Tackling the UK's low pay problem

UNISON's submission to the Low Pay Commission 2014

UNISON

Summary of recommendations

Recommendation

1 The full adult National Minimum Wage (NMW) rate from October 2015 should at the very least reach the mid-point between the October 2014 NMW - £6.50 -and the Living Wage at its October 2015 rate. This will give a rate of . £7.18.

2 The Low Pay Commission (LPC) should undertake some initial assessments about how different ideas for reform of the NMW, the LPC and their role in tackling low pay can be implemented. This should include analysis into the barriers to achieving the following in the different low pay sectors:

- a reduction in the number of employees currently being paid below the low pay threshold
- a NMW at 60 per cent of the median
- a significant increase in number of employees being paid the Living Wage

3 The LPC should i) assess all of the available data and publish its own recommendations on the appropriate rates that should be paid by local authorities for social care in order to ensure that workers delivering these socially vital services are paid appropriately ii) call on the government in the strongest terms possible to make sufficient funding available to cover the real costs of social care

4 The LPC should call on the government to issue its previously promised guidance on procurement as a matter of urgency. We note that the 2014 LPC report called on the government to publish its overdue report on this issue. Clearly this cannot be delayed any further.

5 Local authorities that knowingly let social care contracts that are too low for the employer to pay the NMW should be named and shamed, in addition to any social care employer breaking the law.

6 The LPC should carry out and publish an assessment of the extent to which public spending cuts are driving down pay across public services. This should highlight contradictions in government policies and include recommendations on the role of public service employment in tackling low pay and closing the gender pay gap.

7 Given that the law on travel time is clear, yet being contravened in many cases in the social care sector, the LPC should work with HMRC and government to bring forward a package of measures and guidance to ensure that this abuse can be stamped out immediately. This should include requiring local authorities to write this requirement into contracts.

8 Following the recent EAT ruling that employees should be paid the NMW for sleep-ins, the LPC should recommend that BIS revise and re-issue their guidance .

9 The LPC should call on the HRMC to carry out an investigation into the scope and scale of exploitation of migrant workers in the social care sector. This should be used to develop an enforcement programme targeted at stamping out exploitation of the migrant social care workforce.

10 The LPC should set the apprentice rate of the minimum wage at the same level as the youth rate. Advanced, higher level and older apprentices (18 and up) should be paid the adult rate.

11 We recommend the development rate for 18-20 year olds should be brought in line with the full adult rate from 2015.

12 16-17 year olds should be entitled to the 'development rate' with a view to harmonising it with the adult rate within 3 years.

UNISON submission to the Low Pay Commission 2014

Introduction

UNISON is one of the UK's largest trade unions, serving 1.3 million members.
We represent full-time and part-time staff who provide public services, although they may be employed in both the public and private sectors. Our members work in local government, health care, colleges and schools, the police service and the voluntary sector as well as in transport, the electricity, gas and water industries.

We support our members by helping them to improve their working conditions in a number of ways. UNISON helps and advises members who are facing difficulties at work and negotiates and campaigns to improve pay and working conditions. The union is committed to making sure our members get equal treatment and fair pay. We also support our members through the provision of free legal and welfare advice.

UNISON is pleased to make this submission to the Low Pay Commission (LPC) and commends the recommendations included herein. The submission is organised as follows. Section one provides a survey of current economic data, which we believe shows that a significant increase in the National Minimum Wage (NMW) is affordable and now essential to securing an inclusive and sustainable recovery. The second section goes on to make our recommendations for both the 2015 full adult rate and the future path of the NMW. This recommendation reflects our analysis of current economic circumstances and the ongoing political debate about the UK's worsening low pay problem and the role of the NMW and LPC in overcoming it. The third section then sets out what we see as possible barriers to higher rates, specifically in sectors in which we have experience, along with proposed measures to overcome them. The fourth section provides evidence of UNISON members experience of low pay and highlights the need for better NMW enforcement. The final section sets out our recommendation on apprentice and youth rates.

Section one: the economic context for the National Minimum Wage 2015

The most notable feature of the UK's recovery from recession has been the contrast between persistently low wage growth and strong growth and employment performance. This failure of economic recovery to find its way into pay packets indicates very clearly the need for clear intervention in the labour market to boost pay and ensure a fairer and more sustainable recovery.

In August 2014 official labour market data showed that the wages of British workers had fallen for the first time since 2009. Average weekly earnings were 0.2% lower in the three months to June 2014. Even when bonuses were stripped out, wages were just 0.6% higher than June 2013. That is the lowest rise since records began.

The Bank of England has now halved its forecast for average wage growth in the coming year, stating it now expects average earnings to rise by just 1.25%.

It is important to note that this feature of the UK economy is part of a longer term trend which has *not* been mirrored in other major economies during the financial crisis and the years that followed. Table 1 below shows how real wage growth in the UK has been left far behind other G7 countries from 2008 to 2012. For the corresponding period Germany, Canada, USA and Japan also experienced lower or similar levels of unemployment.

Figure 1

Source: ONS[1]

The trend in the UK economy towards a lower share of UK wealth distributed in wages has been evident since the 1970's. Figure 2 shows that the wage share in the UK averaged 59% of Gross Domestic Product in the 1950s and 1960s, peaking (at 65.5 per cent) in 1975 during the era of 'the profits squeeze' before falling to 53% by 2007.

[1] Taken from "How have labour markets changed across the G7 countries?" http://www.ons.gov.uk/ons/rel/elmr/gdp-and-the-labour-market/q1-2014--may-gdp-update/sty-g7-labour-market.html

Figure 2:

Source: TUC[2]

Assuming that we would want to see wealth more fairly and evenly distributed than is currently the case, this long term decline in the share of wealth being distributed in wages is a fundamental problem. It shows us that, despite interventions such as the introduction of the national minimum wage, policy is failing to create an economy in which the fruits of economic growth are reaching the majority of people. It is precisely this situation which has lead to the vibrant debate in recent years about the role of the LPC and the below inflation increases in the NMW which have been set (see next section).

Growth 2014-15

With this in mind, the prospect of strong economic growth in the coming years should give confidence to the LPC in setting out more generous increases in the NMW to address low pay.

Looking narrowly at GDP, the current outlook for growth in the UK economy is undoubtedly good. GDP growth in the second quarter of 2014 was 3.2%, slightly higher than original estimates. The current 3.2% growth rate compares well to the rest of the G7 industrialised nations. The annual growth rate in the US was 2.4%, 1.3% in Germany and 0.1%. in France. The International Monetary Fund has forecast that the UK will have the strongest growth in the G7 over 2014.

[2] Taken from the TUC publication "How to boost the Wage Share" July 2013
http://www.tuc.org.uk/sites/default/files/tucfiles/How%20to%20Boost%20the%20Wage%20Share.pdf

Figure 3:

Forecasts for 2015					
	Independent*				Average of new* forecasts
	Averages		July		
	July	June	Lowest	Highest	
GDP growth (per cent)	2.6	2.5	1.6	3.6	2.6
Inflation rate (Q4: per cent)					
- CPI	2.0	2.1	1.6	3.1	2.1
- RPI	3.3	3.3	2.3	4.5	3.3
LFS unemployment rate (Q4: %)	5.8	6.0	4.4	6.3	5.7
Claimant unemployment (Q4: mn)	0.93	0.97	0.80	1.30	0.93
Current account (£bn)	-58.2	-56.7	-77.9	-35.0	-59.1
PSNB (2015-16: £bn)	71.4	71.8	58.7	94.6	71.3

Source: HM Treasury[3]

Figure 3 shows that independent forecasts for the performance of the economy in 2015 remain optimistic, with some forecasters predicting a GDP growth rate of 3.6%.

Inflation

It is important too that increases in the NMW factor in the greater effect of inflation on the lowest paid.

In the coming year price increases on everyday items will continue to eat into the standard of living of workers across the UK. The average of independent forecasts for RPI in 2015 is 3.3%, with a lowest prediction of 2.3% and a highest of 4.5%.

Of course, as noted in the previous section, inflation has been eating away at the wage value of workers for a number of years. To give a more practical insight into how this impacts on the very lowest paid it is worth considering research carried out by the Joseph Rowntree Foundation

In JRF's 2014 Minimum Income Standard Report their verdict on the impact of inflation for those earning NMW was unequivocal:

> *"The gap between the NMW and the wage needed to reach the MIS has widened for all groups in recent years, as the NMW rises more slowly than headline inflation but minimum living costs rise more quickly."*[4]

That we have reached a situation where the National Minimum Wage is so insufficient in meeting basic requirements shows the urgency of the situation. In coming years much more needs to be done to close this gap.

In addition, the consumer group 'Which?' has published new research which show that Britain's poorest households are suffering from higher rates of inflation than official statistics suggest.

[3] HM Treasury Report, July 2014, "Forecasts for the UK economy: a comparison of independent forecasts" https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330864/201407forecomp_final.pdf

[4] "A Minimum Income Standard for the UK in 2014", Joseph Rowntree Foundation, http://www.jrf.org.uk/sites/files/jrf/Minimum-income-standards-2014-FULL.pdf

The findings originate from the *Which? Lived Inflation Index*[5], which is based on the Government's Consumer Price Index (CPI), but takes into account differences in spending patterns between households. The index indicates the poorest households are experiencing higher levels of inflation than the richest households. In the year to July 2014, prices rose 1.8% for the poorest households, compared to 1.5% for the richest households.

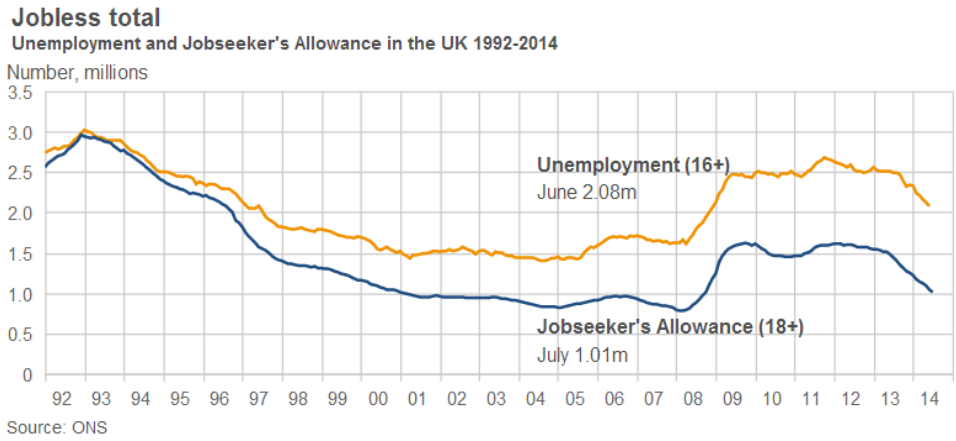
Matthew Oakley, head of economic analysis at Which?, explained:

> *"Households who experience higher inflation rates tend to spend a higher than average proportion on utilities and rent, and have been more heavily impacted by the above average rises in the cost of essentials."*

Unemployment

There is clear evidence to suggest that the labour market has recovered to such degree that there is negligible risk to employment levels from a significant increase in the NMW.

Comparing April to June 2014 with January to March 2014, the number of people in employment increased by 167,000 and the number of unemployed people fell by 132,000 (to reach 2.08 million).



Nobody wants to see a National Minimum Wage level which costs jobs overall. But up until recently the interpretation of the impact of the NMW on the jobs market has been based on fundamentally conservative and unnecessarily cautious economic assumptions.

We believe that the LPC should view this issue with proper perspective. Even the coalition government's own evidence to the LPC pointed out last year "When the NMW began to rise more rapidly from 2001 to 2005 (with an average annual growth of 7 per cent), job growth in the low-paying sectors tended to at least match the annual growth rate in the rest of the economy."

Recently, important new research from former IFS economist Howard Reed has gone some way to addressing the clear weaknesses in previous economic modelling. His report "The Economic Impact of Extending the Living Wage to all Employees in the UK" was published in October 2013. As the title suggests, the report focussed on a rise in the NMW to the current Living Wage levels. As a result, for the first time, an economic model included an assessment of the stimulus to the economy from increasing the pay of millions of low paid workers. The full report can be viewed here.

In his report Howard Reed concludes:

[5] Which? Lived Inflation Indices http://consumerinsight.which.co.uk/inflation

"...it is unlikely that the extension of the living wage to all UK employees would result in any substantial aggregate employment losses. In fact, it is quite plausible that adopting the living wage on a statutory basis could actually increase overall employment in the UK."
He goes on:

"A statutory living wage would therefore result in an economic 'win-win' on a number of levels. It would boost demand and economic growth, reduce earnings inequality, increase the share of wages in national income, and reduce the extent to which the benefit and tax credit system has to prop up low wages to reduce in-work poverty. By insisting on a voluntary approach to extending coverage, current proponents of a living wage are being unnecessarily cautious."

UNISON has always said that any tax and benefit saving to HM Treasury could be recycled into lowering employer National Insurance rates as necessary.

Section two: the political context - the 2015 rate and the future path of the NMW

The remit for the Low Pay Commission's (LPC) current report includes the following. The LPC should:

- monitor, evaluate and review the levels of each of the different NMW rates and make recommendations on the levels that should apply from October 2015
- consider what changes can be made to the apprentice rate to make it simpler and whether the structure and levels should be applied to all levels of apprenticeship
- review the conditions that need to be in place to allow the value of the NMW to rise in real terms, including an update on advice on the future path of the national minimum wage

This section sets out what UNISON believe to be the appropriate adult rate from 2015 in the context of the analysis of the current economic situation set out above, along with our view of the future path. We consider the apprentice rate in a separate section at the end.

We note that the 2015 rate and the future path are intimately linked this year by two important political factors: (i) the policy debate about the future of the NMW and the role of LPC in tackling the UK's low pay problem (ii) this is an election year, during which the rate will be announced and implemented either side of a General Election at which living standards and low pay are likely to be key issues.

As such UNISON is calling for rate increases that:

- are rooted in what we judge to be the rate that should be paid in the context of the economic conditions set out in section one
- reflect our continued aspiration that the NMW should reach the level of a living wage
- demonstrate sensitivity on the part of the LPC to compelling arguments for reform (see below) and the very real possibility that the government after May 2015 will want to inject fresh impetus into tackling low pay and be keen to hit the ground running

UNISON therefore recommends that the rate be increased, so that *significant progress* can be made towards achieving the goal of the NMW becoming a living wage over coming years.

In cash terms we think the increase at October 2015 should at the very least reach the mid-point between the October 2014 NMW (£6.50) and the Living Wage at its October 2015 level. The current LW rate for the UK outside of London is £7.65. Although it's difficult to anticipate what the LW rate

will go up to, on the basis of previous increases we think its reasonable to estimate that in October 2015 it will be approximately £7.85 – giving a mid-point of £7.18. If this were to be the case the increase the increase would be roughly 10 per cent.

We believe that this would help address the need for more inclusive economic growth, as set out in the previous section. It would also set us on a clearer trajectory, and provide more certainty for employers and employees about the role the NMW and LPC will play in addressing the UK's low pay problem in coming years.

Recommendation
The full adult rate from October 2015 should at the very least reach the mid-point between the October 2014 NMW (£6.50) and the Living Wage at its October 2015 rate.

Different ideas about the future role of the LPC and the trajectory of the NMW in tackling low pay

We note that the last 12 months have seen a range of thoughtful analysis and useful ideas about tackling low pay that we believe the LPC should have in mind when setting the rate this year and assessing the future path of the NMW. These ideas have been given extra potency by calls from all of the main political parties for more to be done to boost pay.

The Resolution Foundation review of the future of the NMW takes as its start point an analysis of the record of the NMW. Whilst noting its success in tackling extreme low pay since the late 1990s, it highlights the need for new measures to tackle 'Britain's pervasive problem of low pay', categorised as those earning above the NMW but below the low pay threshold. The review recommends that:

- government should set a goal of reducing the number of employees who are paid below the low pay threshold, which is two thirds of the hourly median (about £7.70), and set out a practical plan to deliver it
- the LPC should have a key role – acing as the government's watchdog on low pay, monitoring the extent and persistence of low pay and advising on how to tackle it
- the government should state its ambition on the future value of NMW – and that this best be expressed as proportion of the median, with 60 per cent as a 'reasonable lodestar'
- the LPC's terms of reference be amended to require that the LPC publish (a) an assessment of the extent to which their recommendation meets the government's trajectory; (b) where its recommendation falls short, an explanation of what the blockages are and advice on how they can be overcome. This should include analysis on how close different sectors are to being able to meet the government's aspirational target
- the Secretary of State should ask the LPC to review the wage floor that could be afforded in London – and that this be used as non-mandatory reference rate to guide employers and negotiators

In a similar vein, the report by Alan Buckle, *Low Pay: the nation's challenge* argues that new measures are needed to tackle low pay. Buckle suggests that a new approach on low pay must be allied with a strategy to move towards a more high skill economy and embody a stronger partnership between government, employers and employees. Among the specific recommendations, the report calls for:

- a new framework for the LPC, with a five year target to increase the NMW to 'a more stretching proportion of median earnings'
- LPC to be empowered to identify sectors that could pay more and those with systematic problems and then set up stakeholder taskforces to establish clear goals and measures to tackle

low pay in those sectors. In sectors that could pay more the LPC could look at the case for the giving the taskforce the power to set either a higher recommended or higher statutory rate for the sector
- the remit of the LPC should be extended to include a long term advisory role – investigating the causes and consequences of low pay and making recommendations to the government
- enforcement of the NMW to be improved, including giving local authorities a role in enforcement. This would involve powers to support the work of HMRC through inspection, information and enforcement
- tools of regulators to be strengthened, including extension of HMRC remit to include non payment of holiday pay

In parallel, we note that there have been developments in relation to the Living Wage, and the role that this has to play in tackling the UK's low pay problem. The Living Wage Commission, for example, has recommended that the government set an explicit goal of increasing the take of a voluntary Living Wage to benefit at least one million more employees by 2020. In order to reach this target, the commission recommend that:

- the government ensure that all directly employed public sector employees are paid the living wage
- UK and devolved governments ensure that the public sector always procures on value rather than spreadsheet cost, enabling stronger consideration of contractors paying the living wage
- The Living Wage Foundation oversee the production of a toolkit and kitemark to help sell business benefits and promote consumer awareness

Recommendation
We recommend that the LPC to make some *initial* assessments and consultations regarding the extent to which the ideas above can be implemented – and the extent to which there are barriers in different low pay sectors to achieving:

- a reduction in the number of employees currently being paid below the low pay threshold
- a NMW at 60 per cent of the median
- a significant increase in number of employees being paid the Living Wage

Section three below sets out UNISON evidence on the situation and the barriers to higher pay prevailing in public services. This includes recommendations on measures to overcome the barriers to fairer pay.

Section three: low pay in public services – overcoming barriers

Low pay is a major problem in parts of the public services. We estimate that one million public service workers are on low pay (earning below two thirds of the median) , including health and social care workers, school staff and local authority employees. Approximately half of this total figure deliver public services as employees of private companies and community organisations. Of those that are low paid and employed directly by the public sector, almost all are in local government. Nearly half a million local government workers earn less than the living wage. This pattern is strongly associated with the profile of local government employees where over half work part time and nine out of ten are women. Female workers and part timers are at risk of experiencing low pay. Cuts to terms and conditions have exacerbated the situation. After five years of pay restraint part time hourly earnings are now worth the same as they were ten years ago, with a quarter of part timers in local government earning less than £6.63. The lowest paid (those on NJC SCP5) on £6.45 are at risk of earning less than the NMW from October 1st . More than 30,000 local government

employees are on SCP5. The situation in local government is subject to an ongoing pay dispute. The pay claim being pursued by UNISON and other local government unions includes the demand for lowest paid to reach the level of the Living Wage.

Conditions in Social Care

Underfunding

UNISON has 300,000 members working in social care. The public sector used to be the main employer of social care workers, but there has been a shift in the past 25 years: now 77% of jobs are with independent (private or voluntary) providers.[6]

The social care workforce is predominantly female, with the latest estimates suggesting 82% of care workers are women (with a broadly similar percentage across all types of care). Social care is a highly gender segregated sector, with low pay and poor conditions reflecting the historic undervaluing of what is deemed to be "women's work". Compared to other sectors, the workforce is also particularly concentrated in the 45-60 age bracket.[7]

The exploitation of the workforce and under-payment of NMW in social care is widespread (see following section) inextricably linked to the chronic and persistent underfunding of the sector. It is impossible to address these concerns adequately without a proper consideration of the extra funding that the sector desperately requires.

Systematic underfunding has been a problem in the sector for decades now and the latest reports suggest a crisis point will be reached shortly. The National Audit Office reported in May 2014 that the number of adults in England aged 85 or over (those most likely to need care) is rising faster than the population as a whole. And yet local authorities' total spending on adult social care fell 8% between 2010-11 and 2012-13 with further decreases on the way. This figure was as high as 12% for expenditure on older adults.

Similarly, research in 2013 by the Association of Directors of Adult Social Services suggests the English social care budget is likely to be cut by a further £800 million by service directors in the current financial year (2013-14). ADASS point out that in the three years since the austerity programme began, £2.68bn in "savings" has been cut from adult social care, concluding that "without additional investment from that already planned, an already bleak outlook becomes even bleaker".[21] In March 2014, Age UK found that hundreds of thousands of elderly people were no longer getting the levels of care they need.[22] Social care is a devolved issue and reductions in funding under the Barnett formula mean that similar levels of cuts are being experienced in the devolved nations. Northern Ireland has been particularly badly affected by austerity.

The picture gets worse still with the additional burdens created by the government's Care Act (which became law in May 2014) which hits local authorities in England. The government has so far failed to acknowledge adequately the impact on councils of key elements of the Act. There are now a whole raft of new responsibilities and pressures for councils to deal with once the Bill becomes law, including new assessments associated with the cap on care costs and the new statutory adult safeguarding regime.

A small amount of extra funding is being transferred from the English NHS budget to social care, but even this is now due to be tied up in the Better Care Fund, which is itself predicated on the assumption of further cuts in services.

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[6] International Longevity Centre (2014), The Future Care Workforce, February 2014, p9, www.ilcuk.org.uk/images/uploads/publication-pdfs/Future_Care_Workforce_Report.pdf

[7] International Longevity Centre (2014), pp13-14

On 6th March 2014 UNISON hosted a roundtable discussion for members working in the care sector, enabling them to communicate their experiences. A common theme was the lack of funding coming through the system from central government and the corresponding failure of local authorities to pass on sufficient monies to deliver services to the highest standard or to treat staff properly. One member reported that her local authority had to save £100 million and that the council's hands were effectively tied, giving them little option but to outsource services.

In February 2014 the UK Homecare Association revealed their recommendation for the total minimum price councils should pay for their homecare services (in order to ensure that providers pay the minimum wage): £15.19 per hour.[8] A UNISON survey, compiled using FOI data, revealed just eight from 176 councils meeting this rate. This provides a graphic illustration of the shortfall in funding allocated to homecare contracts and shows just how far councils have to come in order to provide an acceptable standard of care and minimum staffing conditions. (full dataset available on request)

Council	**Minimum Hourly Rate Paid for Homecare 2013/14**
Hartlepool	£9.08
Warrington	£9.09
London Borough of Redbridge	£9.26
London Borough of Newham	£9.47
London Borough of Haringey	£9.55
East Riding of Yorkshire	£9.98
Rhondda Cynon Taf Council	£10.00
Cardiff Council	£10.13
Telford and Wrekin	£10.15
Brent	£10.23

The table above, compiled from the aforementioned survey, shows the bottom 10 councils in the country for 'Minimum Hourly Rate Paid for Homecare 2013/14'. There is a strong correlation between these minimum rates and non-payment of National Minimum Wage as a result of deductions and failure to pay travel time.

Recommendations

The LPC should i) assess all of the available data and publish its own recommendations on the appropriate rates that should be paid for social care in order to ensure that workers delivering these socially vital services are paid appropriately ii) call on the government in the strongest terms possible to make sufficient funding available to cover the real costs of social care

[8] Community Care, "Home care leaders reveal „minimum price" councils should pay for care", 4 Feb 2014, www.communitycare.co.uk/2014/02/04/home-care-leaders-reveal-minimum-price-councils-pay-care

The LPC should call on the government to issue its guidance on procurement as a matter of urgency. We note that the 2014 LPC report called on the government to publish its overdue report on this issue. Clearly this cannot be delayed any further.

Local authorities that knowingly let social care contracts that are too low for the employer to pay the NMW should be named and shamed, in addition to any social care employer breaking the law.

Public sector outsourcing and the low paid

In September 2014 the Smith Institute published a report, commissioned by UNISON, which investigated the impact of outsourcing on the wages of public service workers. The study looked in-depth at 5 case studies.

The case studies chosen represent a range of providers working in different sectors and draw upon the views and experience of trade union officers and members. They were:

- A Chartwell/Compass contract to provide school meals for children living in the area of Newport City Council, which involved the transfer of around 220 school catering staff on a six-year contract from April 2011;
- Supported living services for Rochdale Borough Council, some of which were outsourced to community interest company Future Directions in 2012;
- A partnership contract between Lincolnshire Police Authority and global security firm G4S which saw 585 police support staff transferred on a 10-year contract which is the most wide-ranging police outsourcing arrangement in the UK;
- Support services for West Sussex County Council, which were outsourced to Capita in 2012, involving the transfer of around 600 staff; and
- NHS patient transport services in North Staffordshire, which were outsourced to Parkwood Holdings, then brought back in house again before being contracted back out to NSL.

The findings raise some important issues for politicians, policymakers and contracting authorities and agencies, some of which should cause deep concern. In particular, the lack of information about terms and conditions, the impact of the cuts on outsourced low paid workers; and the seeming growth of the two-tier workforce (and the widening gap between them). It also raises wider questions about the impact of outsourcing on the quality of public services and the wider social effects (not least the public cost of failing to pay public sector workers a decent wage).

With regard to the national minimum wage and the remit of the Low Pay Commission, there are a number of important findings key. The study finds that in the case of "new starters" who have not been TUPE transferred from public sector terms and conditions, "public sector cuts are being passed directly on to low-paid workers."

The sheer scale of spending cuts is the root cause of this new front line in the fight against poverty wages. For example, local authorities core funding will have reduced by 40% by the end of this Parliament[9]. This is then exacerbated by the process of outsourcing.

The case study of Future Directions CIC illustrates this point. Some supported living services for Rochdale Borough Council were outsourced to community interest company Future Directions in 2012. As a result skilled support workers for disabled adults with complex needs have seen up to a 40% cut in take-home pay with worsened sick pay and annual leave.

[9] Local Government Association, *Future Funding Outlook 2014*, July 2014.

In another of the case studies Chartwells in Newport now have significantly fewer staff delivering more meals They are not being rewarded for this higher workload, however, with pay rates tracking the minimum wage.

The research also makes clear that successive re-tendering of contracts and reconfigurations of services has produced a staggering array of different terms and conditions amongst people providing the same public service. At the same time, when staff move into the private sector transparency around their pay decreases. This calls into question whether it is possible for outsourced services to meet their equal pay obligations and is storing up potentially costly equal pay problems for the future.

For outsourced companies transparency around pay is lower than it is in most of the private sector. This has implications for public authorities who wish to monitor if their contractors are complying with the Minimum Wage. These features also make it much more difficult to identify or challenge pay discrimination.

The table at appendix one is taken from the Smith Institute report and demonstrates how, on two of these contracts, fragmentation of pay structures hits low paid workers and reduces transparency of the overall terms and conditions.

Gender Pay gap
Low Pay Commission Reports have showed that raising the National Minimum Wage has been a very effective way of closing the gender pay gap and the introduction of the NMW in 1999 had a significant impact in closing it for both part time and full time working women. Indeed two thirds of the beneficiaries of the National Minimum Wage are women. With the Equality Act 2010 (even though implementation has been watered down) ensuring a continued focus on the gender pay gap, the importance of the NMW and keeping it at a decent rate should not be forgotten.

According to the Office for National Statistics the current gender pay gap went up to 10 per cent between 2012 and 2013. As the evidence above demonstrates, the situation is being exacerbated by a range of factors pushing down pay across public service roles in which women workers are the majority. At the same time job cuts in public services are resulting in thousands of female public sector workers struggling to find work in the private sector where the gender pay gap is twice as high as in the public sector.

The calculation of the gender pay gap only relates to comparisons between full time workers. UNISON has evidence, for example, that there is a 30%+ gender pay gap between women part-time workers and male full time workers in local government. It is highly likely that this will also apply to zero hours and other casualised workers too.

We note recent analysis by the Labour Party suggested that on current trends it will take a further 60 years for the gender pay gap to close.

Recommendation

The Low Pay Commission should carry out and publish an assessment of the extent to which public spending cuts are driving down pay across public services. This should highlight contradictions in government policies and include recommendations on the role of public service employment in tackling low pay and closing the gender pay gap.

Section four – UNISON member's experience of compliance and enforcement issues

Lack of enforcement of NMW in the care sector

The most authoritative analysis of non-payment of NMW in the care sector, conducted by Dr Shereen Hussein in 2011, found that between 156,673 and 219,241 direct care jobs in the UK are jobs in which the worker is paid below the NMW, this equates to 9-13%.[10] Given that the financial situation of most councils has deteriorated since 2011 it is reasonable to assume that this number will have increased since then.

Currently the primary reason for HMRC to begin investigations into non-compliance with the NMW is when a worker reports their employer to them via the Pay and Rights Work Helpline. However, given that most homecare workers are employed on zero hours contracts, many are too scared to report their employer for fear of subsequently having their hours reduced. This is one of the main reasons behind the incredibly low levels of homecare workers reporting their employers for non-payment of the NMW: in 2011-12 HMRC received only 11 complaints concerning non-payment of the minimum wage by homecare providers and only 19 in 2012-13.

Recommendation

As with our submission last year, we urge the LPC to recommend to government a new formal third party role for trade unions which treats their reports of breaches of the NMW as a formal complaint. All such complaints would then lead automatically to a formal investigation by HMRC Officials.

The LPC should carry out an urgent inquiry into zero hours and non compliance. This should include an assessment of the extent to which different proposals for reform of zero hours contracts will address the problems that we have highlighted.

Failure to pay travel time in social care sector / sleep-ins

The failure to pay staff for their travel time between appointments is probably the single most important reason for care workers not receiving the National Minimum Wage (NMW). More than half (57.8%) of UNISON homecare workers in England reported that they were not paid for their travel time between visits, and this figure was still over 50% in Scotland.[11] A recent FOI survey of local authorities revealed that only 10 per cent require that providers must pay travel time when they issue contracts.

At UNISON's roundtable, members described non-payment of travel time as having become standard practice in homecare. This causes members particular problems when combined with the use of zero hours contracts: one member described how non-payment of travel time meant that he was under pressure to take as many hours as he possibly could under his zero hours contract.

The 2013 Employment Appeal Tribunal decision in the case of Whittlestone v BJP Home Support Limited ruled that the homecare worker was entitled to be paid the NMW for her travel time between appointments. It is to be hoped that awareness of this case will help to stop non-compliance with the NMW, although the fear is that homecare providers will merely extend the length of gaps

[10] "Estimating probabilities and numbers of direct care workers paid under the National Minimum Wage in the UK: A Bayesian approach", *Social Care Workforce Periodical*, Issue 16, December 2011, www.kcl.ac.uk/sspp/kpi/scwru/pubs/periodical/2011/issue16.aspx

[11] UNISON (2012), *Time to Care*, October 2012, p4, www.unison.org.uk/upload/sharepoint/On%20line%20Catalogue/21049.pdf
UNISON Scotland (2014), *Scotland – it's time to care*, http://www.unisonscotland.org.uk/socialwork/timetocare.pdf

between visits to get round their travel time responsibilities. The case also ruled that the NMW should be paid for sleep-ins, which is a bigger issue than travel time for those working in residential care.[12]

One further EAT has further restored the previous position that when a worker is employed to be at the employer's premises during the night to meet a need of the employer's, then they are working and should be paid NMW. In Esparon T/A Middle West Residential Care Home v Slavikovska, the claimant was employed as a care worker in a residential care home who was required to work 'sleep-in' shifts. Here the EAT again found that she was working throughout the shift and pointed to the fact that there were statutory requirements of the employer to ensure such people were employed at all times to ensure the safety of the residents.

Given the nature of the job, most homecare staff are expected to run their own car. Some providers do not provide any mileage allowance at all; others do, but at rates that are often lower than the approved HMRC mileage rate of 45p per mile.

One particularly bad example of these failings has been highlighted publicly by UNISON. In addition to failing to pay the NMW as a result of not paying for travel time as part of its contract with Hampshire County Council, Apex Care also imposed punitive charges on its homecare workers, such as a £7 charge for a £20 loan to buy petrol for a company-provided vehicle.

These loan charges for a period of one week until payday equate to an annual percentage rate of more than 17,000%. Apex also refuses to compensate staff for the actual mileage covered in their work and instead pays them only for the Google Map distance between locations; staff who use their own vehicles do not receive the recommended HMRC mileage rate. The employer introduced a new scheme for paying these zero-hours staff where they are paid only by the minute, although contracts state that they are paid according to the agreed rotas, which are by the quarter hour. The work that Apex Care staff undertake for the county council cannot be undertaken without a vehicle, yet very few staff on or below the minimum wage (some Apex staff received as little as £3.50 per hour for a morning shift of more than five hours) can afford to own their own car, so Apex's answer was to lease vehicles to their staff. This lease costs staff £128 per month from their already meagre wages.

One member of staff suffered a £500 excess charge directly deducted from her wages, without notice, for being involved in a no-fault accident, leaving her almost nothing to live on for the whole month ahead.[13] Apex subsequently produced a further range of draconian measures, including a gagging order, refusals to provide copies of employee handbooks and insisting it had the right to search individuals and their possessions.[14] In March 2014 UNISON was left with no choice but to lodge legal claims against the company on behalf of members.

Recommendation

Given that the law on travel time is clear, yet being contravened in many cases in the social care sector, the LPC should work with HMRC and government to bring forward a package of measures and guidance to ensure that this abuse can be stamped out immediately. This should include requiring local authorities to write this requirement into contracts.

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[12] Employment Appeal Tribunal, www.bailii.org/uk/cases/UKEAT/2013/0128_13_1907.html

[13] UNISON launches fight against Scrooge employer, 17 December 2013, www.unison.org.uk/news/unison-launches-fight-against-scrooge-employer

[14] UNISON condemns gagging order on low paid homecare staff, 17 February 2014, www.unison.org.uk/news/unison-condemns-gagging-order-on-low-paid-homecare-staff

Following recent the recent EAT ruling that employees should be paid the NMW for sleep-ins, the LPC should recommend that BIS revise and re-issue their guidance .

Migrant Labour
The care sector is particularly dependent on migrant labour. The latest estimates suggest that just over 18% of the workforce are non-British, a figure that rises towards 20% for those directly delivering care (rather than those managing care).[15] Migrant workers make up a larger proportion of the workforce in London and larger cities, where the figure can rise to 40-50% of care staff.

At the aforementioned roundtable discussion for members working in the care sector we heard a number of shocking examples of the exploitation of migrant workers in the care sector. One group of Filipino workers found themselves paying £300 a month each to share a flat with only one toilet and no lounge at the residential care home they worked at. The rate paid for the work they did was £7.02 per hour, but there were then monthly deductions for their uniform (they got one per year but had to pay every month) and training (which is a breach of National Minimum Wage law). This would normally cost more than £200 a month, and it transpired that these workers were not necessarily getting the uplifts in the minimum wage they were entitled to.

The roundtable also heard that a working week for these staff could sometimes be as high as 60 hours (depending on staffing levels) despite the fact they were contracted for 36 hours. They could also find themselves working a 10 hour nightshift for a paltry £35, way below the minimum wage, and with no sleeping permitted

The same employer extorted £500 each from this group of workers when their initial five-year period in the job came to an end, on the basis that payments were needed to retain a licence to hire foreign workers and to protect their immigration papers. To compound matters, they were then obliged to pay fees of £2,000 each for a solicitor to renew their work permits. The work permits are with one employer, so if the workers lose their job they would lose their visa and would have to leave the country

Similarly disturbing stories were reported in the treatment of workers elsewhere. At one UNISON branch workers were reported as earning £900 a month for working a 42-hour week. They paid rent and a training fee to a college, as well as paying for their uniforms. They were left with £50 a month to live on after the various deductions and existed just by eating rice.

They lived in bedsits with 5-6 people crammed in together, with beds having to be shared in shifts. When their visas were up for renewal they found themselves on disciplinary charges. There were complaints to the employers that they were basically treated like slaves and stories that some had been beaten at work.

Recommendation
The LPC should call on the HRMC to carry out an investigation into the scope and scale of exploitation of migrant workers in the social care sector. This should be used to develop an enforcement programme targeted at stamping out exploitation of the migrant social care workforce.

Section five - Apprentice and youth rates

Apprentices

[15] International Longevity Centre (2014), p13

We note the BIS apprentice pay survey that shows that most apprentices earn much more than the relevant minimum wage rate with median earnings reported as £6.09 per hour in an official survey carried out 18 months ago[16].

However, BIS's apprentice pay survey has also revealed some serious short-comings which must be addressed..

One quarter of all apprentices surveyed reported that they were paid amounts that were less than the applicable minimum wage rate, and four per cent reported that they were not paid at all. As the fieldwork for the survey was conducted soon after the October 2012 increase, it is possible that some respondents were considering the old 2011/2012 rate. But even on this measure, 24 per cent of apprentices were underpaid[17]. In addition, four per cent of apprentices said that they did not receive any pay at all.

We share the TUC's analysis that that the minimum wage regime for apprentices could now be strengthened and simplified.

First, it is no longer clear that *any* rate below the general levels of the minimum wage is still warranted for older apprentices. Pay rates are generally already far higher for this group, with median pay for the 25+ age group reported to be £7.15. In addition, more older workers tend to be in post before commencing their apprenticeship, with seven out of ten of all apprentices working for their current employer before commencing apprenticeships[18], and there are reports that some existing training has been rebadged as apprenticeships in order to attract government funding. Note also that the government wants to target investment in the apprenticeship programme on younger workers, but 45 per cent of current apprentices are aged 25+[19]. In this context it seems odd to provide a substantial pay discount for the employers of older apprentices.

Second, we can no longer see a case for allowing employers to pay lower levels of wages to advance or higher level apprentices, who make up 43.7 per cent of the total. Our view is that workers who already have an intermediate level qualification should be able to make a contribution that is *more* than the general age-based level of the minimum wage, so it is hard to see how a lower rate could still be justified. This view is supported by the fact that average earnings are already higher for these apprentices. Mean hourly pay for a level 3 (advanced apprenticeship) was £6.67 in 2012, according to the BIS pay survey[20].

Recommendation

The LPC should set the apprentice rate of the minimum wage at the same level as the youth rate. Advanced, higher level and older apprentices (18 and up) should be paid the adult rate.

Young people

In recent years, the Low Pay Commission has been very concerned about the position of young people, as the fall in new job opportunities led to very high unemployment levels for those trying to enter the labour market.

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[16] BIS "apprentice pay survey 2012: research findings," 2013, p31: https://www.gov.uk/government/publications/apprenticeship-pay-survey-2012 the research covered England, Wales and Northern Ireland, and was published, after some delay, in October 2013.
[17] Ibid, p31
[18] BIS pay survey, op cit, p11
[19] Source: SFA/BIS "Further education and skills: statistical first release", op cit, table 5
[20] BIS pay survey, op cit, p9.

Whilst there are not yet any grounds for complacency, it is obvious that the labour market for young people is rapidly improving. In August 2014 the DWP announced a very substantial fall in youth unemployment:

Youth unemployment has fallen by 206,000 over the past year, which is the largest drop since records began in 1984, bringing it to the lowest level for nearly 6 years. The youth unemployment rate is down 4.5 percentage points compared to a year ago.

Unemployment fell by 437,000 over the past year – and 132,000 in only the past 3 months – which is the biggest annual fall in 25 years. [21]*"*

The number of 18-24 year olds in employment increased by 198,000 in the past year, and the employment rate is up by 3.7 percentage points.

In addition, the number of people in this age group who are unemployed has fallen by 173,000, which constitutes a rate fall of 4.3 per cent over the past year.

UNISON has generally argued that lower wage rates are discriminatory. They are based on a personal characteristic that has nothing to do with performance of the job. Our own research has repeatedly shown that lower pay levels offered to young workers do not adequately reflect the value of the work they do, and result in real hardship. In the context of the improvement in labour market conditions for young people we have no hesitation in reiterating these arguments and urging payment of the full adult rate for those aged 18 and up.

Recommendation

In keeping with our position, 'fair rate for the job' - recognising that it is the reward for the work that is at issue and not any characteristic of the worker – we believe that the age-related rates for 16-20 year olds should be harmonised with the full adult rate.

We recommend the development rate for 18-20 year olds should be brought in line with the full adult rate from 2015.

16-17 year olds should be entitled to the 'development rate' with a view to harmonising it with the adult rate within 3 years.

[21] "Record fall in youth unemployment", DWP press release, 13 august 2013: https://www.gov.uk/government/news/record-fall-in-youth-unemployment

Appendix one: Pay and benefits for transferred and new staff: case study contracts					
Contract	**Basic pay rates**	**Other pay-related allowances**	**Working time and employment status**	**Sick pay and annual leave**	**Pension**
Rochdale Borough Council contract with Future Directions CIC (supported living for disabled adults)	Significant reductions in pay made following the transfer, with an ex-NHS support worker receiving 28% less per hour in 2014 than the NHS rate in 2012. New starters in 2014 are appointed on an hourly basic rate that is 37% lower than ex-NHS employees received in 2012. Non-consolidated "quality payment" made to staff as result of settlement of dispute by the council.	Removal of overtime premium, weekend working allowances etc for transferred staff meant that some staff lost up to 40% of total pay and allowances. No working time-related payments for new staff.	Same working hours for transferred and new staff.	Ex-NHS and ex-local authority staff saw sick pay and annual leave terms worsened. New staff receive statutory sick pay and annual leave.	Transferred employers retain membership of local government or NHS pension; defined contribution scheme for new staff (3% employer contribution).
North Staffordshire NHS contract with Parkwood (non-emergency patient transport services)	New starters were recruited on lower pay rates. Acas described the overall package received by new starters as "markedly inferior". Cost-of-living increases due to transferred staff were withheld. As per TUPE requirements, transferred terms are unchanged.	Transferred staff maintained on-call, standby and antisocial hours payments but new staff did not receive them.	Some employees recruited on casual or zero-hours basis by Parkwood.	Sick pay and annual leave received by new starters were less favourable than terms for transferred staff.	Transferred staff were able to maintain their NHS pension. Pension arrangements for new starters are unknown.