UNISON evidence to the Low Pay Commission on minimum wage rates for 2020

June 2019
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INTRODUCTION

As one of the largest trade unions in the UK, UNISON represents in excess of 1.3 million members working across the public services. Our members are employed directly by public sector organisations, by private contractors and community / voluntary organisations engaged in providing public services, and by utility companies.

UNISON represents workers in local government, the health service, social care, schools, universities, further education and sixth form colleges, police and probation services, water and energy companies, environment agencies and transport.

With such a large and wide-ranging set of employees amongst our membership, two-thirds of whom are women, we are well placed to comment on the experiences of workers at the sharp end of low pay.

The evidence that we present in this document sets out our key recommendation for the commission to consider and an executive summary of our analysis. Subsequent chapters go on to consider in greater detail the economic context for increases in the National Minimum Wage, the latest trends affecting low-paid workers, the specific experience of our members in the public services and the enforcement issues in application of the National Minimum Wage.
1. SUMMARY OF RECOMMENDATIONS

UNISON believes that the ultimate goal for National Minimum Wage policy in the UK should be as follows:

- The National Minimum Wage should be raised to the level of the UK Living Wage announced annually by the Living Wage Foundation and then move toward a target of £10 an hour.
- National Minimum Wage rates should be harmonised into a single rate across all age groups.

In moving toward these targets, UNISON believes that the following recommendations should be carried through:

- The April 2020 increase in the “national living wage” should at least match the £8.63 hourly rate specified by the Office for Budgetary Responsibility in taking the final step to reach the 60 per cent of median earnings target in 2020.
- The April 2020 increase in the minimum wage rates applicable to younger workers should exceed the 5% increase applicable to the “national living wage” in recognition that the youth rates have seen a greater devaluation through inflation than the full adult rate over recent years, youth unemployment rates have dipped to their lowest level in decades and a greater gap with the “national living wage” will encourage “substitution” of workers.
- The age at which workers become eligible for the “national living wage” should be reduced to the age of 21 in recognition of the commission’s previous advocacy of that qualifying age for the highest adult rate and recent evidence that raising wages for this group does not generate negative employment outcomes.
- In recognition that this act of age equality puts a downward pressure on the average earnings figure against which, the “national living wage” is calculated, an accompanying reform of gender equality should be made to peg the wage to 60% of male median earnings.
- To address the contribution of certain forms of employment contract to the expansion of low pay employment in the UK, the commission should recommend the strengthening of legislation to limit the use of zero hours contract, to prevent the bogus classification of workers as “self-employed” and to extend the employment rights of “workers.” These recommendations should recognise the devolved nature of employment law in Northern Ireland.
- The commission should call on the government to ensure that additional financial provision is made to fund the projected increase in the “national living wage” for those working in the public services.

Beyond 2020, the government’s stated intention of “ending low pay in the UK” in terms of the OECD definition of two-thirds of median earnings should be established as the next target for the minimum wage within four years.
To ensure that employers comply with the National Minimum Wage, we call upon the Low Pay Commission to carry out a special investigation into the reasons for non-compliance in the social care sector, drawing upon UNISON’s work, and put forward a raft of actions for the government to significantly reduce non-compliance.

We believe that as part of this work, the Low Pay Commission should recommend that:

- HMRC must take action to improve the quality of social care employers’ minimum wage records and start to punish employers who fail to do so by putting forward employers for consideration for prosecution in order to help drive improved rates of compliance across the sector;
- The government reverses its previous rejection of the Director of Labour Market’s Enforcement’s recommendation on procurement templates;
- The Care Quality Commission is given the power to inspect how local authorities commission care services in order to help eradicate poor commissioning practices which significantly contribute to widespread non-compliance with the NMW in the care sector.
- Increased levels of transparency are implemented around the rates councils and commissioning bodies in Northern Ireland, pay their providers, including the publication of a breakdown showing how the fees paid cover pay, travel time, sleep-ins, other conditions, overheads and assumed profit margins.
- Spot inspections are introduced on provider payroll records, provision of clear and understandable payslips and time sheets, alongside measures to ensure providers allow trade union representatives to consult staff to ensure that the law is being complied with.

Furthermore, we call on the commission to:

- Issue a statement on its position with regard to the payment for sleep-ins which recognises the evolution of the social care sector over the last 20 years along with the case law that has accompanied it.
- Cease the use of ASHE data to estimate levels of non-compliance in the care sector because of its failings in presenting a true picture.
2. EXECUTIVE SUMMARY

General economic context

Summary

- Uncertainty caused by whether and/or how the UK will exit from the European Union continues to cloud all forecasts for the economy
- GDP growth is predicted to maintain a steady if modest rate at 1.5% or slightly above over the next two years
- The general unemployment rate is expected to remain around the 4% mark – a low not seen since the mid 1970s – and the effect of this is being seen in strengthening turnover rates
- The increase in the cost of living facing workers is expected to run at 2.7% in 2020, then 3% or over in subsequent years
- Average earnings growth has been escalating sharply to hit a decade long high and is expected to roughly keep pace with inflation at 3% or above in 2020 and subsequently
- Operating surpluses and dividend payments to shareholders generated by the UK workforce have been growing at a faster rate than both the gross domestic product and average weekly earnings

Conclusions

- UNISON believes that the Low Pay Commission has been vindicated since the introduction of the “national living wage” in deciding not to depart from a straight path in uprating to reach the target 60% of median earnings by 2020. The extreme pessimism of some GDP forecasts, particularly in the immediate aftermath of the vote to leave the European Union, was not borne out and the inbuilt adjustment of the “national living wage” to changes in average earnings represents a sufficient insurance against changed economic circumstances [the 2020 target rate has fallen from £9.16 when the “national living wage” was first introduced to £8.63 by 2019].
- UNISON believes that the latest developments in the economy offer no sound reason to depart from taking the final planned step in the “national living wage” to reach 60% of median earnings in 2020.
- The general employment level hasn’t provided a sounder basis for increases in the minimum wage since its inception.
- Predicted changes in the cost of living mean that a 2.7% increase in 2020 rates would be needed simply for the value of the minimum wage to stand still.
- Forecasts suggest that employers are facing a similar general baseline 3% increase in their paybill.
- The generation of £450 billion in operating surpluses and a record high £100 billion payout to shareholders leaves us deeply sceptical of claims that paying the UK’s most poorly paid workers a wage that delivers a basic but socially acceptable standard of living is “unaffordable.”
Factors affecting low-income groups

Summary

- Despite the introduction of the “national living wage,” the problem of in-work poverty across the UK has been expanding, both because of the failure to keep up with the cost of living and the increased use of more exploitative forms of contract by employers.

- Neither employment nor vacancy data in low-paying sectors points to the minimum wage causing acute difficulties.

- The largest companies in the most notorious low-pay sectors have recorded extremely healthy profits since the introduction of the “national living wage” and their employment levels have been on the rise throughout.

- The Living Wage has seen rapid growth in its adoption by employers and is widely seen as a standard benchmark of the wage needed to maintain a basic but decent standard of living.

- The “national living wage” has brought a welcome narrowing of the gap with the Living Wage, but a full-time worker on the “national living wage” still receives £1,524 less per year than a worker on the Living Wage.

- The number of companies operating in low pay fields such as catering, cleaning and security that have signed up as Living Wage Service Providers is testimony to a willingness to improve earnings of low-paid staff where a level playing field applies.

Conclusions

- If the Low Pay Commission is to truly address the scale of in-work poverty in the UK, it must make recommendations that seek to deliver a real living wage and curtail forms of contract that are vulnerable to imposition of inadequate hours to achieve a reasonable standard of living.

- The “national living wage” target rate of 60% of median earnings is a significant step forward for tackling low pay in the UK. However, calculations based on median earnings do not respond sufficiently to changes experienced by workers in the cost of living. The Living Wage rates published annually by the Living Wage Foundation remain the benchmark for achieving genuine reductions in low pay. The Living Wage takes into account affordability for employers by linking the rate to average earnings but it also responds to changes in the cost of living.

- By pegging the “national living wage” to median earnings for all employees aged 25 or over, increases are linked to a figure that has the gender pay gap incorporated into it. In order to address the gender inequality that still prevails across the UK economy, the “national living wage” should be pegged to male median earnings for the target age group.

- To address the contribution of certain forms of employment contract to the expansion of low pay employment in the UK, the commission should recommend the strengthening of legislation to limit the use of zero hours contract, to prevent the bogus classification of workers as “self-employed” and to extend the employment rights of “workers.” These recommendations should recognise the devolved nature of employment law in Northern Ireland.
Factors affecting public service workers

Summary

- The Living Wage has made major strides across the public sector’s directly employed workforce, with the numbers receiving less than the Living Wage dropping by over 140,000 during the last two years. The education sector is where the lowest wages now predominate and it is only in this sector that significant increases will be needed to reach the 60% of average earnings target.

- Where the “national living wage” does apply in the public sector, it is applied to all staff regardless of age. Only the apprentice rate is utilised as a much lower rate that stands outside of the pay scales.

- By far the largest pool of minimum wage workers operate in privatised parts of public services, with social care and facilities management functions such as catering, cleaning and security forming the dominant slice.

- The “national living wage” has not halted continued employment growth in social care, but the poor state of employment conditions is placing severe strain on the sector’s capacity to recruit and retain staff.

Conclusion

- The Low Pay Commission should recognise the role of privatisation in driving low pay across the UK’s public services and the role a minimum based on a truly Living Wage can play in reducing the incentive for driving down costs on the basis of a low-paid workforce.

- The cost implications of the “national living wage” for public sector employers and their contractors need to be addressed through a specific government funding allocation to meet those costs.
Factors affecting young workers and apprentices

Summary

- UNISON’s case for bringing the youth rates up to the Living Wage can be summarised as follows:
  - Paying a 24-year-old differently to a 25-year-old for doing exactly the same job is a blatant injustice in the workplace;
  - This injustice costs employers in terms of retention, morale and motivation of young staff;
  - In reality, employers do not apply the youth rate across large swathes of the economy, reflecting concern both with unnecessary complexity and damage caused by differentiation;
  - Unemployment rates for 18-24-years-olds are at their lowest in over 25 years and their lowest for 16-17-year-olds in over a decade;
  - While the real value of the minimum wage for workers aged 25 and over has been maintained over the last decade, inflation has taken major chunks out of the value of youth rates.
- The case for bringing workers aged 21 or above up to the Living Wage is particularly overwhelming, as the there is no substantial evidence of major differences with the economic situation facing older workers.
- Research on the apprentice rate points to the wage level forming a small part of the total apprenticeship cost issues facing employers and substantial increases having little impact on employment.
- UNISON surveys point to a capacity to pay apprentices significantly higher rates as well as some evidence of apprentices being used to undermine the employment of staff on full rates of pay.
- The growth in the cash value of the gap between most of the youth / apprentice rates and the “national living wage” has grown since 2016, increasing the incentive to substitute workers on the full rate.

Conclusions

- The youth and apprentice rates should be brought up to the level of the Living Wage.
- Closing of the gap with the “national living wage” will reduce the incentive to violate equality legislation, undermine the full rate and reduce employment of staff on the full minimum wage rate or above.
- Increases of the boldness displayed in the introduction of the “national living wage” are needed in the National Minimum Wage rates applicable to workers aged under 21 simply to restore their real value to their 2009 level. For 21-24-year-olds the required rise is a modest 2.1%, but for 18-20-year-olds it is 6.4% and for 16-17-year-olds it is 11.2%.
Minimum wage path beyond 2020

Summary

- Long-term forecasts available for 2021 to 2023 point to a picture that is generally positive for moving toward a minimum wage target of two-thirds of average earnings. Though economic growth is expected to be modest, unemployment remains at a record low.
- Moving toward two-thirds of average earnings could be expected to achieve a rate approximately in line with the Living Wage, which has long been UNISON’s campaigning goal.
- Experience shows the consistent overstatement of damage to employment levels as a result of rises in the minimum wage and the commission should acknowledge that the rate of increase enforced by the 60% of average earnings target again failed to cause negative employment consequences despite the rate raising faster than the commission has felt able to recommend since the early years of the minimum wage.

Conclusions

- UNISON believes that the commission should seize an immense opportunity to make major inroads into reducing low pay in the UK and recommend two-thirds of average earnings as the next target rate for the minimum wage. Based on a similar timeframe to that adopted for achieving 60% of average earnings, the commission should oversee a planned path, based on equal rises in the minimum wage bite and the safeguard provided by the link to average earnings in the event of an economic downturn.

Enforcement of the National Minimum Wage

Summary

- Widespread failure to keep sufficient records is at the heart of non-compliance in the social care sector, employers routinely ignore workers’ requests to inspect records and where they are shared records are frequently indecipherable.
- The new payslip regulations are a welcome recognition that many employers conceal how much workers are paid but the failure to separate contact and travel time for the huge homecare workforce renders them insufficient for determining NMW compliance.
- Commissioning practices fail to address NMW issues adequately, with less than half of local authorities stipulating payment for travel time.
- The Low Pay Commission allowed the Court of Appeal ruling on sleep-ins to pass without comment in its 2019 compliance report, despite the citing of the commission’s position as being of “fundamental importance” by the court.
- The Social Care Compliance Scheme was used by care employers to clear their books with regard to non-compliance in a way that allowed them to escape reputational damage and any additional financial penalties.
UNISON is deeply concerned that the implications of a recent Employment Appeal Tribunal ruling (Mears Home Care Limited v Bradburn Employment Appeal) will significantly reduce the ability of HMRC, workers and trade unions to enforce the minimum wage, particularly in the care sector.

Conclusions
We call upon the Low Pay Commission to carry out a special investigation into the reasons for non-compliance in the social care sector, drawing upon UNISON’s work, and put forward a raft of actions for the government to take to significantly reduce non-compliance.

We believe that as part of this work, the Low Pay Commission should recommend that:

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3 GENERAL ECONOMIC CONTEXT

3.1 Economic growth

Since the introduction of the “national living wage,” the value of UK economic output, as measured by the Gross Domestic Product (GDP), grew by 1.8% in 2016 and 2017, followed by 1.4% in 2018.

Therefore, the 2018 growth rate was slightly above that predicted in July 2018, when the Low Pay Commission last considered its recommendations. This continued a pattern whereby the actual rate has turned out to be ahead of the prevailing forecasts. In July 2016, the Treasury average of independent forecasts predicted that 2017 GDP would grow at 0.8% - it turned out to be 1.8%.

The latest Office for Budgetary Responsibility (OBR) forecasts put the rate of growth of the economy at 1.2% in 2019, before rising to 1.4% over 2020, then picking up again to 1.6% between 2021 and 2023. And already the Bank of England has lifted these forecasts to 1.5% in 2019, 1.6% in 2020 and 2.1% in 2021.

The period since the introduction of the “national living wage” has almost entirely coincided with the immense uncertainty about the economy that followed the UK’s vote to exit from the European Union in June 2016. At the time of writing, this uncertainty showed no signs of abating.

Source: 2011-18 rates from Office for National Statistics (GDP based on chained volume measure seasonally adjusted), forecast rates 2019-23 from Office for Budgetary Responsibility, Economic and Fiscal Outlook, March 2019

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1 HM Treasury, Forecasts for the UK Economy, July 2018
2 Office for Budgetary Responsibility, Economic and Fiscal Outlook, March 2019
3.2 Unemployment and turnover rates

The unemployment rate across the economy has declined markedly over the last seven years, with the proportion of the adult economically active population classified as unemployed dropping from 8.1% in 2011 to 4.1% by 2018. Consequently, the unemployment rate stands at its lowest level in 44 years.

The Office for Budgetary Responsibility’s latest forecasts of unemployment rates have dropped heavily for the coming years. The OBR now predicts that the rate will remain at 4% or just above this year and over the following four years.

The Chancellor stated in the 2018 budget that workers will be filling an additional 600,000 jobs by 2023

With vacancies showing a corresponding ascent, choices available to workers have improved. The 2018 XpertHR labour turnover survey recorded a sharp increase in the average voluntary resignation rate in the economy, which jumped from 15.5% the year before to 19%. Since 2011, the voluntary resignation rate has more than doubled from the 9.3% prevailing at that time.

3.3 The cost of living

The inflation rate experienced by workers has generally been following a dramatic upward trend since 2015, averaging in excess of 3% during 2017 and 2018. The rate, as measured by the Retail Prices Index, has slowed over recent months, before rebounding sharply in April 2019 to 3%. The cost of living is expected to average 2.6% over the year, escalate to 2.7% in 2020, then run at 3% or above for the following three years.

Between 2010 and 2018, the cost of living rose by a total of 31.1%.

The table below shows how many core components of household expenditure have risen even faster over the same period.

<table>
<thead>
<tr>
<th>Expenditure item</th>
<th>House prices</th>
<th>Bus &amp; coach fares</th>
<th>Electricity</th>
<th>Childcare</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price rise 2010 -18</td>
<td>37%</td>
<td>51%</td>
<td>48%</td>
<td>32%</td>
</tr>
</tbody>
</table>

Source: House prices, bus & coach fares, electricity costs as measured by Office for National Statistics. Childcare refers to 25 hours per week nursery costs for under-twos, as measured by Coram Family & Care Childcare Costs Survey
Reason for comparing wages to RPI

i) The key arguments
UNISON believes that the Retail Prices Index (RPI) remains the most accurate measure of inflation faced by employees.

The most widely quoted figure for inflation in the media is the Consumer Prices Index (CPI). However, UNISON believes that CPI consistently understates the real level of inflation for the following reasons:

- CPI fails to adequately measure one of the main costs facing most households in the UK – housing. Almost two-thirds of housing in the UK is owner occupied, yet CPI almost entirely excludes the housing costs of people with a mortgage;
- CPI is less targeted on the experiences of the working population than RPI, since CPI covers non working groups excluded by RPI – most notably pensioner households where 75% of income is derived from state pensions and benefits, the top 4% of households by income and tourists;
- CPI is calculated using a flawed statistical technique that consistently underestimates the actual cost of living rises faced by employees. The statistical arguments are set out exhaustively in the report “Consumer Prices in the UK” by former Treasury economic adviser Dr Mark Courtney, which is summarised here and covered in full here.

While we do not claim that RPI is perfect, we believe that it is a much better indicator than CPI. Estimates arising from Courtney’s analysis suggest that, of the 0.9 percentage point average difference between RPI and CPI inflation over recent years, 0.2 percentage points represented an over-estimation by the RPI, while 0.7 percentage points was down to under-estimation by the CPI.

ii) Widespread opposition to CPI
RPI was the virtually unchallenged measure of UK inflation for almost six decades following the Second World War. However, RPI has been under sustained attack by the UK Statistics Authority (UKSA) for almost a decade, since changes in the collection of clothing price data created a substantial difference in RPI and CPI for this very small element of the overall inflation calculation.

Drawing on the work of economists whose theory offered some support to the UKSA’s arguments against RPI, the authority derocognised RPI in its official status as a “national statistic” in 2013. Subsequently, the UKSA developed CPIH as its “most comprehensive measure of inflation” in 2017 (CPIH attempts to introduce housing costs into the CPI measure, though it uses the controversial rental equivalence method, which treats owner occupiers as if they were renting their property).

However, those steps faced overwhelming opposition whenever the UKSA put their proposals out to public consultation. UNISON and the TUC have joined with sympathetic economists in defending RPI. In addition, the Royal Statistical Society has consistently stated that CPI was never intended as a measure of changes in costs facing households. Rather, it was “designed in the 1990s for macroeconomic purposes” and its purpose is to act “as the principal inflation indicator for the Bank of England in its interest-setting rate role.”
The society sums up its position as follows:

“Why should the typical household accept an inflation index that:

- fails to take account of, or does not track directly, one of their main expenditure items: mortgage payments and other costs of house purchase and renovation;
- gives more weight to the expenditure patterns of wealthier households than of other households;
- fails to take account of interest on loans for a wide variety of purposes, ranging from student loans to loans for car purchase;
- includes the expenditure of foreign tourists in the UK but not their own expenditure outside the UK;
- fails to include council tax.”

In 2019, the UKSA then faced a withering rebuke from the House of Lords Economic Affairs Committee over its handling of RPI, most notably with regard to its failure to fulfil its duty to properly maintain the methodology for calculating RPI. As a result, the committee demanded that, “given RPI remains in widespread use, the authority should stop treating RPI as a legacy measure and resume a programme of periodic methodological improvements.” And the committee directed a further blow at the credibility of CPIH, stating that it was “not convinced by use of rental equivalence in CPIH to impute owner occupier housing costs.”

iii) The continued use of RPI

Though CPI is the figure quoted almost uniformly across the media when reporting inflation, RPI remains by far the most common reference point for pay negotiations. Incomes Data Research found in its 2016 Reward Intentions Survey that 75% of employers regard RPI as the “most relevant to making decisions on the level of pay award,” compared to 53% for CPI, 5% for RPIJ and 3% for CPIH.

And beyond pay bargaining, RPI remains the government’s measure for uprating fuel benefit charges on company cars, air passenger duty, alcohol duty, gaming duty, regulated rail fares, student loan interest rates, tobacco duty and vehicle excise duty,

Across the private sector, it is extensively used wherever charges are made on a rolling contract basis. For instance, RPI uprating can be found among:

- All mobile phone tariffs charged by the major providers - O2, Vodafone, Three, EE
- Annual reviews of property rental – historically, RPI has been the standard benchmark;
- Annual uprating of private sector pension payments;
- Contracts for ongoing services eg RPI is commonplace as the agreed uprating charge under Private Finance Initiative projects.

Some organisations, such as Barnardo’s and British Telecom, have pursued high profile court cases to reduce uprating of pension payments to CPI, but have found their arguments rejected. BT pursued its claim on the basis that RPI had become an “inappropriate measure” but the courts refused to accept that RPI was inappropriate for the purpose of the scheme.

RPI also retains a strong foothold within the finance sector, where index linked government bonds and National Savings and Investments index-linked savings certificates make payments pegged to RPI.
3.4 Average earnings

Average earnings growth across the economy has been escalating over the last year and in December 2018 the rate of 3.5% represented the highest level in the UK economy for over a decade.

Average earnings growth is predicted to continue at 3% over 2020. This represents a significant shift upwards from the OBR predictions when the Low Pay Commission was last considering evidence. At that time, the OBR stated that average earnings in 2020 would be running at 2.5%.

Beyond 2020, the rate is expected to run at over 3% right up to 2023.

3.5 Operating surpluses, dividends and high pay

Operating surpluses across the UK economy have fluctuated quite markedly since 2010, but on average the rate of increase has been running at 3.5% since 2010 to reach in excess of £450 billion in 2018.

The dividend payments made to shareholders reached a record high in 2018 – hitting a payout fractionally short of £100 billion. On average, dividend payments have been rising at over 8% a year since 2010.

The remuneration of FTSE 100 chief executives jumped sharply in 2017 and has been increasing at an average of 4.6% since 2010, putting the mean level at £5.66 million.

Therefore, all measures have been growing at a faster rate than the gross domestic product and at a faster rate than average weekly earnings over the same period.

We also note that 2020 represents the last year in the spectacular reduction in corporation tax that employers pay on profits. From 28% in 2010, the tax payable reaches just 17% in 2020 for the main rate (21% on the small profits rate), leaving UK employers with the fourth lowest rate among the 36 countries of the OECD.

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* Corporation tax is only applicable to firms making in excess of £300,000 profit in a year and a discount is applied to profits between £300,000 and £1.5m.
Summary

- Uncertainty caused by whether and/or how the UK will exit from the European Union continues to cloud all forecasts for the economy
- GDP growth is predicted to maintain a steady if modest rate at 1.5% or slightly above over the next two years
- The general unemployment rate is expected to remain around the 4% mark – a low not seen since the mid 1970s – and the effect of this is being seen in strengthening turnover rates
- The increase in the cost of living faced by workers is expected to run at 2.7% in 2020, then 3% or over in subsequent years
- Average earnings growth has been escalating sharply to hit a decade long high and is expected to roughly keep pace with inflation at 3% or above in 2020 and subsequently
- Operating surpluses and dividend payments to shareholders generated by the UK workforce have been growing at a faster rate than both the gross domestic product and average weekly earnings

Conclusions

- UNISON believes that the Low Pay Commission has been vindicated since the introduction of the “national living wage” in deciding not to depart from a straight path in uprating to reach the target 60% of median earnings by 2020. The extreme pessimism of some GDP forecasts, particularly in the immediate aftermath of the vote to leave the European Union, was not borne out and the inbuilt adjustment of the “national living wage” to changes in average earnings represents a sufficient insurance against changed economic circumstances [the 2020 target rate has fallen from £9.16 when the “national living wage” was first introduced to £8.72 by March 2019].
- UNISON believes that the latest developments in the economy offer no sound reason to depart from taking the final planned step in the “national living wage” to reach 60% of median earnings in 2020.
- The general employment level hasn’t provided a sounder basis for increases in the minimum wage since its inception.
- Predicted changes in the cost of living mean that a 2.7% increase in 2020 rates would be needed simply for the value of the minimum wage to stand still.
- Forecasts suggest that employers are facing a similar general baseline 3% increase in their paybill.
- The generation of £450 billion in operating surpluses and a record high £100 billion payout to shareholders leaves us deeply sceptical of claims that paying the UK’s most poorly paid workers a wage that delivers a basic but socially acceptable standard of living is “unaffordable.”
4. FACTORS AFFECTING LOW INCOME GROUPS

Having set out UNISON’s view of how broad developments in the UK economy should shape the National Minimum Wage increases for 2020, this chapter looks at development in specific factors affecting low income groups. It encompasses the scale of low-paid employment in the UK, economic developments in the low-paying industries and the spread of the Living Wage across the economy.

4.1 Scale of low pay in the UK

The Resolution Foundation’s 2018 Low Pay Britain report has again produced an exhaustive analysis of the scale of low pay in Britain. The research found that:

- Close to one-in-five employees (18% or 4.9 million individuals) are paid less than two-thirds of median gross hourly earnings in Great Britain.
- Close to one-in-four employees (23% or 6.2 million individuals) are paid less than the Living Wage rate defined by the Living Wage Foundation.

The foundation summarised the long term trends in these measures with the graph below.

The graph shows that the 7.5% increase in the highest tier of the minimum wage during 2016 brought about the largest drop in the proportion of workers earning less than two-thirds of average earnings for over four decades. The drop continued into 2017 and the foundation

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5 Resolution Foundation, Low Pay Britain, May 2018
believes that this trend will take the proportion down to 15.4% by 2020, though that would still mean that 4.2 million workers remain below the low-pay threshold.

When measured against the Living Wage, which accounts for the actual increase in the cost of living faced by workers, the last year has also seen a slight drop in the scale of low pay. However, the longer trend is one of sharp growth in low pay, taking the figure from around 15% in 2010 to over 23% just seven years later.

Analysis by the Joseph Rowntree Foundation in its 2018 UK Poverty report paints a similar picture to the trend seen in sub Living Wage workers rather than in relation to median earnings, as their definition depends on the ability of individuals to afford a basic standard of living. According to their measure, the number of workers in poverty has risen by half a million in five years to reach four million people, in line with graph below. Consequently, the in-work poverty rate is at its highest level for 20 years.

Poverty has also shifted away from its former predominance among non-working families, to the point that 60% of poverty in the UK is now found in families where someone works.
4.2 Groups most affected by low pay

The Low Pay Britain report goes on to emphasise the known tendencies of low pay to occur most frequently among certain groups. The most notable features of the 2018 report included the following data on the proportion of staff falling below the two-thirds of median earnings threshold:

- Men 14% / Women 22%
- 16-to-20-year-olds 72% / 21-to-24-year-olds 34% / 31-to-50-year-olds 13%
- Highest regional rate East Midlands 23% / Lowest regional rate London 10%
- Part time contract 36% / Full-time contract 11%
- Temporary or casual contract 30% / Permanent contract 17%
- Private sector 23% / Third sector 12% / Public sector 6%
- Firms employing less than 10 staff 32% / Firms employing more than 250 and less than 5,000 staff 16% / Firms employing 5,000 staff or more 25%

Since the Low Pay Britain report mostly excludes Northern Ireland data, it should be noted that the Nevin Economic Research Institute (NERI) has found that 28% of all employees in 2018 were below the Living Wage, with Northern Ireland having the highest percentage of workers below the Living Wage of all regions in the UK. And the breakdown of sub Living Wage earnings follows the pattern below:

- Men 23% / Women 30%
- 18-21-year-olds 80%
- Part-time contract 51% / Full-time contract 17%
- Private sector 37% / Public sector 9.5%

The gender and regional disparities show that the minimum wage can act as a contributing factor in reducing these inequalities. The study’s exposure of the prevalence of low pay among the workforce of very large firms also suggests that low pay is not an issue mostly confined to small companies struggling to survive, but it is a business model adopted by many very large companies. And we deal with the other important issues concerning the prevalence of low pay among young workers and privatised employment in other chapters of this evidence.

However, the disparities in the level of low pay according to contract types also meshes with the critical point that low pay in the UK is affected by the number of hours offered by employers as well as pay rates.

The TUC conducted a thorough study of the changing face of the UK labour market in 2016 which uncovered the following key points:

- The number of people who work on a low-paid self employed basis had risen by one million over the previous decade to reach 1.7 million;
- Zero hours contracts had risen from 70,000 to 810,000 over the decade;

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6 NERI submission to Low Pay Commission May 2019.
7 TUC, Living on the Edge, 2016
- Temporary work on an involuntary basis had climbed from 370,000 to 485,000. Therefore, while the general employment level had expanded by 9% over the period, insecure forms of contract for those working for an employer had ballooned by 88% (principally driven by zero-hours contracts) and low-paid self-employment ramped up by 143%.

Since 2016, those trends appeared to have largely flattened off, but nonetheless the make-up of the labour market retains the changed features that followed the 2008 recession and became popularly known as the “gig economy.”

Northern Ireland has also seen a growth in part-time and precarious work. NERI has reported that in Northern Ireland in the last quarter of 2016, 38.5% of the workforce was employed in various forms of non-standard employment arrangement i.e. non-permanent and not full time, with permanent. 1 in 5 workers was employed on a part-time basis. In sectors like health and social care, in which UNISON would have significant membership in Northern Ireland, 29% of workers are part-time.

These developments outlined by the TUC were confirmed by the Resolution Foundation this year, when its Setting the Record Straight report showed just how dependent employment growth has been on “atypical work.” Over two-thirds of employment growth since the recession has been in the form of self-employment, part-time, temporary, agency and zero-hours jobs.

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9 NERI submission to Low Pay Commission, May 2019.
10 Resolution Foundation, Setting the Record Straight, January 2019
The Resolution Foundation also expanded the evidence base on the consequences of this point in 2017 when it revealed the extent to which those not classified as “employees” contribute to low pay in the UK, as reflected in the graph below\(^\text{11}\).

![Graph showing the self-employed are more likely to be low paid](image)

Almost a half of the “self-employed” receive less than two-thirds of median earnings, a quarter of “workers” and close to a fifth of “employees.”

Though UNISON recognises that the Low Pay Commission set out some useful steps in its recommendations on “one-sided flexibility” in 2018, we believe that stronger action is necessary to provide a sufficient break on the types of contract that exacerbate the scale of low pay.

In particular, more assertive action is necessary to limit the use of zero hours contracts, to prevent the bogus classification of workers as “self-employed” and to extend the employment rights of “workers.” We would highlight that such actions should take account of the fact that employment law is a devolved matter in Northern Ireland, where limited progress has been made on legislative action to restrict the use of zero-hours contracts in the absence of a devolved Executive and Assembly.\(^\text{12}\)

Without these measures, there is a danger that the gains of the National Minimum Wage are frittered away by allowing employers to impose contracts that reduce wages through fewer hours, as suggested by studies such as that presented on the social care sector in 2018\(^\text{13}\), which found some evidence that employers had responded to the introduction of the “national living wage” by intensifying use of zero-hours contracts.

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\(^{12}\) Under section 18 of the Employment Act (Northern Ireland) 2016 powers exist to create regulations to prevent abuses arising from or connected to the use of zero hours contracts and non-contractual zero hours arrangements. In the absence of a Minister for the Economy and a Northern Ireland Executive, regulations of this kind have not been brought forward.

\(^{13}\) N Datta, G Giupponi, S Machin, Zero Hours Contracts and Labour Market Policy, October 2018
4.3 Employment, vacancy and profit rates in low-pay sectors

Data from the Office for National Statistics indicates that employment growth among the 100 lowest paying occupations\textsuperscript{14} has continued to expand. Between 2016 and 2018, employment levels grew by 1.8\%, creating 215,000 new jobs over the period.

The continued availability of employment in low-paying sectors is also confirmed by the picture seen in vacancy rates. The average vacancy rate across the economy currently stands at 2.8\%,\textsuperscript{15} yet most of the sectors that would be expected to contain a high proportion of low-paid workers, such as retail, accommodation and food services, and human health and social work, all display higher vacancy rates than the average, as shown by the graph below.

\textsuperscript{14} Based on those occupations where more than 50\% of employees receive below the Living Wage, according the IHS Market Report, Living Wage Research for KPMG, 2016

\textsuperscript{15} Office for National Statistics, Labour Market Statistics, March 2019
In the absence of any data from the Office for National Statistics on operating surpluses at sector level, UNISON has conducted some analysis of operating profits in sectors known for employing a very large proportions of low paid staff – the retail sector, the hospitality sector and the social care sector.

For the retail and hospitality sectors, we looked at the financial results of the companies that hold a dominant position in those activities. The top 10 retail companies in the UK\textsuperscript{16} have recorded average operating profits since 2015 in line with the graph below. In 2017, the last year when all their results have been published, their aggregate operating profits stood at £4.6 billion.

The average operating profit was heavily influenced in 2015 by a very large loss declared by Tesco. However, over the subsequent period since the introduction of the “national living wage” operating profits jumped to £467 million in 2016 and have remained largely flat ever since. The numbers employed have been on an upward trend throughout the period.

\textsuperscript{16} The top 10 UK retailers based on GlobalData 2018 information published by Retail Gazette are Tesco, Sainsbury, Asda, Morrison, Amazon, John Lewis, Marks & Spencer, Aldo, Boots, Dixon Carphone.
Among the largest UK restaurants and hotel chains, the patterns of profit and employment have followed the trends below since 2015.

In 2017, the last year when all their results have been published, their aggregate operating profits stood at £1.4 billion – a rise of 50% since the final year before the introduction of the “national living wage.” Over the same period, aggregate employment rose by 7%.

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17 Top 10 UK hotel chains and top 10 UK restaurant chains are based on Statista data that lists hotels by number of rooms and restaurants by revenue. The figures shown are for Premier Inn, Travelodge, Britannia, Marriott, McDonald’s, Wetherspoon, Costa, Greggs, KFC, Domino’s, Starbucks, Pizza Hut and Nando’s. The brands that are part of the Statista listing but do not produce separate UK figures are Holiday Inn, Holiday Inn Express, Hilton, Doubletree, Best Western, Ibis and Subway.
Operating surplus trends

Since UNISON represents many workers in the notoriously low-paying sector of social care, we have also conducted analysis of the aggregate operating surplus among the sector’s leading employers. Our figures are based on the results of 53 organisations listed on the 2017 Care Quality Commission “Market Oversight” list of registered providers in England, which the commission maintains to check the financial health of the biggest homecare and residential care providers in adult social care.

For years in which a full set of accounts has been produced across the sector, profitability went from an aggregate loss of £205m in 2015 to a surplus of £96m by 2017. If the average surplus per organisation is taken, comparisons can be made with reports so far for 2018. When calculated on that basis, results show that the average organisation went from an operating loss of almost £5m in 2015 to a surplus of £1.9m in 2016, £2.3m in 2017 and £2.2m so far in 2018.

The tendency of social care company accounts to perhaps mask greater levels of profitability was perhaps also reflected in the declaration in May 2019 by HC-One, one of the UK’s biggest care home operators, that it had paid out more than £48.5m in dividends over the last two years. This was despite accounts showing a loss almost every year since its establishment in 2011 and a bewildering array of companies under its umbrella, many of which are registered offshore, making the tracing of a comprehensive financial picture a difficult task.

The source data for the profit and employment graphs above are set out in appendix 1 to this document

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18 Financial Times, Care home group paid £48.5m in dividends while warning of cuts, May 2019
4.4 Spread of the Living Wage and contrast to NMW

The Joseph Rowntree Foundation’s calculation of the Minimum Income Standard (MIS), based on what members of the public think people need to achieve a socially acceptable standard of living, puts the 2018 figure at £18,400 for a single person and a combined income of £39,992 for a couple with two children, both working full-time.¹⁹ The foundation found that a couple with two children working full time on the “national living wage” fall between 4.2% and 10.7% short of the MIS depending on the level of benefit payments they receive, while a single person falls 20.4% short.

The MIS basket of goods feeds into the calculation of the Living Wage, which is announced every November by the Living Wage Foundation. In 2018, the rate for outside of London was set at £9.00 and the rate for London was set at £10.55 an hour.

The £9.00 figure is a weighted composite of the wage needed by a variety of different household types. The hourly wage for different households ranges from £6.35 for a couple to £19.05 for a lone parent with three children.

Adoption of the Living Wage has expanded with astonishing speed over recent years to become a widely quoted benchmark of the minimum earnings needed for low-paid staff to have a “basic but acceptable” standard of living.

There are now in excess of 5,000 employers accredited as Living Wage employers by the Living Wage Foundation, a figure that has grown from around 200 just seven years ago.

The Living Wage is now paid by some of the UK’s most high profile private companies, such as Barclays, HSBC and KPMG. It has even made inroads into traditionally low-paying areas such as the retail sector, where IKEA and Lidl have signed up as Living Wage employers. The Living Wage has now reached the point that over a third of the FTSE 100 companies are accredited.

While the Living Wage has been gaining ever greater inroads, the graph below shows how the gap between the Living Wage and the highest minimum wage tier has diminished since the introduction of the “national living wage.”

![Shortfall between highest national minimum wage and Living Wage](image)

However, for a full-time worker on a 37-hour week, the highest National Minimum Wage is still £1,524 a year short of the wage needed for a basic but acceptable standard of living.

Trends in the rapid escalation of private companies as accredited Living Wage employers despite the competitive disadvantage, in crude cost terms, that it may place on them shows that there is an appetite and capacity to pay the Living Wage.

However, many are held back by the absence of a level playing field, given that the National Minimum Wage still stands a considerable distance behind the Living Wage.

An open letter from chief executives published in September 2014 on the future of the National Minimum Wage made it apparent the “level playing field” was one of the most valued dimensions of the National Minimum Wage, by stating:

“For businesses, it has created a level playing field, enabling employers to improve business performance and staff conditions without fear of being undercut by companies competing on lower wage rates”.

The readiness to commit to the Living Wage when it is on the basis of a level playing field is also demonstrated by the range of companies who have signed up to the Living Wage Foundation’s category of Living Wage Service Providers.

These employers do not commit to paying the Living Wage to all staff, but they “always supply a Living Wage bid alongside every market rate submittal to all of their prospective and current clients.”

Dominated by cleaning, catering and facilities management companies, the list of signatories includes major providers, such as ISS, OCS and Sodexo.

While it may be relatively easy to sign up to the Living Wage in sectors where low wages account for a small part of the paybill, in sectors where low wage employment forms a major part of the workforce, such as cleaning, catering and social care, the Living Wage is only likely to be delivered through the lead and level playing field that a legal minimum provides.
Summary

- Despite the introduction of the “national living wage,” the problem of in-work poverty across the UK has been expanding, both because of the failure to keep up with the cost of living and the increased use of more exploitative forms of contract by employers.

- Neither employment nor vacancy data in low-paying sectors points to the minimum wage causing acute difficulties.

- The largest companies in the most notorious low-pay sectors have recorded extremely healthy profits since the introduction of the “national living wage” and their employment levels have been on the rise throughout.

- The Living Wage has seen rapid growth in its adoption by employers and is widely seen as a standard benchmark of the wage needed to maintain a basic but decent standard of living.

- The “national living wage” has brought a welcome narrowing of the gap with the Living Wage, but a full-time worker on the “national living wage” still receives £1,524 less per year than a worker on the Living Wage.

- The number of companies operating in low-pay fields such as catering, cleaning and security that have signed up as Living Wage Service Providers is testimony to a willingness to improve earnings of low-paid staff where a level playing field is in operation.

Conclusions

- If the Low Pay Commission is to truly address the scale of in-work poverty in the UK, it must make recommendations that seek to deliver a real living wage and curtail forms of contract that are vulnerable to imposition of inadequate hours to achieve a reasonable standard of living.

- The “national living wage” target rate of 60% of median earnings is a significant step forward for tackling low pay in the UK. However, calculations based on median earnings do not respond sufficiently to changes experienced by workers in the cost of living. The Living Wage rates published annually by the Living Wage Foundation remain the benchmark for achieving genuine reductions in low pay. The Living Wage takes into account affordability for employers by linking the rate to average earnings but it also responds to changes in the cost of living.

- By pegging the “national living wage” to median earnings for all employees aged 25 or over, increases are linked to a figure that has the gender pay gap incorporated into it. In order to address the gender inequality that still prevails across the UK economy, the “national living wage” should be pegged to male median earnings for the target age group.

- To address the contribution of certain forms of employment contract to the expansion of low-pay employment in the UK, the commission should recommend the strengthening of legislation to limit the use of zero hours contract, to prevent the bogus classification of workers as “self-employed” and to extend the employment rights of “workers.” These recommendations should recognise the devolved nature of employment law in Northern Ireland.
5. FACTORS AFFECTING PUBLIC SERVICE WORKERS

This chapter seeks to provide a broad indication of the scale of low pay across the public sector where UNISON represents members. The part of public services where National Minimum Wage rates affect the largest section of workers are in privatised areas such as social care and facilities management functions covering cleaning, catering and security. This sector is not subject to the same level of stringent data collection as the public sector, but where evidence is available we set it out below.

5.1 Low pay in public services delivered by the public sector

Among the principal public sector bargaining groups where UNISON represents members, the table below shows the lowest rate within each group and the percentage uplift required to reach the £8.63 hourly rate needed to achieve the 60% of average earnings target in 2020.

<table>
<thead>
<tr>
<th>UNISON bargaining group</th>
<th>Last pay settlement date</th>
<th>Lowest annual pay rate (£)</th>
<th>Lowest hourly pay rate (£)*</th>
<th>Uplift needed to reach £8.63 NLW rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local government (England, Wales &amp; Northern Ireland)</td>
<td>01/04/2019</td>
<td>17364</td>
<td>9.00</td>
<td>0.0%</td>
</tr>
<tr>
<td>Local government (Scotland)</td>
<td>01/04/2019</td>
<td>17497</td>
<td>9.07</td>
<td>0.0%</td>
</tr>
<tr>
<td>NHS Agenda for Change (England and Wales)</td>
<td>01/04/2019</td>
<td>17652</td>
<td>9.03</td>
<td>0.0%</td>
</tr>
<tr>
<td>NHS Agenda for Change (Scotland)</td>
<td>01/04/2019</td>
<td>17949</td>
<td>9.18</td>
<td>0.0%</td>
</tr>
<tr>
<td>NHS Agenda for Change (Northern Ireland)</td>
<td>01/04/2018</td>
<td>16943</td>
<td>8.67</td>
<td>0.0%</td>
</tr>
<tr>
<td>Higher education</td>
<td>01/08/2018</td>
<td>15842</td>
<td>8.21</td>
<td>5.1%</td>
</tr>
<tr>
<td>Further education (England)</td>
<td>01/08/2018</td>
<td>15796</td>
<td>8.21</td>
<td>5.1%</td>
</tr>
<tr>
<td>Sixth Form College support staff (England &amp; Wales)</td>
<td>01/09/2018</td>
<td>16000</td>
<td>8.29</td>
<td>4.1%</td>
</tr>
<tr>
<td>Police staff (England &amp; Wales)</td>
<td>01/09/2018</td>
<td>17262</td>
<td>8.95</td>
<td>0.0%</td>
</tr>
<tr>
<td>Probation Service (NPS staff)</td>
<td>01/04/2019</td>
<td>17764</td>
<td>9.23</td>
<td>0.0%</td>
</tr>
<tr>
<td>Youth and Community Workers</td>
<td>01/09/2018</td>
<td>18117</td>
<td>9.39</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

* The hourly rate is based on a 37-hour week, with the exception of the NHS, which has a standard 37.5-hour week

Across the bargaining groups listed, eight of the 11 groups already pay in excess of the 2020 target rate, including the largest bargaining groups - local government NJC and NHS Agenda for Change. Significant increases are mainly confined to the education sector. Almost all parts of the public sector apply their bottom rate to staff regardless of age. Therefore, the youth rates are hardly utilised, though the apprentice rate is adopted by many of the bargaining groups as a separate rate outside the pay scale.
Across the public sector, the Living Wage has been incorporated into the following national and framework agreements:

- The Scotland government has established the Living Wage within all its public sector organisations and across the social care sector;
- Minimum rates have been raised to the Living Wage or above for the workforce in local government, the NHS (except in Northern Ireland) and Wales Further Education Colleges;
- Framework agreements for support staff in more than 12,000 schools across the UK set the Living Wage as a key target.

We estimate that these major steps forward in local government and the NHS have reduced the number of staff on wages below the Living Wage by over 140,000. Among our largest bargaining groups, this leaves the issue mainly confined to the education sector.

We would highlight that the lack of implementation of a pay agreement for health and social care workers in Northern Ireland, similar to the NHS pay agreement reached in England, Scotland and Wales is leading to a growing gap in pay between workers across all four jurisdictions performing the same work.

We estimate that approximately 10,000 university staff and 10,000 further education / sixth form college staff are paid below the Living Wage\(^\text{20}\). In higher education that represents less than 3% of the workforce, while among colleges, the figure is closer to 10%. UNISON has no reliable source of information on the situation within the highly fragmented school sector.

However an increasing trend reported by our members in Northern Ireland is that due to constricting school funding, schools now seek to reduce their hours of work. At its evidence session in Derry, the Commission will have heard from UNISON members working in the education sector report about the detrimental effect a cut in their hours of work has on their ability to save or live independently of their own parents.

The upshot of all these developments is that low pay remains a significant issue in the public sector, but Living Wage agreements mean that the issue is becoming ever more concentrated in those parts of public services that have been outsourced to the private or voluntary sector.

### 5.2 Low pay in public services delivered by the private / voluntary sector

Decades of privatisation have turned large swathes of public service workers over to private and voluntary sector employers, particularly in such low paying areas as catering, cleaning, refuse collection, building maintenance, call-centre and administrative work.

One of the largest pools of labour in this category is social care, where almost 80% of employment is now in private hands across England\(^\text{21}\). However, whereas many privatised areas of public services offer no comprehensive picture of employment trends because they stand outside the public sector’s directly employed workforce, the Skills for Care annual reports do at least provide a broad outline.

In its 2018 report entitled The State of the Adult Social Care Sector and Workforce in England, Skills for Care estimates that that the sector has gone through a 21% increase in

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20 These figures have been derived from UNISON FoI surveys of university / further education college employers, combined with analysis of the Sixth Form College Association Workforce Survey 2017.

21 Skills for Care, The State of the Adult and Social Care Workforce in England, September 2018
employment between 2009 and 2017, taking the number of jobs up 275,000 to 1.6 million workers. The minimum wage has not halted this growth, with employment expanding by 19,000 jobs since the introduction of the “national living wage.”

However, the terms of this employment are reflected in the fact that a quarter of all jobs are zero-hours contracts, median pay of private sector care workers was £7.89 in March 2018 and over 500,000 care workers are paid below the Living Wage.

Consequently, the vacancy rate is well above the economy average at 8% and the staff turnover rate is well above the economy average at 31%.

Employers are aware of the damage that low-pay norms are causing, with 80% citing low wages as the biggest barrier to recruiting and retaining staff, while 76% of staff state that they leave for better paid careers in other sectors.

And while demand for social care is expected to continue to expand to the point that almost 1.8 million workers will be employed in the sector by 2028 in England, the difficulties in attracting staff on current terms are forecast to create a shortage of 350,000 workers.

In Northern Ireland, similar trends to England have occurred in relation to the privatisation of social care. Whilst the HSC Trusts have a responsibility to provide social care, they frequently procure services from the private, community and voluntary and social enterprise services. This has led to a multiplicity of different providers split between the public and private sectors. Approximately 28,000 people in Northern Ireland are registered social care workers, with approximately 12,000 of those working in domiciliary care. NISCC estimates that 75% of the workforce is employed by the independent sector, with the remaining 25% employed by the HSC Trusts.

In 2018, 71% of domiciliary care contracted hours were provided outside of the public sector. Whilst a detailed analysis of the private sector in terms of pay, vacancy rates and staff turnover is not available as outlined for England above, it is clear to UNISON that all of these issues are present in Northern Ireland. Rates of pay below the Living Wage would be the norm, driving problems in recruiting and retaining staff.

In December 2017, an advisory panel established by the former Minister for Health, Michelle O’Neill MLA, reported that workers within the sector are being underpaid, are undervalued and are being exploited by the system. It rightly recognised that a low-paid, high turnover and undervalued workforce is a poor way to ensure the quality of care the public demand. This report was clear that pay within the sector must be at least a Living Wage and that pay and conditions should be equalised across the entire workforce. In the absence of a Northern Ireland Health Minister, Executive and Assembly, we have not seen moves being taken to end this exploitation.

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22 IPPR, Fair Care, November 2018
23 Hft, Sector Pulse Check, 2018
24 IPPR, Fair Care, November 2018
25 ‘Power to People: proposals to reboot adult care and support in N.I.’ (December 2017) p.51
27 ‘Power to People: proposals to reboot adult care and support in N.I.’ December 2017
28 ‘Power to People: proposals to reboot adult care and support in N.I.’, December 2017, Section 6 and 7.
Summary

- The Living Wage has made major strides across the public sector’s directly employed workforce, with the numbers receiving less than the Living Wage dropping by over 140,000 during the last two years. The education sector is where the lowest wages now predominate and it is only on this sector that significant increases will be needed to reach the 60% of average earnings target.

- Where the “national living wage” does apply in the public sector, it is applied to all staff regardless of age. Only the apprentice rate is utilised as a much lower rate that stands outside of the pay scales.

- By far the largest pool of minimum wage workers operate in privatised parts of public services, with social care and facilities management functions such as catering, cleaning and security forming the dominant slice.

- The “national living wage” has not halted continued employment growth in social care, but the poor state of employment conditions is placing severe strain on the sector’s capacity to recruit and retain staff.

Conclusion

- The Low Pay Commission should recognise the role of privatisation in driving low pay across the UK’s public services and the role a minimum based on a truly Living Wage can play in reducing the incentive for driving down costs on the basis of a low-paid workforce.

- The cost implications of the “national living wage” for public sector employers and their contractors need to be addressed through a specific government funding allocation to meet those costs.
6. FACTORS AFFECTING YOUNG WORKERS AND APPRENTICES

This section considers the specific issues facing workers below the highest tier of the minimum wage and draws particular attention to the consequences of the gap between the rates.

6.1 Injustice of youth rates recognised by most employers

UNISON believes that the lower National Minimum Wage rates that apply to young workers and apprentices are fundamentally unfair and discriminatory. To have a young employee working alongside an older employee receiving different rates for doing exactly the same job represents an unacceptable injustice in the workplace. This discouraging introduction to working life can only have a negative impact on the retention, morale and motivation of young employees.

In practice, this appears to be a position that most employers agree with. The youth rate is not utilised by large swathes of employers. Pay analyst XpertHR conducted a survey in 2017 which found that 54% of employers pay the “national living wage” to all employees regardless of age, 23% pay the wage to employees aged 18 or over and the remainder pay the wage solely to staff aged 25 or over, as required by legislation. Therefore, 77% of employers already pay the “national living wage” to all staff aged over 17.

Even within the low-paying retail sector, research by Incomes Data Research for the Low Pay Commission has found that all the major supermarkets do not operate age related pay. And, as noted in the previous chapter, no major public sector employer utilises the youth rates, preferring to apply the “national living wage” across the board.

The Young Women’s Trust confirmed this picture in 2018, when it published the results of a survey which found that 79% of employers believe that young people should be paid the same as older people for the same work – a figure that only dropped to 77% among small and medium sized organisations.

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29 Incomes Data Research, The National Living Wage, October 2017
6.2 Employment and wage rates among young workers

While the unemployment rate for younger groups remains substantially higher than the general rate, unemployment has shown major declines over recent years and the gap with the general rate has been shrinking considerably.

**Unemployment rate 18-24-year-olds**

Since 2012, the unemployment rate for 18-24-year-olds has almost halved and the 2018 rate was less than at any time since published ONS figures begin in 1993.

**Unemployment rate 16-17-year-olds**

Since 2011, the unemployment rate for 16-17-year-olds has dropped by around a third and the 2018 rate was the lowest in 13 years.
6.3 Impact of inflation on value of youth rates

The graph below contrasts the path of the minimum wage rates with the path that they would have followed if they had kept pace with RPI inflation since 2009.

The graph shows that the current real value of all rates for workers below the age of 25 is less than the value of the rate in 2009.

Only the government intervention to raise the rate for 25-year-olds and above by 7.5% in 2016 and then over 4% subsequently has bucked this pattern and taken the wage for that group to 35p an hour over the value of the 2009 minimum wage.

This means that the value of a full-time minimum wage salary has suffered annual falls in purchasing power in line with the graph below, based on a 37-hour week and RPI accumulated inflation rates since 2009.
This year, the value of the rate applicable to 21-to-24-year-olds is still over £300 less than it was in 2009 for a worker on a 37-hour week full time job. The scale of the losses sustained by young workers has been even greater, with the 2019 wage of 16-20-year-olds devalued by over £900. The cumulative impact of this devaluation since 2010 has been £5,555 for 21-to-24-year-olds, £8,133 for 18-to-20-year-olds and £6,778 for 16-to-17-year-olds.

When the value of the National Minimum Wage is compared to house price growth, the contrast is particularly acute. The New Economics Foundation notes that, “if the National Minimum Wage had grown since its introduction at the same pace as house prices it would now be over 40% higher than the government’s “national living wage” - at more than £10 per hour ... “ In London, the “National Minimum Wage would be nearly £14 an hour - 90% higher than the current rate.”

Average UK house prices30 are now over 15 times the annual minimum wage for a 21-24-year-old and the average monthly rent for new tenancies in the UK31 takes up three-quarters of income for a minimum wage worker in the same age bracket (based on a 37-hour week). The geographical breakdown of these ratios is shown below.

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30 Office for National Statistics, House Price Index, January 2019
31 HomeLet Rental Index, February 2019
Ratio of house prices to 21-24-year-old NMW

Average rent as % of 21-24-year-old NMW
6.4 Research findings on youth rates

A more detailed assessment of all these issues was set out in the research entitled “Young Adults and the National Minimum Wage” by the New Policy Institute\textsuperscript{32}, which was submitted alongside our evidence in 2017.

The key findings of that research were as follows:

**There is strong evidence that people from the age of 21 should be eligible for the NLW**

- 21-24 year olds are currently experiencing high earnings growth, low unemployment and high employment. The large majority of this age group (86 per cent) were already being paid the NLW or above in April 2016.

- 21 year olds did not suffer negative employment outcomes from a significant wage rise in 2010, when the economy had only just returned to growth after recession. Not only does the research fail to show negative outcomes from raising wages for 21 year olds, it provides evidence that eligibility for higher wages encourages greater labour market participation.

- Before the introduction of the NLW, the LPC advocated that 21 should be the age of eligibility for the highest adult rate. They made this recommendation because the majority of 21 year olds were already paid the adult rate or above. Those that weren’t were mainly employed by larger employers who could absorb the cost.

- The strong labour market performance of this group, the previous rationale of the LPC, and the recent evidence that raising wages for this group does not generate negative employment outcomes, and may actually encourage greater labour market participation mean it would be consistent with the LPC’s remit to recommend that eligibility for the NLW be lowered to 21.

**Raising the value of minimum wages for people under 21 has not historically harmed employment outcomes**

- Increasing the value of youth minimum wages for people under the age of 21 in the UK has not had negative employment effects outside of economic downturns, and does not affect young people’s educational choices.

- Evidence from both of the UK and abroad indicates that increasing the value of the minimum wage for teenagers encourages greater labour market activity in this group.

- The body of evidence on the productivity of young workers is conflicting, and shows that productivity and age may not have as straightforward a relationship as is often assumed - increasing the value of minimum wages of young people may increase their productivity.

- There is some evidence from both the UK and abroad that a large difference in value between youth rates and adult rates leads to the substitution of older workers for younger ones. Recent surveys of employers in the UK suggest that the current difference between the NLW and the youth rates may risk this occurring.

\textsuperscript{32} New Policy Institute, Young Adults and the Minimum Wage, June 2017
Publication bias reduces certainty in the international evidence

- Reviews of international evidence have shown that increases to minimum wages have negative employment effects for young people in countries without age differential wage rates. They also indicate that young people experience more negative employment effects from changes to wage rates in economic downturns, even in countries with age differentials.

- However, a meta-analysis of the international literature concluded there was publication bias towards studies that demonstrated negative employment effects of minimum wages, which calls into question the body of evidence.

- Recent studies corrected methodological issues in earlier studies that found negative youth employment effects from changes to the minimum wage in the USA. These studies found no negative employment effects for teens, even during times of economic downturn. It is possible other international studies showing negative employment effects are also the result of flawed methodology.

- The majority of evidence from other major European economies demonstrates small or insignificant effects from minimum wages on youth employment, however differing labour market interventions mean these countries are not directly comparable to the UK.

Abolishing age differentials could bring many benefits to employers

- The rationale for age-based wage differentials views young workers as less productive than older workers. This is at odds with the value that many employers place on young people

- Higher wages could encourage higher labour market participation by young people in sectors where they are needed, such as social care.

- Paying young people already in employment the same rates as older workers would bring an end to ‘divisive’ wage policies which could bring many benefits from improved morale, such as lower turnover and higher productivity.
6.5 Apprentice rate risks

As in the case of youth rates, UNISON’s view that the apprentice minimum wage is grossly inadequate appears to be supported by the great majority of employers. In its 2018 survey, the Young Women’s Trust found that three-quarters of employers believe that that the rate is too little for apprentices to live on. And that is a position which chimes with the call from the Federation of Small Businesses for government to “look to steadily close the gap between the apprentice minimum wage and the under 18 minimum wage.”

In October 2018, the Commons Education Select Committee added their weight to concerns about the paltry rate that currently prevails by recommending that the government “continues to raise the apprentice minimum wage at a rate significantly above inflation. In the long term-it should move toward its abolition.”

As set out in previous evidence, UNISON’s general concern about the rate has been accentuated by the risks that have been highlighted around employer responses to the apprenticeship levy.

In this regard, we note the House of Commons Committee of Public Accounts report on The Apprenticeships Programme, which commented:

“We are concerned that the introduction of the levy may incentivise some employers to exploit the system, for example by artificially routing other forms of training into apprenticeships or hiring apprentices as a way to avoid paying the minimum wage.”

As part of the report, SNP MP Philip Boswell also stated:

“In December 2015, Channel 4 revealed that one high street retailer saved £2.5 million in wages in 2014 by hiring apprentices, while also receiving an additional £1.8 million in public funds to support the apprenticeship programme. The National Audit Office found that one in five apprentices did not receive any formal training at all, either by an external provider or in the workplace, and current job roles for retail apprentices, according to a Government website, include stockroom assistant. The anecdotal reports of employers hiring apprentices to avoid paying the minimum wage is clearly an abuse of the system.”

This chimed with similar concerns expressed by the Institute for Fiscal Studies that the reforms to apprenticeships funding in England could lead to increased relabeling of existing training schemes as apprentices.

A survey by the CIPD found that 46% of employers thought that they would be encouraged to “rebadge” existing training schemes as apprenticeships, in order to claim back money from the apprenticeship levy.

These intentions appear to have been borne out in reality in a study conducted by Reform which concluded that many employers are "simply rebadging low-quality, low-skill and often low-wage roles as 'apprenticeships'.”

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33 Commons Education Select Committee, The Apprenticeships Ladder of Opportunity, October 2018
35 Institute for Fiscal Studies, Reforms to Apprenticeship Funding in England, January 2017
36 CIPD, Assessing the Early Impact of the Apprenticeship Levy, January 2018
37 Reform, The Great Training Robbery: Assessing the first year of the apprenticeship levy, April 2018
6.6 Research on the apprentice rate

As part of last year’s evidence, UNISON submitted research entitled "Apprentices and the Minimum Wage" by the New Policy Institute\textsuperscript{38}.

The conclusions of that research were as follows:

Evidence from both the UK and abroad points to the net cost of apprenticeships as a key factor in employers’ decision to offer apprenticeships, of which wages are just one part. Apprentice productivity, training costs and retention rates post apprenticeship all contribute to the net cost of offering apprenticeships, and employers’ willingness to incur a cost rather than a profit from apprenticeships.

The fact that raising the NMWAR 21% in 2015 had no significant impact on apprenticeship starts provides evidence that previously increasing the NMWAR did not result in a significant increase in net costs. The significant reduction in apprentice starts following the introduction of the Apprentice Levy indicates that employers have been far more impacted by this increase in training costs.

The 34% reduction of apprenticeship starts for over 25s, driven by a reduction in Intermediate (Level 2) apprenticeships, indicates that low wage sectors are the most affected, and that employers may have become (at least temporarily), more sensitive to the higher wage costs associated with older apprentices, as they attempt to offset training costs.

The evidence suggests that increases to the NMWAR alone do not impact on apprentice starts. However, the NMWAR does not occur in a vacuum, but rather in a policy landscape which has seen huge changes that have affected the cost of apprenticeships beyond wages. The research reviewed in this report points to apprentice wage rates as being a fairly ineffective instrument for influencing employers’ offer of apprenticeships. It seems that policy relating to training costs may have a far larger impact, although the impact of the Apprentice Levy so far seems to be negative.

While wage rates may not have a significant impact on the number of apprenticeships offered, the differential wage rates may contribute to employer behaviour towards apprentices in other ways—such as under compliance (whether intentional or not) and substitution of younger, cheaper apprentices for older ones.

Where apprentice wage rates may also have more influence is over apprentice behaviour—both current and potential. While the majority of people who have undertaken apprenticeships may not see the wage level as a primary motivation, there is evidence that low wages may be dissuading people from low-income backgrounds from undertaking apprenticeships to begin with.

Higher wages may also improve both completion rates and retention rates. In this way, raising wages may indirectly encourage employers to offer more apprentice places in the long run, by reducing the net costs of apprenticeships as completion and retention rates rise. Improving completion rates is also vital to fulfilling the ultimate goal behind policies attempting increasing apprenticeships: ensuring a ‘pipeline’ of trained young workers to meet the skills needs of the future.

\textsuperscript{38} New Policy Institute, Apprentices and the Minimum Wage, May 2018
This research built on the findings of a UNISON Freedom of Information survey in September 2017, which went to all employers classified as local authorities, NHS trusts, police authorities, universities and further education (FE) colleges.

A total of 721 responses were received, representing a response rate of 70% across all employers and ranging from 45% among FE colleges to 94% among police authorities.

On average, organisations employed 26 apprentices, though universities, FE colleges and police authorities tended to employ less than 10, whereas NHS Trusts averaged 65 apprentices.

The lowest apprentice wage rate averaged £5.17 an hour across all employers, but ranged from a low of £4.38 among FE colleges to a high of almost £7 an hour in universities. The average was £1.67 above the then prevailing National Minimum Wage for apprentices, but £2.33 below the full adult minimum wage rate and £3.58 below the UK Living Wage.

These results therefore reflected a capacity to pay almost 50% above the National Minimum Wage for apprentices.

The vast majority of apprentices were on the same terms and conditions as permanent employees (excluding pay), with little variation among sectors around the employer average of 87%.

Completion rates were consistent across sectors, with around 87% of those starting apprenticeships completing them.

On average, a little over one in 10 employers guaranteed apprentices a job at the end of the scheme, though the figure was much higher among NHS trusts and police authorities, where it was around one in four.

New starters to apprenticeship schemes mainly came from external sources, with three-quarters on average coming from such a source. However, the NHS is an exception to that rule, since around half of apprentices come from transfer of existing staff to the apprentice programme.

The final two questions tested the scale of employers substituting apprentices for staff on standard contracts and found that around one in 10 acknowledged reducing recruitment of staff on standard contracts or failing to replace staff in order to meet apprenticeship targets.

A summary of the results is set out below.
<table>
<thead>
<tr>
<th>Employer</th>
<th>Response rate</th>
<th>Average number of apprentices employed</th>
<th>Average lowest apprentice rate of pay (per hour)</th>
<th>Proportion of apprentices on the same terms and conditions as permanent employees</th>
<th>Average completion rate</th>
<th>Proportion of organisations that guarantee apprentices a job at the end of the scheme</th>
<th>Proportion of new starts from (a) recruitment of new apprentices from external sources; (b) transfer of existing staff to apprentice programme (c) Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>FE</td>
<td>45%</td>
<td>8</td>
<td>£4.38</td>
<td>89%</td>
<td>93%</td>
<td>13%</td>
<td>87% 8% 6%</td>
</tr>
<tr>
<td>HE</td>
<td>79%</td>
<td>6</td>
<td>£6.97</td>
<td>84%</td>
<td>87%</td>
<td>19%</td>
<td>93% 7% 0%</td>
</tr>
<tr>
<td>Police</td>
<td>94%</td>
<td>7</td>
<td>£5.86</td>
<td>85%</td>
<td>93%</td>
<td>24%</td>
<td>75% 18% 7%</td>
</tr>
<tr>
<td>NHS Acute Trusts</td>
<td>69%</td>
<td>65</td>
<td>£4.60</td>
<td>90%</td>
<td>81%</td>
<td>27%</td>
<td>48% 51% 2%</td>
</tr>
<tr>
<td>Councils</td>
<td>79%</td>
<td>28</td>
<td>£5.14</td>
<td>87%</td>
<td>86%</td>
<td>7%</td>
<td>80% 18% 1%</td>
</tr>
<tr>
<td>Total</td>
<td>70%</td>
<td>26</td>
<td>£5.17</td>
<td>87%</td>
<td>87%</td>
<td>13%</td>
<td>76% 22% 2%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employer</th>
<th>Proportion of organisations that have reduced recruitment of staff who are not apprentices to meet target for new apprenticeship starts</th>
<th>Proportion of organisations that have opted not to replace non apprentice staff when they have left to meet target for new apprenticeship starts</th>
</tr>
</thead>
<tbody>
<tr>
<td>FE</td>
<td>5%</td>
<td>17%</td>
</tr>
<tr>
<td>HE</td>
<td>7%</td>
<td>7%</td>
</tr>
<tr>
<td>Police</td>
<td>9%</td>
<td>14%</td>
</tr>
<tr>
<td>NHS Acute Trusts</td>
<td>18%</td>
<td></td>
</tr>
<tr>
<td>Councils</td>
<td>12%</td>
<td>11%</td>
</tr>
<tr>
<td>Total</td>
<td>12%</td>
<td>12%</td>
</tr>
</tbody>
</table>
6.7 Undermining of the “national living wage”

UNISON is concerned that the larger the gap between the “national living wage” and youth / apprentice rates the greater the incentive to violate equality legislation through age discrimination in the recruitment process and substitution of workers on full rates of pay. The decision to increase the youth rates at a lower pace than that of the “national living wage” in 2019 has exacerbated this issue. The cash value of the gap has increased across all the youth and apprentice rates since 2016, increasing the cost advantage to employers of substituting staff with those on lower minimum wage rates. The graph below illustrates this trend.

![Value of gap with NLW](chart.png)

These cost advantages to employers come on top of the tax savings they already make under National Insurance rules. Employers are not liable for National Insurance Contributions for staff under the age of under 21 or apprentices under the age of 25.
Summary

- UNISON’s case for bringing the youth rates up to the Living Wage can be summarised as follows:
  - Paying a 24-year-old differently to a 25-year-old for doing exactly the same job is a blatant injustice in the workplace;
  - This injustice costs employers in terms of retention, morale and motivation of young staff;
  - In reality, employers do not apply the youth rate across large swathes of the economy, reflecting concern both with unnecessary complexity and damage caused by differentiation;
  - Unemployment rates for 18-24-years-olds are at their lowest in over 25 years and their lowest for 16-17-year-olds in over a decade;
  - While the real value of the minimum wage for workers aged 25 and over has been maintained over the last decade, inflation has taken major chunks out of the value of youth rates.

- The case for bringing workers aged 21 or above up to the Living Wage is particularly overwhelming, as there is no substantial evidence of major differences with the economic situation facing older workers.

- Research on the apprentice rate points to the wage level forming a small part of the total apprenticeship cost issues facing employers and substantial increases having little impact on employment.

- UNISON surveys point to a capacity to pay apprentices significantly higher rates as well as some evidence of apprentices being used to undermine the employment of staff on full rates of pay.

- The growth in the cash value of the gap between most of the youth / apprentice rates and the “national living wage” has grown since 2016, increasing the incentive to substitute workers on the full rate.

Conclusions

- The youth and apprentice rates should be brought up to the level of the Living Wage.

- Closing of the gap with the “national living wage” will reduce the incentive to violate equality legislation, undermine the full rate and reduce employment of staff on the full minimum wage rate or above.

- Increases of the boldness displayed in the introduction of the “national living wage” are needed in the National Minimum Wage rates applicable to workers aged under 21 simply to restore their real value to their 2009 level. For 21-24-year-olds the required rise is a modest 2.1%, but for 18-20-year-olds it is 6.4% and for 16-17-year-olds it is 11.2%.
7. MINIMUM WAGE PATH BEYOND 2020

In this section, UNISON offers its initial views on the path of the minimum wage beyond 2020, in the context of the government’s stated intention to give the commission a new remit for that period and the Chancellor’s comments in the October 2018 Budget:

“ We will want to be ambitious with the ultimate objective of ending low pay in the UK but we will also want to be careful – protecting employment for lower paid workers. So we will engage responsibly with employers, the TUC, and the LPC itself over the coming months gathering evidence and views to ensure we get this right – and I will confirm the final remit at the Budget next year.”

We also note that, to help guide this process, the government has appointed Professor Arindrajit Dube to undertake a review of the international evidence on the impacts of minimum wages.

The government’s stated position appears to have suggested that they are open to the idea that the next remit for commission should set a new target for the minimum wage at two-thirds of median earnings, in line with the OECD definition of low pay.

Therefore, UNISON sets out below its observations on why we believe that the commission should support this proposal as an historic step toward reducing low pay in the UK.

7.1 Economic indicators

Long term economic forecasts clearly carry a high degree of uncertainty, which is heightened even more than usual by the continued uncertainty over the UK’s trading relationship with the European Union.

However, the forecasts available at the moment run up to 2023 and show the following picture:

- Modest but positive GDP growth averaging 1.6% between 2021 and 2023, marginally up on the 1.5% average between 2016 and 2020;
- An unemployment rate remaining at the lowest level in over 40 years, averaging 4% between 2021 and 2023, which would be down on the 4.3% average between 2016 and 2020;
- An inflation rate sticking at 3% between 2021 and 2023, marginally up on the 2.9% average between 2016 and 2020;
- An average earnings growth rate sticking at over 3%, averaging 3.2% between 2021 and 2023, which would be up on the 2.8% average between 2016 and 2020;

If these forecasts are correct, with economic growth taking place against a period of sustained low unemployment, economic conditions provide a sound basis for pushing toward the two-thirds target.
7.2 Repeated failure of predicted job losses to materialise

As always, we appreciate that the commission's principal concern with setting a target for the minimum wage to reach two-thirds of average earnings would be the effect of such a step on employment.

Therefore, UNISON has commissioned independent research to examine the economic consequences and offers the accompanying report for the commission's consideration. However, in considering this issue, we wish to emphasise the repeated failure of predicted job losses to materialise over the 20-year lifespan of the National Minimum Wage in the UK.

Going right back to the establishment of the minimum wage, the Centre for Economic Performance at the London School of Economics recalled in its exhaustive study\textsuperscript{39} of the wage's impact up to 2008 that:

\begin{quote}
"Prior to the introduction of the minimum wage, there were claims that it would not only destroy up to two million jobs but also push up inflation and interest rates as better paid workers sought similar pay increases to their low-paid colleagues."
\end{quote}

\begin{quote}
"None of these fears have materialised. So far, there is no evidence of significant job losses for the workers most affected by the minimum wage and there have been no obvious knock-on effects on the wages of better paid workers."
\end{quote}

The subsequent establishment of the “national living wage” in 2016 was accompanied by the Office for Budgetary Responsibility’s claim that the wage would be likely to lead to 60,000 job losses by 2020 within the context of wider job growth.

Of course, whether there would be 60,000 more jobs in the economy by 2020 if the wage had not been introduced is virtually unproveable but it can only be observed that unemployment in general has continued to decline since the wage was introduced and low pay industries have not suffered any general decline in employment.

In the intervening periods, the numerous studies commissioned by the Low Pay Commission have never found any substantial evidence of the wage rises causing unemployment.

Therefore, UNISON believes that it is worth reflecting on why orthodox economic analysis gets this point wrong time and time again. We would suggest that this consistent overestimation of employment effects lies in an underestimation of both the capacity to absorb wage rises and the effect of increased demand on the economy as a whole.

However, this is clearly a point worthy of more detailed investigation.

\textsuperscript{39}Centre for Economic Performance at London School of Economics, The National Minimum Wage: The Evidence of its Impact on Jobs and Inequality, September 2008
7.3 Experience of navigating a path to 60% of average earnings

UNISON believes that the experience of the Low Pay Commission's role in overseeing the process of navigating the highest minimum wage rate from 53.3% to 60% of average earnings in the space of four years has provided an excellent model for governing the next stage in the development of the minimum wage.

The model provides ample safeguards - the linking of the wage to average earnings provided a built in response to changed circumstances and the commission had the ability to adjust the planned path if “severe economic shocks” occurred.

In the event, the planned path was maintained despite modest economic growth and considerable uncertainty about the UK economy, with no evidence emerging of any significant negative employment impacts to contradict those decisions.

UNISON also believes that it is reasonable to assume that the 7.5% increase in 2016 followed by increase in excess of 4% every year since would not have been judged by the commission as being consistent with its remit to increase wages while protecting low-paid workers from damage to employment.

We believe that it is highly likely that the commission would have regarded such increases as carrying an excessive risk. Yet the government enforced those increases and no significant negative employment impacts materialised.
Summary

- Long-term forecasts available for 2021 to 2023 point to a picture that is generally positive for moving toward a minimum wage target of two-thirds of average earnings. Though economic growth is expected to be modest, unemployment remains at a record low.

- Moving toward two-thirds of average earnings could be expected to achieve a rate approximately in line with the Living Wage, which has long been UNISON’s campaigning goal

- Experience shows the consistent overstatement of damage to employment levels as a result of rises in the minimum wage and the commission should acknowledge that the rate of increase enforced by the 60% of average earnings target again failed to cause negative employment consequences despite the rate raising faster than the commission has felt able to recommend since the early years of the minimum wage.

Conclusions

- UNISON believes that the commission should seize an immense opportunity to make major inroads into reducing low pay in the UK and recommend two-thirds of average earnings as the next target rate for the minimum wage. Based on a similar timeframe to that adopted for achieving 60% of average earnings, the commission should oversee a planned path, based on equal rises in the minimum wage bite and the safeguard provided by the link to average earnings in the event of an economic downturn.
8. ENFORCEMENT OF THE NATIONAL MINIMUM WAGE

We note that the Low Pay Commission’s latest report\(^{40}\) on non-compliance put the proportion of workers who are not paid the minimum wage rate to which they are entitled at the extraordinarily high level of 22.4%. Though acknowledging that the timing of the measurement can affect this figure, the report went on to highlight the especially high incidence among women and apprentices.

Therefore, the final chapter of our evidence sets out the issues that UNISON believes are at the heart of continued widespread non-compliance, particularly in the social care sector, alongside the steps that are necessary to effectively ensure workers receive the wage to which they are legally entitled.

8.1 Social care non-compliance

UNISON has been raising serious concerns about the scale and extremely harmful impact of non-compliance with the minimum wage for both the workforce and the people in receipt of care in the social care sector for a number of years now. Not only does the practice impoverish a vital group of workers but it contributes to poor standards of care thanks to increased levels of staff turnover and an increased likelihood of shortened care visits. The Low Pay Commission has also consistently raised concerns in their reports about the problems and extent of non-compliance in the sector over recent years.

The problems with non-compliance in social care have been demonstrated by HMRC itself, which has reported increasing incidents of non-compliance within the sector in their own investigations over recent years. Whilst the number of investigations has stayed roughly the same, the HMRC is finding more social care employers that owe their workers arrears.

- In 2015/16, HMRC closed 233 social care cases with a strike rate of 43%;
- In 2016/17, HMRC closed 274 social care cases with a strike rate of 47%;
- In 2017/18, HMRC closed 219 social care cases with a strike rate of 49%.

Therefore, we are incredibly disappointed that no meaningful efforts have been taken by the government to eradicate this practice, especially given the extent to which public procurement could influence employment practices in the sector. It cannot be left to UNISON to act as the primary driver for increasing levels of enforcement in the sector, the state needs to do more.

Below, we once again identify a number of factors that help drive high levels of non-compliance in the sector, along with problematic approaches from HMRC, BEIS and the Low Pay Commission on the issue.

8.2 Record keeping

We are amazed that, despite the recognition from HMRC that there is a real problem with the standard of minimum wage records that are kept by social care employers, not one single social care employer has been put forward by HMRC to be considered for prosecution for failing to keep sufficient records despite the requirements of Regulation 59 which state:

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\(^{40}\) Lay Pay Commission, Non-Compliance and Enforcement of the National Minimum Wage, April 2019
“Records to be kept by an employer

59.—(1) The employer of a worker who qualifies for the national minimum wage must keep in respect of that worker records sufficient to establish that the employer is remunerating the worker at a rate at least equal to the national minimum wage.

(2) the records required to be kept under paragraph (1) are to be in a form which enables the information kept about a worker in respect of a pay reference period to be produced in a single document.”

The widespread failure by social care employers across the sector to keep sufficient records is at the heart of the problem of non-compliance in the sector. The failure of many social care employers to provide workers with clear and understandable payslips is also linked to their failure to maintain sufficient pay records and to HMRC’s failure to take any action against employers over this problem.

Section 10 of the National Minimum Wage Act 1998 gives workers the statutory right to inspect their pay records if they have reasonable grounds to believe they have been paid below the minimum wage. Employers have 14 days to produce records for inspection on receipt of a statutory request. In our submission last year, we revealed how in nearly all instances where UNISON members made statutory requests to inspect their NMW records, social care employers were ignoring the requests.

In the limited instances where NMW records were produced, UNISON’s experience is that the records were indecipherable and could not used to be used to determine whether the employer was compliant with the minimum wage. This is very concerning given that the purpose of the s10 right is for the worker to determine whether or not they had been in receipt of the National Minimum Wage. The failure to compile clear and understandable minimum wage pay records has frustrated care workers and their representatives in their efforts to determine whether being paid legally. We must make it clear that the request for minimum wage records is a simple one. It is purely a request that employers explain how they say they have complied with minimum statutory requirements.

**Action:** UNISON believes that HMRC must take action to improve the quality of social care employers’ minimum wage records and start to punish employers who fail to do so by putting forward employers for consideration for prosecution in order to help drive improved rates of compliance across the sector.

8.3 Payslip changes

The Low Pay Commission’s report from 2017 made clear why the widespread use of complex and/or insufficiently clear payslips in the care sector was an issue that needed to be addressed:

“The key impact of any complexity and lack of clarity on hours of work and pay is that workers themselves are less likely to be aware of whether they are paid the correct amount. Indeed, this is a reason for the LPC’s recommendation to improve the information provided to workers on their payslips in our Spring 2016 report.”

[Low Pay Commission report 2017](#)

As of April 2019, the law now requires employers to list the hours that workers have been paid for on payslips. However, UNISON has serious concerns that this measure does not do anything to address the problems in the social care sector where employers routinely issue payslips that mask non-compliance with the National Minimum Wage and that the provision
is far too weak. There are over 20,000 individual employers in the social care sector in England alone, most of them very small, and we are doubtful that most of them will be aware of the new payslip requirement and take steps to introduce any changes, especially given that BEIS has not spent any money to promote the new requirement. Furthermore, the lack of any real penalty for employers who refuse to adopt the new requirements is a further barrier to increased transparency as the burden is on individual workers to take their employer to an employment tribunal.

More damningly, the new measures introduced by the government will allow employers to obscure the fact that they are not paying homecare staff for all the working hours to which the minimum wage applies and allow them to pay illegal wages. This is because the regulations do not require employers to separate out contact time from travel time.

Because homecare workers are routinely not paid for all of their travel time - which counts as working time - the government’s new requirement will allow employers to continue to provide payslips that hide the fact that they have not paid workers properly. The government even recognised this problem in their Equality Impact Assessment of the new payslip legislation:

“For employees that are paid the same rate of pay for all the different types of hours they have worked (i.e. overtime and travel hours) and do not receive additional payments (e.g. bonuses) or deductions, employees would be able to identify NMW non-compliance by dividing their gross pay with this number of hours stated. Therefore, as an additional benefit of this proposal, for those employees with relatively straight-forward pay arrangements, we expect underpayment and the percentage of NMW non-compliance to decrease. **This will not be the case for all employees and, where pay arrangements are more complex, further interpretation would be required in order to determine NMW compliance.**”

8.4 Commissioning practices

UNISON has continually highlighted the failure of both local councils and the government to address problems with commissioning practices in the social care sector that are helping to ensure to boost levels of non-compliance. In Northern Ireland, Health and Social Care operates as one integrated system with the five HSC Trusts holding responsibility to provide social care. The Department of Health sets the overall policy direction within the system and sets the budget for the delivery of services. UNISON has continuously brought evidence to these bodies calling on them to address deficiencies in the commissioning process.

UNISON sent Freedom of Information (FoI) requests in 2014, 2016 and 2018 asking councils in England and Wales the following questions:

a) Does your council currently make it a contractual condition that your externally commissioned homecare providers must pay their homecare workers for their travel time?

b) Please list the steps that your council has taken to ensure that your externally commissioned homecare providers are paying their home care workers at least the national living wage.

In total, 174 councils across England and Wales with a responsibility for social care were contacted in September 2018, with 147 responding. In 2014, fewer than one in ten (7%) councils in England and Wales made it a contractual condition when commissioning care for homecare companies to pay workers for their travel time.
When UNISON repeated the FoI request two years later the situation had improved. In 2016 just under a quarter (24%) of local authorities in England, and fewer than one in ten (9%) in Wales, stipulated in their care contracts that homecare firms must pay employees when they are travelling between appointments.

Although the situation in 2018 undoubtedly improved again, with the proportion stipulating in England rising from 24% to 46%, and proportion in Wales hitting 40%, most councils in both England and Wales still do not make it a contractual condition for homecare companies and other organisations to pay staff for travel time. Of the councils that didn’t insist that travel time was paid, a sizeable number stated that the companies they commissioned were bound by minimum wage laws, thus downplaying their responsibility.

UNISON’s survey of homecare workers conducted late last year indicates that many companies do not abide by minimum wage laws, and even those paid extra by councils to remunerate care workers for travel time simply do not do so. For example, one council said it required care providers to pay their employees an average of £8.35 per hour. Although this is almost 7% above the “national living wage” (£7.83), the extra 52p per hour allows for just over four minutes travel time for every hour of contact time. Any travel time above this is therefore unpaid. It’s highly unlikely that any homecare workers would only spend four minutes an hour travelling between visits. The UK Homecare Association, which represents homecare providers, estimates that staff spend 19% of their working day travelling between the homes of the people they care for.

The picture has improved significantly since 2014, in part due to UNISON campaigning (UNISON’s Ethical Care Charter, which says that homecare workers must be paid for their travel time, has now been signed by 42 councils). However, too many care workers are still being failed by some councils’ ‘hands-off’ approach to commissioning homecare services. A recent report by the IPPR, Fair Care: A Workforce Strategy for Social Care, highlighted how local authorities’ approach to commissioning plays a significant role in shaping the quality of jobs and the care provided, and has contributed to poor standards and the shoddy treatment of the workforce. Many councils are simply trusting homecare companies to pay staff for travel time but do little, if anything, to check that this is actually happening. As UNISON research repeatedly shows, a clear majority of companies are still failing to do what is legally required of them. Undoubtedly, the huge squeeze on care budgets, caused by years of government cuts, has greatly contributed to this problem. Both the Westminster and Cardiff governments should enact a legal duty for councils to ensure that all their homecare providers are paying workers for travel time. Failure to do this should result in companies being prevented from delivering care services in the future.

The problem of poor quality commissioning was also picked up by the Director of Labour Market Enforcement, who recommended in his 2018 strategy that “procurement templates should be amended to explicitly compel compliance with labour market regulations in public contracts”.

UNISON believes that, if enacted, this measure would be a significant factor in improving levels of compliance in the sector. Therefore, we were again very disappointed that the government rejected the recommendation that “procurement templates should be amended to explicitly compel compliance with labour market regulations in public contracts” given how reliant the social care sector is on public funding.
**Action:** We call upon the Low Pay Commission to request that the government explains its rationale for the rejection of the Director of Labour Market’s Enforcement’s recommendation and urges the government to reverse its decision.

**Action:** The Low Pay Commission should request that the Care Quality Commission is given the power to inspect how local authorities commission care services in order to help eradicate poor commissioning practices which significantly contribute to widespread non-compliance with the NMW in the care sector.

**Action:** The Low Pay Commission should call for increased levels of transparency around the rates councils and commissioning bodies in Northern Ireland pay their providers, including the publication of a breakdown showing how the fees paid cover pay, travel time, sleep-ins, other conditions, overheads and assumed profit margins.

**Action:** Spot inspections of provider payroll records, provision of clear and understandable payslips and time sheets to staff should be carried out by councils and in Northern Ireland by the relevant HSC Trust commissioning the service, alongside measures to ensure providers allow trade union representatives to consult staff to ensure that the law is being complied with.

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### 8.5 Low Pay Commission compliance report

UNISON would also like to place on record our immense disappointment at the failure of the Low Pay Commission to address the fact that they were cited by the Court of Appeal in making the case that workers should not receive the minimum wage for sleep-ins. The compliance report from 2019 made no reference whatsoever to this important ruling despite UNISON vociferously raising it in both our written and oral evidence. The issue was also raised in the TUC verbal evidence and commissioners responded by acknowledging the importance of the issue. We are consequently bemused that it was not in any way addressed in the resulting reports.

Therefore, we would once again like to re-submit the elements of the Court of Appeal ruling which extensively referenced the Low Pay Commission’s reports along with our written evidence on the matter in the hope that it will be addressed in the next report.

**Court of Appeal ruling July 2018: Royal Mencap Society v Tomlinson-Blake [2018]**

*THE REPORTS OF THE LOW PAY COMMISSION*

10. The First Report of the Low Pay Commission, addressing the matters identified at section 5 (2) of the Act, was published in June 1998. As appears from the preceding paragraph, it has a particularly important status in relation to the Regulations. The Secretary of State made no report to Parliament pursuant to section 5 (4) of the 1998 Act to the effect that the Government was not proposing to follow the Commission’s recommendations in making the 1999 Regulations: indeed the Government said in terms that it proposed to follow them. In those circumstances it was common ground before us that the recommendations in the Report are admissible as an aid to the construction of the Regulations: I should note that this was not the position in Focus – see paras. 44-46 below.

11. How the NMW should be calculated in the case of workers who are required to be at the place of work and available to work and, more particularly for our purposes,
of workers who are required to "sleep in" at work was the subject of formal recommendations in the report. Recommendations 11 and 12 read:

"11. The actual working time definition should define what constitutes working time for the purposes of the National Minimum Wage. The National Minimum Wage should also apply to all working time when a worker is required by the employer to be at the place of work and available for work, even if no work is available for certain periods. (para. 4.33)

12. For hours when workers are paid to sleep on the work premises, workers and employers should agree their allowance, as they do now. But workers should be entitled to the National Minimum Wage for all times when they are awake and required to be available for work. (para. 4.34)"

12. Paragraphs 4.33 and 4.34 of the report, as referred to in those recommendations, read as follows:

"4.33. We recommend that the actual working time definition should define what constitutes working time for the purposes of the National Minimum Wage. The National Minimum Wage should also apply to all working time when a worker is required by the employer to be at the place of work and available for work, even if no work is available for certain periods. This definition has the advantage of covering agreed 'downtime' hours when workers are on-site but unable to work (e.g. because of machine breakdowns or lack of materials). It includes all agreed overtime hours, including call-out hours for emergencies, but it does not include standby or on-call periods away from the employer's workplace or agreed rest periods.

4.34. Certain workers, such as those who are required to be on-call and sleep on their employer's premises (e.g. in residential homes or youth hostels), need special treatment. For hours when workers are paid to sleep on the premises, we recommend that workers and employers should agree their allowance, as they do now. But workers should be entitled to the National Minimum Wage for all times when they are awake and required to be available for work."

13. Those recommendations, and the quoted passages explaining them, are of fundamental importance to this appeal. In particular, the Commission deals expressly with the case of workers who sleep in in "residential homes" but who are required to be "on-call". In such cases, which are essentially the kinds of case with which we are concerned, it refers to what it evidently understood to be the existing practice ("as they do now"), namely that the worker would be paid an agreed "allowance"; but it recommends that the only time that would count for NMW purposes should be "when they are awake and required to be available for work".

14. There have been regular reports from the Commission since its first report, together with numerous research papers and other publications. It appears, however, that there is nothing that casts light on the origins of the Amendment Regulations made in 2000.

15. The only other report to which we were referred is the Commission's fourth, published in March 2003, which contains a section on pay in the social care sector. Paras. 3.55-3.56 read as follows:

"3.55 Having considered the overall economic impact of the minimum wage on the social care sector, we now turn to a more specific policy question of particular
relevance to the sector, namely how the National Minimum Wage applies to 'sleepovers'. 'Sleepovers' cover situations where, for example, someone works a day shift in a care home and then sleeps in the home overnight and is available to deal with emergencies but would not necessarily expect to be woken. Similar situations may arise with workers who care for an elderly or disabled person in his or her own home and sleep on the premises, or with wardens in sheltered housing who are available to deal with emergencies during the night.

3.56 In our earlier reports we concluded that for 'sleepovers', where the assumption is that the worker will not normally be woken, the National Minimum Wage should not apply (in practice an allowance is usually paid) but workers should be entitled to the National Minimum Wage for the times when they were awake and required to be available for work. We noted the difference between these 'sleepovers' and on-call or standby arrangements where a worker is required to be at the workplace outside of normal working hours with the expectation that he or she will be required to work, for which the National Minimum Wage is payable. The Government accepted and acted upon our recommendations, and we believe that these still reflect the right approach."

Paras. 3.57 and 3.58 then go on to refer to "certain recent Employment Appeal Tribunal judgments [which] have held that the National Minimum Wage was payable in circumstances where the worker was able to sleep at times during the night" and say that there has been "concern that these judgments might imply that the National Minimum Wage was payable in the 'sleepover' cases which we had considered earlier". The EAT decisions referred to appear to be those in the British Nursing Association and Scottbridge cases, which I discuss at paras. 49-62 below. The report says that it is clear that some uncertainty remains and continues:

"We believe it important to ensure that the position as set out in our earlier recommendations on 'sleepovers' is maintained and clarified. We therefore recommend that the Government should examine whether the present uncertainty over the treatment of 'sleepovers' can best be resolved through revised guidance, or whether a change to the Regulations is required."

16. There is no evidence of the Government having given any further consideration to the issue, despite that recommendation. Certainly we were not referred to any published discussion or statement.

As we can see above, the Court of Appeal decision in Royal Mencap v Tomlinson-Blake has had the unfortunate effect of trapping certain classes of worker in low pay pending the outcome of the Supreme Court's decision on the matter.

The Low Pay Commission took the view in its first report in 1998 that “certain workers, such as those who are required to be on-call and sleep on their employer’s premises (e.g. in residential homes or youth hostels), need[ed] special treatment”. The commission recommended that workers and employers should agree an allowance. The government adopted that approach but in practice it has produced three problems.

First, since there is no minimum level set for any such allowance and since the pressure to reduce costs in the care sector has been very considerable, special treatment has evolved into especially unfair treatment as the gap between what is paid and what would be received if the minimum wage were paid has grown. The inequality of bargaining power between
employers and the individuals engaged to perform care services is so great that it no longer makes sense to talk about allowances being “agreed” – they are, in practice, set by the employer without discussion.

Second, there are some people who now only work sleep-in shifts. It is most common amongst what might be called “nightwatchmen” but there are care workers too who work those patterns. The effect is that they can never qualify for the National Minimum Wage and form a sub-class of exceptionally poorly paid workers.

Thirdly the courts developed case law which acknowledged that, taking into account all relevant factors, some workers are working by being present. The Low Pay Commission was quick to identify the development of that line of authority, commenting on it in its Fourth Report in 2003 and inviting the government to consider either revising the regulations or issuing revised guidance. The government took neither step immediately. Subsequent revisions to the legislation did not specifically address the issue, suggesting that the government was not concerned about the direction or the increasing sophistication of the case law. The cases ensured in many cases that already low-paid workers were not further exploited. In 2015, BIS issued new guidance which expressly incorporated the principles established by the courts and tribunals, thereby signalling acceptance of the position developed over the previous decade or so. However, the Court of Appeal has now swept those cases aside, relying on LPC’s 20 year old First Report and a finding, bare of explanation, that the BIS guidance was not the sort of revised guidance that the LPC had envisaged in its fourth report.

The ruling by the Court of Appeal devoted two and a half page to the position of the Low Pay Commission in setting out its arguments that the NMW is not payable for sleep-ins other than when an individual is working and referred to quoted LPC passages as being “of fundamental importance to the appeal.”

And yet the LPC report published just three years ago acknowledged the government position that sleep-ins should be paid where a worker must be present at the place of work and pressed the government to publish this position widely.

The social care system has also changed significantly since 1998, so it is peculiar that the ruling relies so heavily from a report made in that year. The eligibility levels for people to receive social care services have been significantly tightened in recent years, meaning that only people with high levels of need now receive care services. In contrast, care workers in 1998 would have been caring for people with low level care needs as well. We believe that the relatively healthy state of the social care system at that time and the comparative lack of demands that were placed upon the care workforce as a whole undoubtedly helped to frame the recommendations that were made. The annual turnover rate amongst the care workforce now also stands at 27.8% - one of the highest in the economy, a figure that has been steadily increasing in recent years. If the care sector had been facing such a recruitment and retention crisis in 1998, we believe that it is unlikely that the Low Pay Commission would have produced the same recommendations around payment for sleep-ins.

The net effect has been that the Low Pay Commission first report has been used as a stick with which to metaphorically beat the low paid.

**Action:** Therefore we reiterate our request for an urgent and corrective statement on the issue by the LPC.
We are also extremely disappointed that the Low Pay Commission’s compliance chapter relied upon the use of ASHE data in order to estimate levels of non-compliance across various sectors. This meant that the report was unable to present a true sense of how widespread non-compliance is in the social care sector given that ASHE data is based on working time and the problems in social care revolves mostly around employers failing to properly record and pay for all working time (e.g. travel time and sleep-in shifts). We are disappointed that no mention was made of this in the report or that very little mention was made of social care at all despite the well documented levels of widespread non-compliance and the fact that the government had actually suspended enforcement of the minimum wage in the sector in 2017 and introduced a bespoke enforcement program which has only recently come to an end.

**Action:** We request that the Low Pay Commission no longer relies upon the use of ASHE data to estimate levels of non-compliance in the care sector in future reports.

### 8.6 Social Care Compliance Scheme

UNISON expressed a number of concerns with the introduction of the Social Care Compliance Scheme in our 2018 submission.

The scheme allowed no role for workers or trade unions at all and had clear gender equality problems given the makeup of the workforce. When employers identified that they had to pay arrears to workers, there was no mechanism which allowed these figures to be scrutinised and no appeal process. Instead, workers were expected to trust an employer who admitted to having broken the law. We also had concerns about the thoroughness of the assurance checks that HMRC have carried out into the figures presented to them by employers. There was also no public scrutiny of the process, employers were exempted from any penalties beyond the arrears they identified and they were also spared from being put forward to be named and shamed.

Just over 1,000 employers took part in the compliance scheme despite UNISON research revealing that over 2,100 individual employers are commissioned by local councils to deliver sleep-in shift services, which further demonstrates an inability of HMRC and BEIS to accurately understand a social care sector which allows employers to escape punishment. UNISON provided HMRC, BEIS and Department and Social Care officials with the details of all the social care employers that used sleep-in, shifts but sadly this information was not used to enforce compliance.

During the life of the Social Care Compliance Scheme, the Court of Appeal issued its ruling on the sleep-in issue. Only a very small number of employers had declared any arrears before the ruling, with most employers waiting for the ruling on what counted as working time for purposes of the minimum wage. Subsequently, over three-quarters of employers identified no arrears at all.

None of the £6.3 million in arrears identified through the scheme will lead to any employers being named and shamed for non-compliance and they will also evade any financial penalties. Furthermore, despite the sleep-in issue being the catalyst for the creation of the scheme, the majority of arrears identified did not relate to sleep-ins but rather issues like the non-payment of travel time.

This confirms UNISON’s fear that the scheme, which involved minimal oversight from HMRC and absolutely no role for trade unions or individual workers to check the veracity of the level
of arrears identified, was used by care employers to clear their books with regards to non-compliance in a way that allowed them to escape reputational damage and any additional financial penalties.

The escape from any reputational damage is particularly pertinent. Around 225 employers collectively identified arrears of over £6 million which leads to an average amount of approximately £28,000. This figure dwarfs the average amount of arrears for care companies identified in all the past naming-and-shaming operations where the average for each employer has been £4,271.

The failures of the Social Care Compliance Scheme compound how limited the options are for care workers when it comes to recovering money that they are owed. Investigations by HMRC are often lengthy, whilst seeking redress via an employment tribunal is a costly, lengthy and unattractive route for care workers, many of whom who are particularly vulnerable given the prevalence of zero hours contracts in the sector. This situation has to change.

8.7 Worrying EAT ruling

UNISON is deeply concerned that the implications of a recent Employment Appeal Tribunal ruling (Mears Home Care Limited v Bradburn Employment Appeal) will significantly reduce the ability of HMRC, workers and trade unions to enforce the minimum wage, particularly in the care sector.

UNISON has been supporting homecare workers in their attempts to secure National Minimum Wage Act (NMWA) compliance in their industry. To this end, UNISON has been commencing tribunal claims for members who have been underpaid in breach of the NMWA. These claims are typically of low value but are technically complex, relying heavily on wage and time records held by their employers. UNISON has encountered considerable difficulty in gaining access to those essential wage and time records through voluntary disclosure or through normal disclosure during tribunal proceedings. In a number of cases, UNISON has assisted the homecare workers in making formal requests for the production of wage and time records pursuant to section 10 of the NMWA. This process requires employers to produce a workers’ wage and time records within 14 days of service of such a request. Employers are required to hold and maintain wage and time records for each of their employees for a period of three years under regulation 59 of the National Minimum Wage Regulations 2015 (“NMWR 2015”).

HMRC also has powers to enforce NMWA compliance under the NMWA. HMRC officers have the right to require the production of wage and time records; require explanations of the records and additional information relating to those records. HMRC has powers to enter onto the premises of employers to exercise any of their powers under the NMWA. HMRC has the power to issue notices to employers found to be in breach of the NMWA and impose financial penalties on employers who fail to comply with such notices. Importantly, under section 31 of the NMWA, HMRC has the power to impose a criminal penalty on employers who fail to pay the minimum wage or fail to comply with the obligations to maintain wage and time records under regulation 59 NMWR 2015.

In October 2016, a number of UNISON members working for Mears Home Care Limited (“Mears”) transferred to other service providers by way of service provision change. In
February 2017, section 10 NMWA production notices were served on Mears. They failed to produce the required records and Employment Tribunal proceedings were issued against them in March 2017. The central question for the tribunal was whether or not Mears continued to fall within the definition of “person by whom the ... worker is (or in the case where the employment has ceased, was) employed” for the purposes of regulation 54(4) of the NMWR 2015. If they did not fall within this definition, they would not continue to be responsible for holding and maintaining wage records under regulation 59, nor would they continue to be responsible for answering section 10 production notices. Mears argued that regulation 4 of TUPE took Mears outside the definition because it treated them as having never employed the workers post transfer. They argued that their obligations to hold and maintain records and answer section 10 notices ended once the workers transferred and that those duties and responsibilities transferred to the new employers along with the workers’ contracts of employment.

On 19 January 2018, the employment tribunal found, as a matter of statutory interpretation, that Mears continued to fall within the definition of employer in regulation 54(4) NMWR 2015 and therefore was required to maintain wage and time records in respect of the workers who had transferred and continued to be responsible for answering section 10 production notices, notwithstanding the fact that those workers’ employment had transferred to other service providers some months before. The tribunal rejected Mears arguments that the TUPE regulations took Mears outside the relevant definition and did not accept that the Acquired Rights Directive was abrogated by the interpretation adopted in respect of the NMWA because the protections contained in the TUPE regulations were concerned with ensuring that a worker’s contract of employment had effect post transfer; as if it had been made with the new employer in the first place.

On 23 February 2018, Mears appealed the tribunal’s decision and this was heard on 2 May 2019.

On 2 May 2019, the Employment Appeal Tribunal (“EAT”) made an ex tempore judgment allowing Mears’ appeal. The EAT accepted Mears argument that the effect of regulation 4 of TUPE was that all the rights and obligations under the NMWA and NMWR 2015 transferred to the new employer upon a relevant transfer. The EAT found that the workers employment had not “ceased to be employed by Mears for the purposes of regulation 54(1) of the NMWR 2015 because the effect of TUPE was that the workers’ employment continues. The EAT placed reliance on the fact that the contract of employment does not terminate as a consequence of a relevant transfer and instead continues with the new employer as if it had been originally made with them. The EAT accepted Mears’ argument that at the relevant transfer of 31 October 2016, its obligations to maintain wage and time records pursuant to regulation 59 of the NMWR 2015 and answer productions notice served pursuant to section 10 NMWA ended.

The EAT was not persuaded by the arguments made on behalf of the workers that the effect of such a finding would make it extremely difficult to enforce the NMWA because it would be open to transferor employers to destroy records after a relevant transfer thus compromising any attempts to investigate and prosecute NMWA breaches. The EAT held that such claims could still be brought against the new employers and the provision of wage and time records for periods of employment with the transferor employer could be dealt with by way of indemnities or agreement between the those employers. Likewise the EAT was not
persuaded that its finding would seriously compromise HMRC's ability to enforce non compliance through penalties or criminal proceedings.

This decision has very serious implications for all workers seeking to enforce their NMWA rights. The effect of this decision is that transferor employers are not required to maintain wage and time records for workers once they have transferred out of their employment. Employers can with impunity destroy such records after a relevant transfer of such employees. Whilst it is technically possible for workers to present section 10 requests to their new employers for wage and time records for periods of employment with the old employer, if those records are no longer in existence, any claims for breaches of NMWA are unlikely to be made out. Workers in those situations will be left with procedural rights to payments for breach of production notices but employers will avoid the much greater liability for failing to pay wages in accordance with NMWA. It is not appropriate for rights as important as those contained in the NMWA to rely on cooperation between the transferor and transferee employers in respect of maintenance or provision of wage and time records; especially when there is no obligation on the transferor employer to provide those records to the new employer as part of employee liability information or to maintain those records post transfer.

UNISON's experience is that it is virtually impossible to make out claims for breaches of the NMWA without first seeing the relevant wage and time records. The regulations concerning provision of pay information on wage slips does not go far enough or provide workers with information needed to prosecute such claims; particularly those claims where travel time and waiting time are being investigated. Employers are required to hold this information to allow both workers and the HMRC to properly investigate and prosecute NMWA breaches.

Workers who have a reasonable belief they were paid below the National Minimum Wage by a transferor, will now be reliant on the transferee acquiring National Minimum Wage records at the point of transfer, or the co-operation of a transferor in circumstances where the worker asserts the employer is not NMW compliant and there is no legal obligation to retain or produce those records. In light of the frequency of TUPE transfers of low-paid workers, this is a significant limitation on their ability to enforce the NMW. In the enforcement cases we run, access to National Minimum Wage records means we can calculate past unpaid travel and waiting time and assess whether or not pay is NMW compliant. Where employers operate complex systems to assess NMW compliance or maintain records that are unclear or insufficient to complete this assessment, we request an explanation or additional information to enable a worker to understand how their pay is calculated and assess if their pay is NMW compliant. This information is vital to both identify non-compliance and calculate the quantum of our members' claims. The absence of this information means we are unlikely to be able to bring a successful claim for past failure to pay workers the NMW. We would be required to rely on records or the recollection of members work patterns in circumstances where members are on zero hour contracts and whose work pattern varies. The evidentiary burden and uncertainty this creates will mean these cases are unlikely to get off the ground.

The decision likewise has serious implications for HMRC and compromises its ability to properly investigate and prosecute breaches of the National Minimum Wage. HMRC relies on its ability to inspect wage and time records to investigate NMWA breaches. If those wage and time records do not exist, this seriously compromises its ability to ensure compliance with the NMWA. The decision could lead to situations where employers who are under suspicion of NMWA breaches or who have been notified by HMRC that they will be
investigated could easily hand back contracts or transfer staff to other companies, thereby avoiding the requirement to hold and maintain wage and time records.

The decision has the potential to seriously compromise the right to access to justice as articulated in the Supreme Court decision of UNISON v Lord Chancellor [2017] 4 All ER 903. If a right to make a complaint to an employment tribunal is so seriously impeded by a procedural or other barrier (as we suggest that this decision does) then that right is compromised.

Concluding remarks

We cannot accept a situation where UNISON continues to highlight the range of problems around compliance in the social care sector, put forwards solutions and continues to be ignored. UNISON, along with the hundreds of thousands of people who rely on care services and the hundreds of thousands of care workers demand action to end rampant non-compliance. We have put forward a number of practical steps that could be taken to help end the practice.

In light of the seriousness of the matter, we also call upon the Low Pay Commission to carry out a special investigation into the reasons for non-compliance in the social care sector, drawing upon UNISON’s work and put forward a raft of actions for the government to take to significantly reduce non-compliance.
Summary

- Widespread failure to keep sufficient records is at the heart of non-compliance in the social care sector, employers routinely ignore workers’ requests to inspect records and where they are shared records are frequently indecipherable.
- The new payslip regulations are welcome recognition that many employers conceal how much workers are paid but the failure to separate contact and travel time for the huge homecare workforce renders them insufficient for determining NMW compliance.
- Commissioning practices fail to address NMW issues adequately, with less than half of local authorities stipulating payment for travel time.
- The Low Pay Commission allowed the Court of Appeal ruling on sleep-ins to pass without comment in its 2019 compliance report, despite the citing of the commission’s position as being of “fundamental importance” by the court.
- The Social Care Compliance Scheme was used by care employers to clear their books with regard to non-compliance in a way that allowed them to escape reputational damage and any additional financial penalties.
- UNISON is deeply concerned that the implications of a recent Employment Appeal Tribunal ruling (Mears Home Care Limited v Bradburn Employment Appeal) will significantly reduce the ability of HMRC, workers and trade unions to enforce the minimum wage, particularly in the care sector.

Conclusions

We call upon the Low Pay Commission to carry out a special investigation into the reasons for non-compliance in the social care sector, drawing upon UNISON’s work, and put forward a raft of actions for the government to take to significantly reduce non-compliance.

We believe that as part of this work, the Low Pay Commission should recommend that:

- HMRC must take action to improve the quality of social care employers’ minimum wage records and start to punish employers who fail to do so by putting forward employers for consideration for prosecution in order to help drive improved rates of compliance across the sector;
- The government reverses its previous rejection of the Director of Labour Market’s Enforcement’s recommendation on procurement templates;
- The Care Quality Commission is given the power to inspect how local authorities commission care services in order to help eradicate poor commissioning practices which significantly contribute to widespread non-compliance with the NMW in the care sector.
- Increased levels of transparency are implemented around the rates councils and commissioning bodies in Northern Ireland pay their providers, including the publication of a breakdown showing how the fees paid cover pay, travel time, sleep-ins, other conditions, overheads and assumed profit margins.
• Spot inspections are introduced on provider payroll records, provision of clear and understandable payslips and time sheets, alongside measures to ensure providers allow trade union representatives to consult staff to ensure that the law is being complied with.

Furthermore, we call on the commission to:

• Issue a statement on its position with regard to the payment for sleep-ins which recognises the evolution of the social care sector over the last 20 years along with the case law that has accompanied it.

• Cease the use of ASHE data to estimate levels of non-compliance in the care sector because of its failings in presenting a true picture
APPENDIX 1 – Organisational profit and employment figures

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<td>163,000</td>
<td>161,000</td>
<td>16%</td>
</tr>
<tr>
<td>Asda</td>
<td>Asda Group Ltd</td>
<td>735,400,000</td>
<td>845,300,000</td>
<td>1,045,800,000</td>
<td>-30%</td>
<td>155,941</td>
<td>161,451</td>
<td>113,936</td>
<td>37%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Morrison</td>
<td>WM Morrison Supermarkets PLC</td>
<td>475,000,000</td>
<td>486,000,000</td>
<td>333,000,000</td>
<td>-676,000,000</td>
<td>NA</td>
<td>105,487</td>
<td>112,365</td>
<td>120,913</td>
<td>119,778</td>
<td>-12%</td>
</tr>
<tr>
<td>Amazon</td>
<td>Amazon UK Services Ltd</td>
<td>79,784,000</td>
<td>26,574,000</td>
<td>50,088,000</td>
<td>59%</td>
<td>19,749</td>
<td>14,118</td>
<td>9,090</td>
<td>117%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>John Lewis</td>
<td>John Lewis PLC</td>
<td>247,600,000</td>
<td>646,900,000</td>
<td>528,700,000</td>
<td>447,700,000</td>
<td>-45%</td>
<td>84,500</td>
<td>88,000</td>
<td>90,700</td>
<td>92,100</td>
<td>-8%</td>
</tr>
<tr>
<td>Marks &amp; Spencer</td>
<td>Marks &amp; Spencer PLC***</td>
<td>23,200,000</td>
<td>327,600,000</td>
<td>627,300,000</td>
<td>640,600,000</td>
<td>-96%</td>
<td>53,273</td>
<td>53,562</td>
<td>52,388</td>
<td>52,247</td>
<td>2%</td>
</tr>
<tr>
<td>Aldi</td>
<td>Aldi Stores Ltd</td>
<td>266,640,000</td>
<td>230,563,000</td>
<td>274,182,000</td>
<td>-3%</td>
<td>33,121</td>
<td>30,116</td>
<td>27,963</td>
<td>18%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boots</td>
<td>Boots UK Ltd *****</td>
<td>503,000,000</td>
<td>516,000,000</td>
<td>576,000,000</td>
<td>-13%</td>
<td>33,121</td>
<td>30,116</td>
<td>27,963</td>
<td>18%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dixons Carphone</td>
<td>Dixons Carphone PLC</td>
<td>281,000,000</td>
<td>385,000,000</td>
<td>365,000,000</td>
<td>313,000,000</td>
<td>-10%</td>
<td>31,479</td>
<td>32,011</td>
<td>27,608</td>
<td>23,582</td>
<td>33%</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>2,781,800,000</td>
<td>4,591,324,000</td>
<td>4,776,437,000</td>
<td>-2,581,630,000</td>
<td>NA</td>
<td>785,856</td>
<td>1,004,350</td>
<td>995,362</td>
<td>915,525</td>
<td>-14%</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td>463,633,333</td>
<td>459,132,400</td>
<td>477,643,700</td>
<td>-258,163,000</td>
<td>NA</td>
<td>130,976</td>
<td>111,594</td>
<td>110,596</td>
<td>101,725</td>
<td>29%</td>
</tr>
</tbody>
</table>

* Top 10 UK retailers based on GlobalData 2018 information published by Retail Gazette
** Profits shown are based on UK and Ireland operations, number of employees on figures published by Statista UK
*** Figures are for UK operations
**** Figures are for UK and Ireland operations, profit figure is that described as "headline profit" in accounts
***** Companies vary in whether they quote headcount or full time equivalent figures. Where both are stated in the accounts, the headcount is shown here.
****** Boots UK does not show employment figures in its accounts
<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Premier Inn</strong></td>
<td>Premier Inn Hotels Ltd**</td>
<td>276,024,000</td>
<td>285,750,000</td>
<td>277,766,000</td>
<td>94,466,000</td>
<td>192%</td>
<td>27,201</td>
<td>27,115</td>
<td>26,111</td>
<td>4%</td>
<td></td>
</tr>
<tr>
<td><strong>Travelodge</strong></td>
<td>Travelodge Hotels Ltd</td>
<td>57,100,000</td>
<td>60,400,000</td>
<td>64,100,000</td>
<td>-11%</td>
<td></td>
<td>11,071</td>
<td>10,294</td>
<td>4,644</td>
<td>138%</td>
<td></td>
</tr>
<tr>
<td><strong>Britannia</strong></td>
<td>Britannia Hotels Ltd</td>
<td>20,687,000</td>
<td>19,623,000</td>
<td>34,180,000</td>
<td>15,189,000</td>
<td>36%</td>
<td>2,112</td>
<td>2,175</td>
<td>2,011</td>
<td>1,895</td>
<td>11%</td>
</tr>
<tr>
<td><strong>Marriott</strong></td>
<td>Marriott Hotels Ltd</td>
<td>2,429,099</td>
<td>874,487</td>
<td>1,133,465</td>
<td>114%</td>
<td></td>
<td>8,528</td>
<td>9,162</td>
<td>9,557</td>
<td>-11%</td>
<td></td>
</tr>
<tr>
<td><strong>McDonald's</strong></td>
<td>McDonald's Restaurants Ltd</td>
<td>342,985,000</td>
<td>282,160,000</td>
<td>238,147,000</td>
<td>44%</td>
<td></td>
<td>35,878</td>
<td>38,913</td>
<td>35,879</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td><strong>Wetherspoon</strong></td>
<td>JD Wetherspoon PLC</td>
<td>132,291,000</td>
<td>128,508,000</td>
<td>109,727,000</td>
<td>106,495,000</td>
<td>24%</td>
<td>38,384</td>
<td>36,550</td>
<td>36,768</td>
<td>34,731</td>
<td>11%</td>
</tr>
<tr>
<td><strong>Costa</strong></td>
<td>Costa Coffee**</td>
<td>158,800,000</td>
<td>158,000,000</td>
<td>153,500,000</td>
<td>132,500,000</td>
<td>20%</td>
<td>14,748</td>
<td>13,990</td>
<td>12,645</td>
<td>17%</td>
<td></td>
</tr>
<tr>
<td><strong>Greggs</strong></td>
<td>Greggs PLC***</td>
<td>72,313,000</td>
<td>75,168,000</td>
<td>73,113,000</td>
<td>-1%</td>
<td></td>
<td>21,549</td>
<td>20,581</td>
<td>19,847</td>
<td>9%</td>
<td></td>
</tr>
<tr>
<td><strong>KFC</strong></td>
<td>Kentucky Fried Chicken (Great Britain) Ltd</td>
<td>188,028,000</td>
<td>60,590,000</td>
<td>56,911,000</td>
<td>230%</td>
<td></td>
<td>7,507</td>
<td>6,848</td>
<td>8,417</td>
<td>-11%</td>
<td></td>
</tr>
<tr>
<td><strong>Domino's</strong></td>
<td>Domino's Pizza Group PLC****</td>
<td>81,100,000</td>
<td>86,400,000</td>
<td>74,484,000</td>
<td>9%</td>
<td></td>
<td>1,749</td>
<td>995</td>
<td>1,083</td>
<td>61%</td>
<td></td>
</tr>
<tr>
<td><strong>Starbucks</strong></td>
<td>Starbucks Coffee Company (UK) Ltd</td>
<td>670,344</td>
<td>6,371,903</td>
<td>27,877,483</td>
<td>-98%</td>
<td></td>
<td>5,379</td>
<td>5,789</td>
<td>6,848</td>
<td>-21%</td>
<td></td>
</tr>
<tr>
<td><strong>Pizza Hut</strong></td>
<td>Pizza Hut (UK) Ltd</td>
<td>-10,012,000</td>
<td>5,226,000</td>
<td>28,097,000</td>
<td>NA</td>
<td></td>
<td>8,803</td>
<td>8,514</td>
<td>8,496</td>
<td>-5%</td>
<td></td>
</tr>
<tr>
<td><strong>Nando's</strong></td>
<td>Nando's Chickenland Ltd</td>
<td>96,062,000</td>
<td>101,734,000</td>
<td>92,236,000</td>
<td>70,332,000</td>
<td>37%</td>
<td>14,793</td>
<td>12,849</td>
<td>11,709</td>
<td>10,371</td>
<td>24%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>683,864,000</td>
<td>1,431,228,443</td>
<td>1,245,033,390</td>
<td>962,844,948</td>
<td>-29%</td>
<td>55,289</td>
<td>193,217</td>
<td>194,399</td>
<td>180,524</td>
<td>-69%</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td></td>
<td>136,772,800</td>
<td>110,094,496</td>
<td>95,771,799</td>
<td>74,064,996</td>
<td>85%</td>
<td>18,430</td>
<td>14,863</td>
<td>14,954</td>
<td>13,886</td>
<td>33%</td>
</tr>
</tbody>
</table>

*Top 10 UK hotel chains and top 10 UK restaurant chains are based on Statista data that lists hotels by number of rooms and restaurants by revenue. The companies shown above are those for which UK profit and employee data is shown in accounts. The brands that are part of the Statista listing but do not produce separate UK figures are Holiday Inn, Holiday Inn Express, Hilton, Doubletree, Best Western, Ibis and Subway.

** Costs Coffee and Premier Inn results are shown as part of Whitbread accounts, number of employee figures are only shown to 2017 as the company appeared to switch from FTE to headcount figures in 2018.

*** Greggs reported twice in 2016, the 2016 results result to year reporting to December 2016, 2015 results to year reporting to January 16.

**** Operating profit results cover UK and Ireland, number of employees also includes international business, though this only accounts for 15% of revenue.
<table>
<thead>
<tr>
<th>Employer</th>
<th>Operating profit on normal activities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Acadia*</td>
<td></td>
</tr>
<tr>
<td>Accord Housing Association Ltd**</td>
<td></td>
</tr>
<tr>
<td>Affinity Trust</td>
<td>1,729,062</td>
</tr>
<tr>
<td>Agincare Group Ltd</td>
<td>857,512</td>
</tr>
<tr>
<td>Allied Healthcare (Nestor Primecare Services Ltd)</td>
<td>17,192,000</td>
</tr>
<tr>
<td>Alternative Futures Group Ltd</td>
<td>-768,446</td>
</tr>
<tr>
<td>Anchor Trust*</td>
<td></td>
</tr>
<tr>
<td>Ark Health (Minmar 1004 Ltd)</td>
<td>-1,018,000</td>
</tr>
<tr>
<td>Avery (Avery Healthcare Holdings)</td>
<td>Incorporated</td>
</tr>
<tr>
<td>Barchester Healthcare Ltd</td>
<td>18,106,000</td>
</tr>
<tr>
<td>BUPA Group*</td>
<td></td>
</tr>
<tr>
<td>Care UK (Care UK Health and Social Care Holdings Ltd)</td>
<td>-53,500,000</td>
</tr>
<tr>
<td>CareTech Community Services (Caretech Holdings PLC)</td>
<td>17,815,000</td>
</tr>
<tr>
<td>Carewatch (Carewatch Care Services Ltd)</td>
<td>-5,585,000</td>
</tr>
<tr>
<td>Caring Homes (Myriad Healthcare Holding Ltd)</td>
<td>Incorporated</td>
</tr>
<tr>
<td>Choice Support</td>
<td>692,079</td>
</tr>
<tr>
<td>City and County Healthcare (C&amp;C Topco Ltd)</td>
<td>4,193,763</td>
</tr>
<tr>
<td>Clece Care Services Ltd</td>
<td>-2,492,114</td>
</tr>
<tr>
<td>Community Integrated Care</td>
<td>416,000</td>
</tr>
<tr>
<td>Countrywide Care Homes Ltd</td>
<td>878,000</td>
</tr>
<tr>
<td>Creative Support *</td>
<td></td>
</tr>
<tr>
<td>Dimensions (Dimensions UK Ltd)</td>
<td>2,357,000</td>
</tr>
<tr>
<td>Embrace (Future Life Group Ltd)</td>
<td>5,107,000</td>
</tr>
<tr>
<td>Excelcare Holdings Ltd</td>
<td>1,772,766</td>
</tr>
<tr>
<td>Four Seasons (Elli Investments Ltd)</td>
<td>-263,566,000</td>
</tr>
<tr>
<td>Gracewell</td>
<td></td>
</tr>
<tr>
<td>HC-One Ltd</td>
<td>-20,965,000</td>
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<tr>
<td>HF Trust Ltd</td>
<td>-1,087,000</td>
</tr>
<tr>
<td>Housing &amp; Care 21*</td>
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</tr>
<tr>
<td>The Human Support Group Ltd</td>
<td>1,286,658</td>
</tr>
<tr>
<td>Interserve Healthcare Ltd</td>
<td>1,901,000</td>
</tr>
<tr>
<td>Larchwood*</td>
<td></td>
</tr>
<tr>
<td>Leonard Cheshire Disability</td>
<td>7,886,000</td>
</tr>
<tr>
<td>Lifeways Community Care (Lifeways Finance Ltd)</td>
<td>5,695,179</td>
</tr>
<tr>
<td>Employer</td>
<td>Operating profit on normal activities</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Maria Mallaband Care (MMCG Holdings Ltd)</td>
<td>-1,788,000</td>
</tr>
<tr>
<td>Mears Care Ltd</td>
<td>-3,998,000</td>
</tr>
<tr>
<td>Methodist Homes</td>
<td>5,704,000</td>
</tr>
<tr>
<td>MiHomecare Ltd</td>
<td>-1,144,000</td>
</tr>
<tr>
<td>Minister Care Management Ltd</td>
<td>4,182,287</td>
</tr>
<tr>
<td>New Century Care (Custodes Midco Ltd)</td>
<td>-9,234,476</td>
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<td>Orchard Care Homes*</td>
<td></td>
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<tr>
<td>Orders of St John Care Trust</td>
<td>13,134,000</td>
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<tr>
<td>Radis Ltd</td>
<td>447,916</td>
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<tr>
<td>Royal Mencap Society</td>
<td>2,371,000</td>
</tr>
<tr>
<td>Runwood Homes</td>
<td>19,490,455</td>
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<tr>
<td>Sanctuary Care Ltd</td>
<td>9,379,000</td>
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<tr>
<td>Sevacare (UK) Ltd</td>
<td>1,523,721</td>
</tr>
<tr>
<td>Somerset Care Ltd</td>
<td>5,140,621</td>
</tr>
<tr>
<td>Sunrise Senior Living*</td>
<td></td>
</tr>
<tr>
<td>Thera Trust</td>
<td>408,623</td>
</tr>
<tr>
<td>United Response</td>
<td>477,000</td>
</tr>
<tr>
<td>Voyage Care Holdco Ltd</td>
<td>9,998,000</td>
</tr>
<tr>
<td>Westminster Homecare Ltd</td>
<td>326,698</td>
</tr>
<tr>
<td>TOTALS</td>
<td>-204,677,696</td>
</tr>
<tr>
<td>AVERAGE PER ORGANISATION</td>
<td>-4,992,139</td>
</tr>
</tbody>
</table>

* Consolidated financial results are not readily available as the group splits its operations into a number of separate companies that report separately

** Results are not shown as care operations account for a minority of the organisation's turnover