Government reviews the current obligations on employers regarding provision of payslips and considers introducing a requirement that payslips of hourly-paid staff clearly state the hours they are being paid for.

Before the 2017 general election the government was planning to pilot this measure in a rather minimalist way by requiring social care employers to print hours worked on payslips. This is technically easy to implement, as this facility can be turned on in commercial software by a couple of simple clicks.

[28] Derived from government evidence to the LPC, autumn 2016, Ibid, table 14: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/561779/beis-16-37-national-minimum-wage-government-evidence-for-lpc-autumn-2016-report.pdf

However, the TUC was shocked at the poor quality of social care record keeping, where it appears that some employers even fail to record the hours worked by employees who are paid by the hour. This poor practice should be rectified as quickly as possible, and should certainly not be seen as a barrier to running the pilot, which should go ahead as soon as possible. The lessons learned should then be used to generalise this simple requirement. It is hard to see how any worker can tell whether they have been paid the NMW when such simple information is lacking.

Third party complaint protocol

- “We recommend that the Government establishes a formal public protocol for HMRC to handle third party whistleblowing on breaches of the NMW, which should include arrangements for giving all possible feedback to relevant third parties and appropriate continuing involvement in any resulting casework.

The TUC’s sharpest interest in ensuring that third party complaints are effective stems from our wish to ensure that union officers are able to play an effective part in enforcing the NMW. However, lack of feedback on third party complaints has strongly discouraged union officers from bringing information forward, as they feel that it simply vanishes.

Third party complaints take a number of forms. One manifestation would be in cases where union officers are acting on behalf of members, or potential members, who do not want to identify themselves on a complaint form. In other cases, union officers may receive intelligence about underpayment by a non-unionised company.

A way should be found to create a proper legal gateway to allow some feedback without compromising the rights of employers, even if this means amending an existing statute.

In the first instance, promotion of the minimum wage should specify that third party complaints are taken seriously and, subject to evaluation, most are investigated.

Second, government could then undertake to evaluate some assessment of the outcomes of third party complaints as a class.

In addition, guidance and promotion should also make it clearer that union officers can act as agents in all cases where they are identified as such by the workers in question.

Funding the NMW in social care

The LPC should remind the government that it has a moral duty to fund social care, and indeed all public services, in a way that allows the NMW to be paid.

TUC NMW enforcement targets

- **The government should continue to increase funding for NMW enforcement, as the numbers of workers covered by the law is increasing. There is a growing need for more advertising, more inspectors, and more proactive enforcement.**
- **The government should guarantee NMW arrears in cases where the employer goes bankrupt or simply vanishes.**
- **BEIS should continue to work with the social partners to develop sectoral guidance for atypical industries such as theatre and broadcasting.**
- **HMRC should conduct more proactive targeted work and inspections. This should include the problem areas already identified such as social care and internships, but should also look at other areas such as retail.**
- **Apprentices are a particularly likely to be paid less than the NMW. Strenuous efforts must be made to stop employer mistakes and cheating in this this sector.**
- **A workable prosecution strategy is needed. This should lead to a steady flow of the worst employers being taken to court. This must be coupled with much higher fines. Civil penalties and naming and shaming are still not providing sufficient deterrent on their own, and are an inappropriate punishment for the worst cases.**
- **However, there is still a role for civil penalties and naming and shaming for routine cases. Naming and shaming should take place on fixed dates 3 or 4 times per year, so that it can gain more media coverage**
- **The LPC should resist any lobbying to reduce pay for sleep-overs.**
- **The NMW should apply to non-British seafarers on ships that have a close connection to the economic life of the UK.**
- **BEIS have been planning a pilot in the social care sector that would require employers to provide information on payslips on hours worked. This exercise should go ahead as soon as possible and the results should be generalised.**
- **The LPC's previous recommendation on establishing a protocol on third party complaints should be acted upon. This should be supported by guidance and promotional work.**
- **The LPC should remind the government that they must find a workable way of ensuring that social care is properly funded.**

10: All TUC targets for 2018

The TUC has noted the government's continued commitment to increase the NMW rate for those aged 25 and above to 60% of median earnings. The 2017 election saw a further commitment to maintain the NMW at this level until the end of the parliament.

There are some in the business community who have attacked this target. The TUC's assessment is that it can be managed without any net detrimental side-effects. Indeed, it likely that only state action can prevent some sectors from becoming stuck in a low wage paradigm, which would be bad for the economy in terms of both labour supply and consumer demand. It would also be unnecessarily costly to the Exchequer, and to us all as taxpayers, if employers were allowed to become over-reliant on tax credits and benefits to make up a decent living income.

Indeed, our real fear is that the NMW may not increase rapidly enough to fulfil its potential. Over-caution would have the negative effect of leaving too many low paid workers in poverty. We argue that a £10 an hour minimum wage is both necessary and achievable.

<u>The TUC's NMW targets for 2018</u>

- **The National Minimum Wage rate for those aged 25 and above (the "national living wage") should at least continue to rise in a steady fashion to meet the target of 60% of median earnings by 2020. However, the LPC should be more ambitious and focus on getting the rate to £10 as soon as possible.**
- **21-24 year olds should be paid the full NMW rate including the "national living wage" supplement.**
- **The rates for younger workers should narrow the gap between adults and younger workers as quickly as can be sustained.**
- **The apprentice rate should be raised to the level of the young workers rate.**
- **The apprentice rate should only apply to those undertaking intermediate level apprentices who are aged 16-18 and to 19-20 year olds in the first year of their apprenticeship.**
- **The TUC strongly hopes that the Taylor review will lead to better employment practices. In their next report, the LPC should make it clear that they are concerned about practices like the abuse of zero hours contracts, bogus self-employment and the misuse of interns and volunteers. The issue is that such practices wrongly lead to non-payment of the NMW.**
- **The government should actively promote the real Living Wage and more employers should adopt it.**
- **The government should continue to increase funding for NMW enforcement, as the numbers of workers covered by the law is increasing.**

There is a growing need for more advertising, more inspectors, and more proactive enforcement.

- **The government should guarantee NMW arrears in cases where the employer goes bankrupt or simply vanishes.**
- **BEIS should continue to work with the social partners to develop sectoral guidance for atypical industries such as theatre and broadcasting.**
- **HMRC should conduct more proactive targeted work and inspections. This should include the problem areas already identified such as social care and internships, but should also look at other areas such as retail.**
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- **A workable prosecution strategy is needed. This should lead to a steady flow of the worst employers being taken to court. This must be coupled with much higher fines. Civil penalties and naming and shaming are still not providing sufficient deterrent on their own, and are an inappropriate punishment for the worst cases.**
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- **The LPC's previous recommendation on establishing a protocol on third party complaints should be acted upon. This should be supported by guidance and promotional work.**
- **The LPC should remind the government that they must find a workable way of ensuring that social care is properly funded.**