UNISON evidence to the Low Pay Commission on minimum wage rates for 2021

UNISON
the public service union

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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, three-quarters 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 goal for National Minimum Wage policy in the UK should be as follows:

- Raise the National Minimum Wage to the level of the UK Living Wage announced annually by the Living Wage Foundation and so rapidly close on a target of £10 an hour;
- Harmonise the National Minimum Wage rates into a single rate across all age groups.

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

- The planned steps toward achieving a "national living wage" at two-thirds of average earnings by 2024 should be maintained, with the only adjustment being to consider whether it is necessary to smooth the uplifts over the next two years to prevent major fluctuations before the economy is expected to return to a relatively steady state in 2022;
- The April 2021 increase in the minimum wage rates applicable to younger workers should at least build in the 3%-8% uplift needed in 2020 to restore their value of over a decade ago, in recognition that youth unemployment rates have dipped to their lowest level in over a decade and the growing gap with the "national living wage" will encourage "substitution" of workers;
- The April 2021 increase in the apprentice rate should at least bring it in line with the rate applicable to 16-17-year-olds;
- In recognition that introducing greater age equality by making workers aged 21 and over eligible for the "national living wage" puts a downward pressure on the average earnings figure against which the wage is calculated, an accompanying reform of gender equality should be made to peg the wage to two-thirds 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 contracts, 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;
- Recommendations should also go to the government that seek to improve enforcement of the National Minimum Wage in the following ways:
    - Accept and implement the recommendations previously made by the commission and reinforced by the Director of Labour Market Enforcement around what standard of minimum wage records employers have to keep;

- Strengthen the new payslip law so that employers are forced to provide a clear breakdown of all working time and the associated rates of pay and that employers are sanctioned if they refuse to comply;
- Reverse the recent changes to the naming and shaming scheme, with the HMRC publicly shaming employers who have been found to owe significant amounts of arrears;
- Change the self-correction system so that employers do not escape punishment for non-compliance with the minimum wage.

2. EXECUTIVE SUMMARY

General economic context

Summary

- An economic outlook already clouded by the uncertainty of the UK exit from the European Union now faces the unprecedented implications of the Covid-19 pandemic.
- Expectations of moderate GDP growth, unemployment remaining at record lows, inflation climbing steadily and average earnings remaining at relatively high levels for the last decade have been replaced with forecasts of a violent downswing in 2020 and a violent bounce back in 2021 before resuming patterns roughly in line with former expectations.
- The one major indicator remaining relatively steady in pre and post pandemic forecasts is inflation, which suggests that workers' wages will need to rise by a figure approaching 3% in 2021 simply to keep pace with the cost of living.
- The steering of the "national living wage" toward 60% of average earnings has taken place against the backdrop of muted economic growth while unemployment has continued to decline to record lows.
- Operating surpluses across the economy stood at £454bn in 2019, while payments to shareholders have been reaching an all-time high and escalating at a rate far in excess of GDP, average earnings and even "national living wage" growth rates.

Conclusions

- UNISON believes that the situation facing the Low Pay Commission as it starts to steer the "national living wage" to two-thirds of median earnings by 2025 bears strong similarities with the scenario in 2016 when it began the climb toward 60% of median earnings.
- At that time, there was much pessimism in many GDP forecasts produced in the immediate aftermath of the vote to leave the European Union. However, the commission held its nerve and kept on track to reach the target in the timeframe. UNISON believes that the commission was vindicated in its actions as the extreme scenarios laid out in some of those early forecasts never materialised and the target was reached without any significant discernible negative impact on employment.
- The inbuilt adjustment of the "national living wage" to changes in average earnings represents a powerful insurance against changed economic circumstances. The 2020 target rate was £9.16 in 2016 but actually came in at £8.72 because of those adjustments.
- Economic forecasting of the impact of unprecedented pandemic response measures is uncharted territory and so should be treated with caution. Care should also be taken in reading across the impact on GDP to the impact on individual employers, because of the enormous cushioning of the impact provided to employers by the state.

- UNISON believes that the only adjustment that may be necessary to the planned path toward two-thirds of average earnings is to smooth the changes to the rate and avoid violent fluctuations arising from the impact of Covid-19 response measures on the economy in the near-term. Therefore, it may be appropriate to base the 2021 minimum wage rates on a half-way step toward where average earnings are expected to be by 2022, when most forecasters are predicting the economy will be returning to a steady state.
- Predicted changes in the cost of living mean that an increase approaching 3% would be needed simply for the real value of the minimum wage to stand still. This point also reflects the weakness of linking the National Minimum Wage to average earnings rather than UNISON's preferred method of linking the wage to the change in prices faced by workers, in line with the methodology of the Living Wage.

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.
- Vacancy data in low-paying sectors offers no sign of the minimum wage creating difficulties for finding employment in those sectors.
- Early indications point to staff in the low-paying sectors taking the brunt of the impact on earnings during the Covid-19 pandemic.
- 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 over £900 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.
- The Living Wage has made major strides across the public sector's directly employed workforce. The education sector is where the lowest wages now predominate and it is only on this sector that significant increases would have been needed to reach the anticipated 2021 NLW target before the Covid-19 pandemic.
- 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.

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.
- 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.
- 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[1], which found some evidence that employers had responded to the introduction of the "national living wage" by intensifying use of zero-hours contracts.
- 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, as has been demonstrate by Scotland's initiative for social care workers.
- The Low Pay Commission should recognise that UK's lowest paid workers are the most likely to have experienced a further drop in pay during the Covid-19 pandemic. They should not be expected to pay a further price in 2021 by curtailment of the planned path to two-thirds of average earnings.

[1] N Datta, G Giupponi, S Machin, Zero Hours Contracts and Labour Market Policy, October 2018

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 21-year-old differently to a 20-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 to morale and productivity caused by differentiation;
  - Unemployment rates for 18-24-years-olds are at their lowest in around 15 years and their lowest for 16-17-year-olds in 17 years;
  - While the real value of the minimum wage for workers aged 21 and over has been maintained over the last decade, inflation has taken major chunks out of the value of rates for younger workers.
- 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 to restore the real value of youth rates to their 2009 level are a modest minimum target in the short term – 3% for 18-20-year-olds and 8% for 16-17-year-olds.
- Bringing the apprentice rate in line with that for the 16-17-year-olds represents a minimum step forward.

Enforcement of the National Minimum Wage

Summary

- The Director of Labour Market Enforcement and Low Pay Commission have made welcome calls and commitments over the last year concerning measures to ensure sufficient records for workers to enforce their rights and enforcement within the social care sector in particular.
- An exhaustive UNISON survey of homecare workers has shown the widespread inadequacy of payslip regulations in enabling staff to identify whether they have been paid the minimum wage for all their hours worked.
- The raising of the threshold for naming and shaming of employers has enabled an estimated 40% of social care employers to escape public censure for failing to pay the National Minimum Wage.
- Self-correction, covering enormous sums in unpaid wages, adds to the ability of employers to avoid proper penalties and escape naming and shaming,

Conclusions

- We urge the government to accept and implement the recommendations made by the Director of Labour Market Enforcement and the Low Pay Commission around what standard of minimum wage records employers have to keep.
- The government's new payslip law needs to be strengthened so that employers are forced to provide a clear breakdown of all working time and the associated rates of pay and that employers are sanctioned if they refuse to comply.
- The recent changes for the naming and shaming scheme needs to be reversed and HMRC needs to ensure that the employers who have been found to owe significant amounts of arrears are publicly shamed.
- Changes should be made around self-correction so that employers do not escape punishment for non-compliance with the minimum wage.

3. GENERAL ECONOMIC CONTEXT

Almost simultaneously with the government providing the Low Pay Commission with a remit to steer the highest tier of the National Minimum Wage to 60% of average earnings by 2020, the 2016 UK vote to leave the European Union put a cloud of uncertainty over the economy.

The official departure of the UK from the European Union on 31 January has not ended that uncertainty, as the terms of trade with the EU after the close of the transition period on 31 December are still unknown.

This confused picture has now been compounded enormously by the Covid-19 pandemic, which spread across the globe with such speed in the early months of 2020 and has curtailed economic activity in the UK on an unprecedent scale since the introduction of "lockdown" measures on 23 March.

Consequently, little consensus has yet emerged on the depth and duration of the downturn or the speed and scale of the bounce-back.

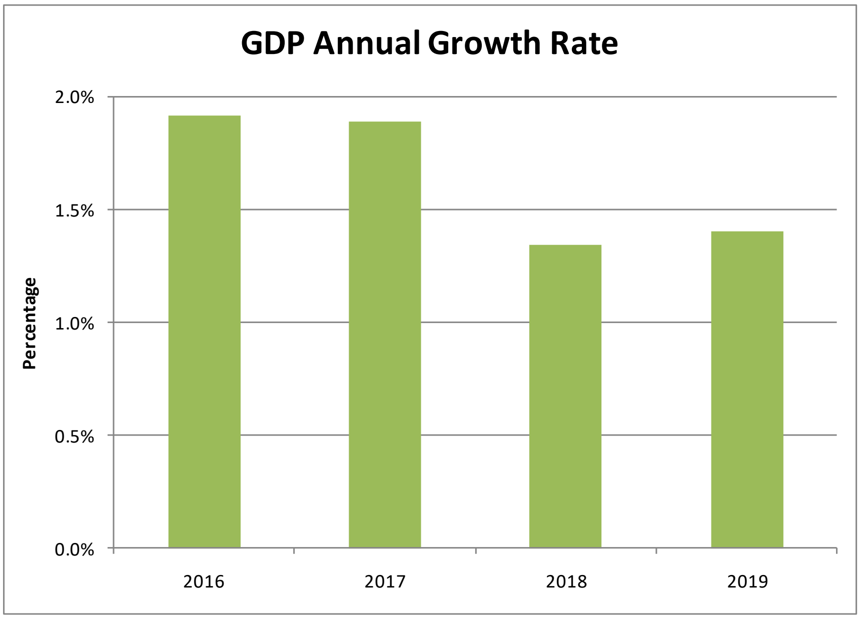
However, we set out below the main trends in terms of economic growth, unemployment, inflation and average earnings since the government embarked on an acceleration in National Minimum Wage increases, alongside our commentary on those trends.

For future developments, we draw on the few forecasts made since the "lockdown" began. Firstly, the Office for Budgetary Responsibility (OBR) reference scenario, published on 14 April, based on expectations of an economy under heavy restrictions for three months followed by three months of partial restrictions. Secondly, the Treasury summary of independent forecasts, published on 16 April, which sets out the average of new forecasts by 25 major analysts over the first two weeks of April.

3.1 Economic growth and surpluses

Since the introduction of the "national living wage," the value of UK economic output, as measured by the Gross Domestic Product (GDP), has shown modest annual growth - 1.9% in 2016 and 2017, followed by 1.3% in 2018 and 1.4% in 2019.

Despite the modest level of growth, operating surpluses across the UK economy increased to £454 billion in 2019, while dividend payments made to shareholders reached a record high in 2019 – hitting a payout of £110.5 billion. On average, dividend payments have been rising at 9% a year since the introduction of the "national living wage."



Source: Office for National Statistics (GDP based on chained volume measure seasonally adjusted)

The OBR Economic and Fiscal Outlook published on 11 March, shortly before lockdown measures came into force, had been predicting GDP growth of 1.1% in 2020, followed by 1.8% in 2021.

However, the lockdown has now triggered predictions of dramatic swings in GDP over the next two years.

The OBR's reference scenario sets out the expectation that the second quarter will see a 35% drop in GDP on the previous quarter, before increases of 27% in the third quarter and 21.3% in the fourth quarter.

However, it should be noted that the scale of decline predicted by the OBR is at the top end of forecasts and analysts differ wildly in their predictions. KPMG puts the downturn at between 2.1% and 3.9%, Bloomberg predicts 9%, Capital Economics 15% and the OECD 25%[2].

[2] All forecasts were published at the end of March following the lockdown coming into effect on 23 March

In terms of the annual 2020 decline, the OBR puts the figure at 12.8%, Morgan Stanley estimates 5.1% and KPMG between 2.6% and 5.4%.

Beyond 2020, the OBR is predicting 17.9% growth in 2021, before returning to the typical levels of recent years - 1.5% in 2022, 1.3% in 2023 and 1.4% in 2024.

The latest Treasury summary of independent forecasts[3] puts GDP decline at 5.8% in 2020 followed by 5% growth in 2021.

UNISON believes that care should be taken in reading across from the macroeconomic picture of gross domestic product reductions to the microeconomic experience of individual employers during the pandemic.

Among public sector organisations and contractors dependent on public sector funding, budgets have not been cut and government procurement guidance has sought maintenance of funding to contractors.

Outside of public services, the Job Retention Scheme has dramatically cushioned the impact for employers, providing 80% of wage costs up to a monthly limit of £2,500 for each employee, together with the cost of National Insurance and pension auto-enrolment contributions.

And even within public services, the scheme has been made available for certain types of employee unable to work during the pandemic, such as staff with vulnerable conditions who are subject to the government's 12-week shielding requirement, and staff with substantial caring responsibilities, such as those with children affected by school closures.

Therefore, the decline in economic output measured by GDP will be much more acute than the decline in the revenue experienced by employers.

That is not to deny that some employers face significant non-wage costs while their revenues have dwindled, but it can be expected that some non-wage variable costs will have diminished substantially and many fixed costs will have been deferred through delays in scheduled mortgage, rental and taxation payments.

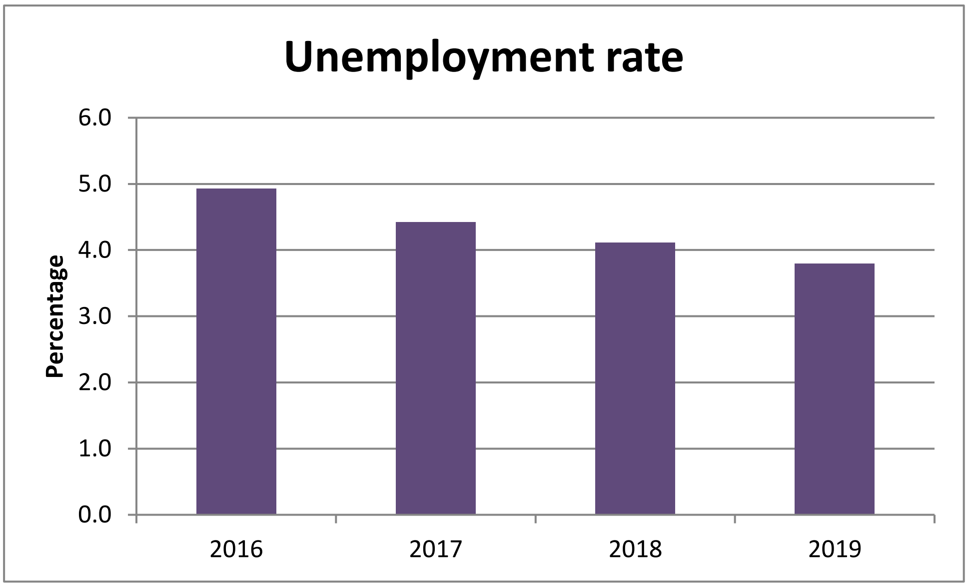
Although these fixed costs are liable to bear down on profits for a period after restrictions end, this is also likely to be accompanied by a surge in demand that will leave a pattern of displaced output from one period to another rather than a total loss of output.

[3] Treasury, Forecasts for the UK Economy, April 2020

3.2 Unemployment and turnover rates

The unemployment rate across the economy has declined markedly over the last eight years, with the proportion of the adult economically active population classified as unemployed dropping from 8.1% in 2011 to 3.8% by 2019. Consequently, the unemployment rate fell to its lowest level in 45 years.

That general decline has persisted since the accelerated increases in the "national living wage" from 2016, as reflected in the graph below.



Source: Office for National Statistics, Labour Market Statistics – Rate is for workers aged 16 and over, seasonally adjusted

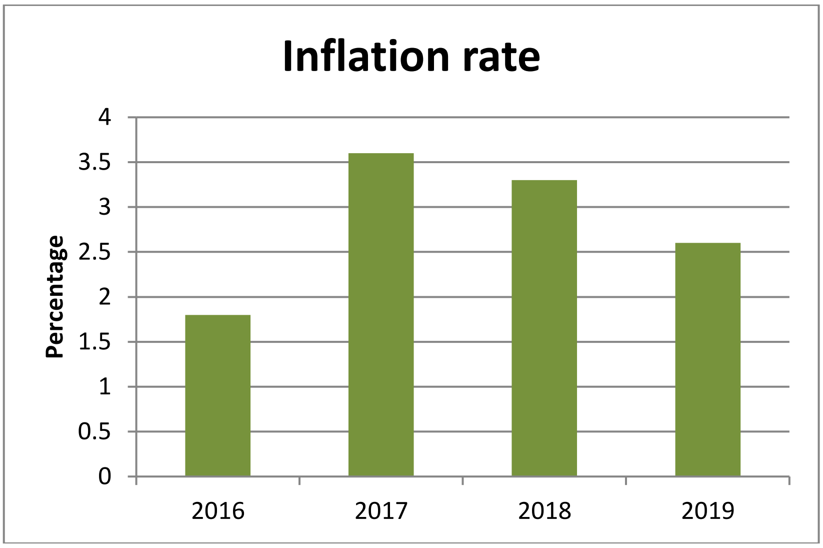
The OBR Economic and Fiscal Outlook had been predicting that unemployment would stick at 3.8% for the next two years before edging up to 4.1% by 2024. The OBR's revised predictions in light of the Covid-19 pandemic are that the unemployment rate will show a sharp jump to 10% in the second quarter, before falling back to 7% by the fourth quarter. It expects the annual rate to stand at 7.3% in 2020, before falling back to 6 4% in 2021 and then to figures approximating to pre-pandemic forecasts – 4.5% in 2022, 4% in 2023 and 4.1% in 2024.

The Treasury average of independent forecasts puts the 2020 figure at 6.9% and the 2021 figure at 5.5%.

With vacancies across the economy showing an ascent prior to the pandemic, choices available to workers had been improving. The 2019 XpertHR labour turnover survey continued to demonstrate a long-term rise in the average voluntary resignation rate in the economy to 14.6% from 9.3% in 2011.

3.3 The cost of living

The inflation rate experienced by workers jumped markedly after the first year of the "national living wage" to 3.6% and remained in excess of 3% until dipping to 2.6% over the course of last year.



Source: Office for National Statistics, UK Consumer Price Inflation, Rate as measured by the Retail Prices Index

The OBR Economic and Fiscal Outlook had predicted that RPI would run at 2.2% during 2020, rise to 2.7% in 2021 and then stabilise around the 3% mark for the following three years.

The OBR's revised predictions in light of the Covid-19 pandemic dropped RPI to 1.8% in 2020, but then raised subsequent rates to 2.9% in 2021, 3.4% in 2022, 3.2% in 2023 and 3% in 2024.

The Treasury average of independent forecasts puts the 2020 figure at 1.4%, followed by 2.7% in 2021.

We also bring to the attention of the commission in this section the scale of increases in the cost of living faced by workers over the last decade. Between 2010 and 2019, the cumulative increase in prices amounted to 34%.

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

Expenditure item	**House prices**	**Bus & coach fares**	**Electricity**	**Rail fares**
Price rise 2010-19	36%	54%	59%	36%

Source: Office for National Statistics, Consumer Price Inflation Tables

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 under-estimates 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 a common reference point for pay negotiations.

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:

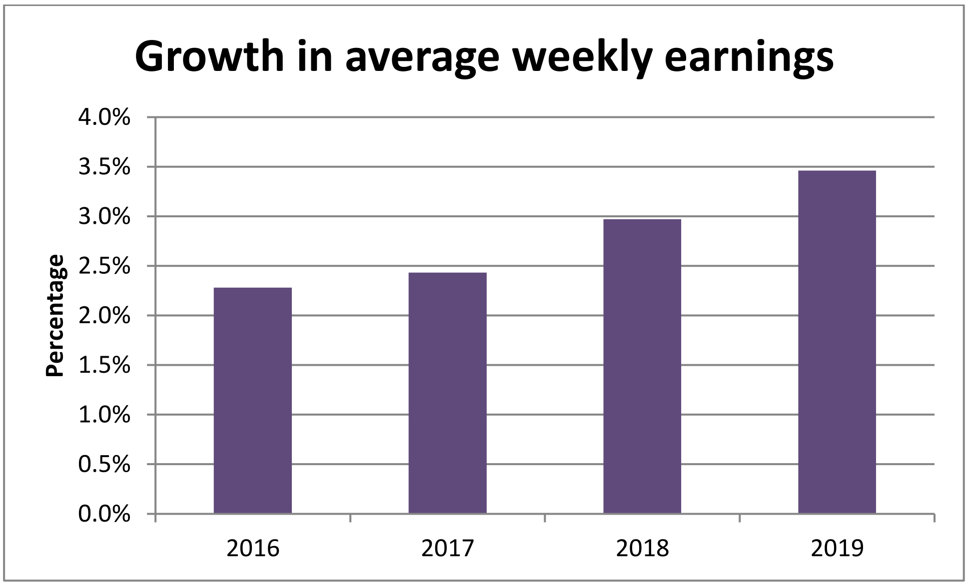
- All mobile phone tariffs charged by the major providers - O2, Vodafone, Three, EE
- Annual reviews of property rental – historically, RPI has been the standard benchmark;
- Annual uprating of private sector pension payments;
- Contracts for ongoing services e.g. RPI is commonplace as the agreed uprating 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 markedly since the introduction of the “national living wage,” rising from 2.3% in 2016 to 3.5% in 2019 – the highest growth rate in over a decade.



Source: Office for National Statistics, Labour Market Overview Tables, Average Weekly Earnings Seasonally Adjusted Total Pay

The OBR Economic and Fiscal Outlook had predicted that average earnings would run at 3.3% during 2020, rise to 3.6% in 2021 and remain in excess of 3% for the following three years.

The OBR’s revised predictions in light of the Covid-19 pandemic are that average earnings will fall 7.3% in 2020, rebound by 18.3% in 2021, then grow at 1.6% in 2022, 2.5% in 2023 and 3.1% in 2024

Summary

- An economic outlook already clouded by the uncertainty of the UK exit from the European Union now faces the unprecedented implications of the Covid-19 pandemic.
- Expectations of moderate GDP growth, unemployment remaining at record lows, inflation climbing steadily and average earnings remaining at relatively high levels for the last decade have been replaced with forecasts of a violent downswing in 2020 and a violent bounce back in 2021 before resuming patterns roughly in line with former expectations.
- The one major indicator remaining relatively steady in pre and post pandemic forecasts is inflation, which suggests that workers' wages will need to rise by a figure approaching 3% in 2021 simply to keep pace with the cost of living.
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- Operating surpluses across the economy stood at £454bn in 2019, while payments to shareholders have been reaching an all-time high and escalating at a rate far in excess of GDP, average earnings and even "national living wage" growth rates.

Conclusions

- UNISON believes that the situation facing the Low Pay Commission as it starts to steer the "national living wage" to two-thirds of median earnings by 2025 bears strong similarities with the scenario in 2016 when it began the climb toward 60% of median earnings.
- At that time, there was much pessimism in many GDP forecasts produced in the immediate aftermath of the vote to leave the European Union. However, the commission held its nerve and kept on track to reach the target in the timeframe. UNISON believes that the commission was vindicated in its actions as the extreme scenarios laid out in some of those early forecasts never materialised and the target was reached without any significant discernible negative impact on employment.
- The inbuilt adjustment of the "national living wage" to changes in average earnings represents a powerful insurance against changed economic circumstances. The 2020 target rate was £9.16 in 2016 but actually came in at £8.72 because of those adjustments.
- Economic forecasting of the impact of unprecedented pandemic response measures is uncharted territory and so should be treated with caution. Care should also be taken in reading across the impact on GDP to the impact on individual employers, because of the enormous cushioning of the impact provided to employers by the state.

- UNISON believes that the only adjustment that may be necessary to the planned path toward two-thirds of average earnings is to smooth the changes to the rate and avoid violent fluctuations arising from the impact of Covid-19 response measures on the economy in the near-term. Therefore, it may be appropriate to base the 2021 minimum wage rates on a half-way step toward where average earnings are expected to be by 2022, when most forecasters are predicting the economy will be returning to a steady state.
- Predicted changes in the cost of living mean that an increase approaching 3% would be needed simply for the real value of the minimum wage to stand still. This point also reflects the weakness of linking the National Minimum Wage to average earnings rather than UNISON's preferred method of linking the wage to the change in prices faced by workers, in line with the methodology of the Living Wage.

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 2021, this chapter looks at developments in specific factors affecting low income groups. It encompasses the scale of low-paid employment in the UK, the spread of the Living Wage across the economy and developments within the public services where UNISON represents members.

4.1 Scale of low pay in the UK

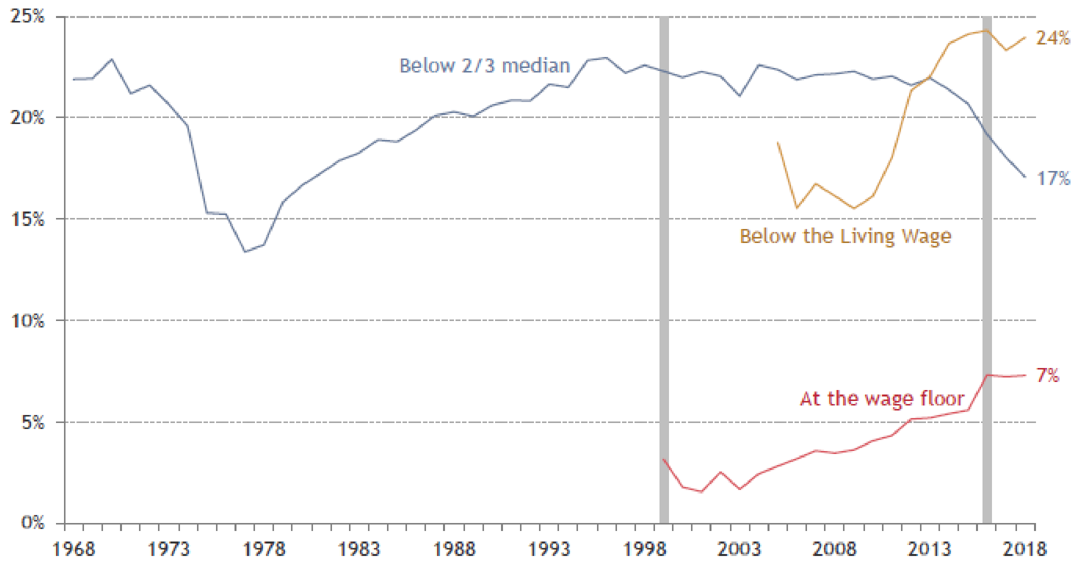
The Resolution Foundation's 2019 Low Pay Britain report has again produced an exhaustive analysis of the scale of low pay in Britain[4].

The research found that:

- Close to one-in-five employees (17% or 4.7 million individuals) are paid less than two-thirds of median gross hourly earnings in Britain.
- Close to one-in-four employees (24% or 6.5 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.

Proportion of all employees below selected low pay thresholds: 1968-2018, GB



Sources: RF analysis of DWP, *Family Expenditure Survey;* ONS, *New Earnings Survey Panel Data* (NESPD); ONS, ASHE

The graph shows the startling disparity between those paid below the two-thirds of median earnings threshold and those paid less than the Living Wage. While the former has been on a sustained decline, sub-Living Wage rates displayed a sharp increase after the 2008 financial crisis when cost of living increases ran well above average earning growth. The proportion below the Living Wage has flattened out over the last three years, but remains just under a quarter of the workforce.

[4] Resolution Foundation, Low Pay Britain, May 2018

Analysis by the Joseph Rowntree Foundation in its 2019 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 proportion of workers in poverty has risen from 10% to 13% over the last two decades.

Poverty has also shifted away from its former predominance among non-working families, to the point that 56% of poverty in the UK is now found in families where someone works.

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 2019 report included the following data on the proportion of staff falling below the two-thirds of median earnings threshold:

- Men 14% / Women 21%
- 16-to-20-year-olds 72% / 21-to-24-year-olds 31%
- Highest regional rate East Midlands 22% / Lowest regional rate London 9%
- Part time contract 35% / Full-time contract 10%
- Temporary or casual contract 27% / Permanent contract 16%
- Private sector 22% / Third sector 12% / Public sector 6%
- Firms employing less than 10 staff 30% / Firms employing more than 250 and less than 5,000 staff 16% / Firms employing 5,000 staff or more 22%

4.2 Labour market developments

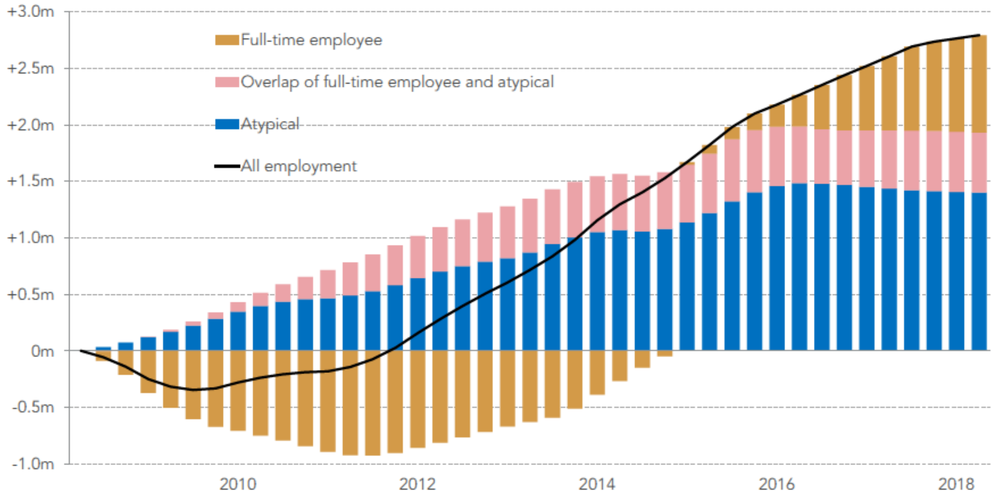
Alongside the increase in low pay when wages are compared against the cost of living rather than average earnings, the latest Annual Survey of Hours and Earnings (ASHE) data suggests that changes to the types of contracts on which staff are employed are also acting as a brake on the benefits of the “national living wage” for workers. ASHE data released in 2019 showed that while 16% of the workforce are paid less than two-thirds of average earnings in hourly terms, 27% are paid less than two thirds of the average in weekly terms. Since 2015, prior to the NLW, low pay measured by hourly earnings has dropped 5% while in terms of weekly earnings the decline has been 2%[5].

The Resolution Foundation’s Setting the Record Straight report[6] offers some of the most compelling evidence for how the changing nature of the labour market may have contributed toward this disparity. The graph below taken from the report shows how over two-thirds of employment growth since the 2008 recession has come in the form of “atypical” work - self-employment, part-time, temporary, agency and zero-hours jobs.

[5] ONS, Low and High Pay in the UK, 2019
[6] Resolution Foundation, Setting the Record Straight, January 2019

Figure 28: Atypical work has accounted for the majority of post-recession employment growth

Change in employment since 2008, 16+ year olds

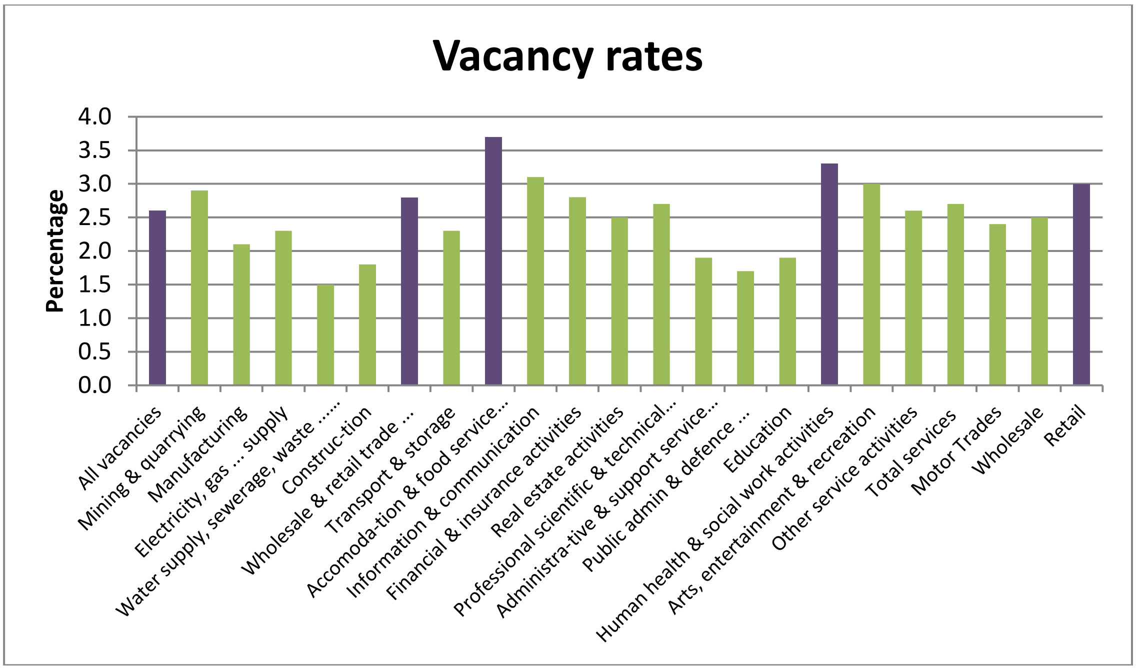


Source: RF analysis of ONS, *Labour Force Survey*

4.3 Vacancy rates in low-pay sectors

Vacancy data for low-paying sectors fails to offer any suggestion of damage to employment prospects as a result of the "national living wage." The average vacancy rate across the economy currently stands at 2.6%,[7] 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. In fact, two of the sectors have the highest vacancy rates in the entire economy, as shown by the graph below.

[7] Office for National Statistics, Labour Market Statistics, April 2020


Vacancy rates
Percentage
4.0
3.5
3.0
2.5
2.0
1.5
1.0
0.5
0.0
All vacancies
Mining & quarrying
Manufacturing
Electricity, gas ... supply
Water supply, sewerage, waste ......
Construc-tion
Wholesale & retail trade ...
Transport & storage
Accomoda-tion & food service...
Information & communication
Financial & insurance activities
Real estate activities
Professional scientific & technical...
Administra-tive & support service...
Public admin & defence ...
Education
Human health & social work activities
Arts, entertainment & recreation
Other service activities
Total services
Motor Trades
Wholesale
Retail

4.3 Earnings in low-pay sectors

All the early indications are that the low-paid have taken the brunt of damage to employees' standard of living during the pandemic.

Analysis by the Institute for Fiscal Studies[8], came to the following conclusions:

- Low earners are seven times more likely than high earners to have worked in a sector that has been shut down. The impact follows a remarkably straight line from one-third of employees in the bottom tenth of the earnings distribution to just 5% of those in the top 10%.
- The lockdown has hit young workers the hardest, with nearly a third (30%) of all employees under the age of 25 working in a sector that has been shut down, compared to 13% of those aged 25 or over.
- Closures have been most prevalent among restaurants, shops and leisure facilities, while air travel has been halted and public transport has been greatly reduced. Therefore, workers in the notoriously low-paying sectors of retail and hospitality have felt the biggest impact. This picture of retail and hospitality workers suffering the greatest damage was also confirmed by subsequent analysis published by the Resolution Foundation[9].

For workers on the National Minimum Wage, it should also be noted that the Job Retention Scheme allowed employers to reduce payments to 80% of the minimum wage rate for the duration of any period on furlough unless they were engaged in some form of training that was not beneficial to the employer.

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 2019 figure at £18,800 for a single person and £20,600 each for a couple with two children[10].

The 2019 increase again highlighted the inadequacy of the Consumer Price Index (CPI) as a measure of changed costs facing workers, by noting that the essential living costs of home energy, public transport and council tax pushed the minimum cost of living up by 3.6% in the past year while CPI was running at 2.1%. Similarly, families requiring childcare experienced increases of between 3% and 4% in nursery fees.

The foundation noted the benefits that the "national living wage" has generated but stated that a single person on the minimum wage still fell £36 a week short of the MIS, while for couples with children the shortfall was £47. It noted that part of the explanation for this lay in falling state financial support. Consequently, a "couple with two children working full time on the "national living wage" falls 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."

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[8] IFS, Sector Shutdowns during the Coronavirus Crisis: Which Workers are Most Exposed?,

[9] Resolution Foundation, Launching an Economic Lifeboat, April 2020

[10] Joseph Rowntree Foundation, A Minimum Income Standard for the UK, July 2019

The MIS basket of goods feeds into the calculation of the Living Wage, which is announced every November by the Living Wage Foundation. In 2019, the rate for outside of London was set at £9.30 and the rate for London was set at £10.75 an hour.

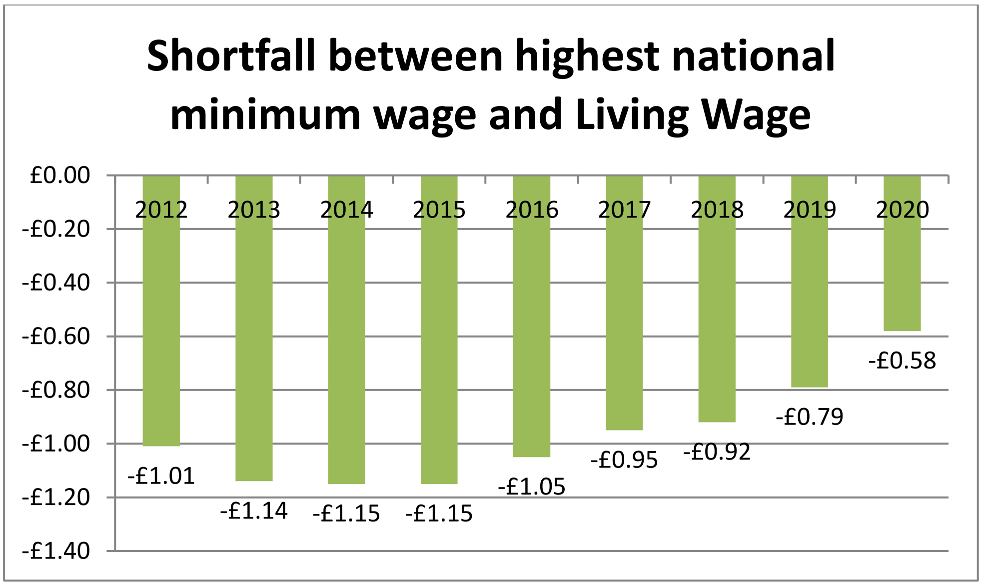
The £9.30 figure is a weighted composite of the wage needed by a variety of different household types. The hourly wage for different households ranges from £6.60 for a couple to £23.55 for a lone parent with three children.

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 almost 6,000 employers accredited as Living Wage employers by the Living Wage Foundation, a figure that has grown from around 200 just eight 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.”



However, for a full-time worker on a 37-hour week, the highest National Minimum Wage is still over £900 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 140 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.

4.4 Developments in public services

Among the principal public sector bargaining groups where UNISON represents members, the table below shows the lowest rate within each group and the percentage gap that rate displays in comparison to the current "national living wage."

UNISON bargaining groups	Last pay settlement date	Lowest annual pay rate (£)	Lowest hourly pay rate (£)*	% above NLW rate
Local government (England, Wales & Northern Ireland)	01/04/2019	17364	9.00	3.2%
Local government (Scotland)	01/04/2020	18019	9.34	7.1%
NHS Agenda for Change (England and Wales)	01/04/2020	18005	9.21	5.6%
NHS Agenda for Change (Scotland)	01/04/2020	18478	9.45	8.4%
NHS Agenda for Change (Northern Ireland)	01/04/2020	18005	9.21	5.6%
Higher education	01/04/2020	16825	8.72	0.0%
Further education (England)	01/04/2020	16825	8.72	0.0%
Sixth Form College support staff (England & Wales)	01/04/2020	16825	8.72	0.0%
Police staff (England & Wales)	01/09/2019	17799	9.23	5.8%
Police staff (Scotland)	01/09/2019	19221	10.53	20.8%
Probation Service	01/04/2019	17764	9.21	5.6%
Youth and Community Workers	01/09/2019	18117	9.39	7.7%

* 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, only the education sector does not already have a significant cushion for the next rise in the "national living wage" and eight of the 12 bargaining groups are already paying the £9.21 rate or above that had been the anticipated NLW 2021 rate before the Covid-19 pandemic.

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 made major inroads. Now long-established as the baseline in Scotland across all public sector organisations, 2019 pay deals took minimum rates to at least the then prevailing Living Wage in the NHS, local government, police and probation service, while framework agreements for support staff also set the Living Wage as the target in more than 12,000 schools across the UK.

In 2019, we estimated that the major steps forward in local government and the NHS had reduced the number of staff on wages below the Living Wage by over 140,000. With the issue mainly confined to education within the public sector, we estimated that approximately 10,000 university staff and 10,000 further education / sixth form college staff were paid below the Living Wage[11]. In higher education that represented less than 3% of the workforce, while among colleges, the figure was closer to 10%. UNISON has no reliable source of information on the situation within the highly fragmented school sector.

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.

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[12]. 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 2019 report entitled The State of the Adult Social Care Sector and Workforce in England, Skills for Care estimates that the sector has gone through a 22% increase in employment between 2009 and 2018, taking the number of jobs up 290,000 to 1.6 million workers. The minimum wage has not halted this growth, with employment expanding by 3.8% (60,000 jobs) since 2015, before 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 (rising to 43% in domiciliary care), median pay of private sector care workers was £8.10 in 2018/19 and over 500,000 care workers are paid below the Living Wage.[13]

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% (for care workers in domiciliary care the rate is 44%).

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[11] 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.

[12] Skills for Care, The State of the Adult and Social Care Workforce in England, October 2019

[13] IPPR, Fair Care, November 2018

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[14].

And while demand for social care is expected to continue to expand to the point that over half a million further workers will be needed in the sector by 2035 in England, the difficulties in attracting staff on current terms have been well documented and are anticipated to create a shortage measured in hundreds of thousands of workers[15].

However, UNISON notes that, to take on the difficulties in the sector, Scotland announced in April 2020 that it was uprating government funding to enable all adult social care workers to receive the Living Wage, including payment at the rate for sleepovers.

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.
- Vacancy data in low-paying sectors offers no sign of the minimum wage creating difficulties for finding employment in those sectors.
- Early indications point to staff in the low-paying sectors taking the brunt of the impact on earnings during the Covid-19 pandemic.
- 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 over £900 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.
- The Living Wage has made major strides across the public sector's directly employed workforce. The education sector is where the lowest wages now predominate and it is only on this sector that significant increases would have been needed to reach the anticipated 2021 NLW target before the Covid-19 pandemic.
- 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.

[14] Hft, Sector Pulse Check, 2018
[15] IPPR, Fair Care, November 2018

- 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.

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.
- 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.
- 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[16], which found some evidence that employers had responded to the introduction of the “national living wage” by intensifying use of zero-hours contracts.
- 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, as has been demonstrate by Scotland’s initiative for social care workers.
- The Low Pay Commission should recognise that UK’s lowest paid workers are the most likely to have experienced a further drop in pay during the Covid-19 pandemic. They should not be expected to pay a further price in 2021 by curtailment of the planned path to two-thirds of average earnings.

[16] N Datta, G Giupponi, S Machin, Zero Hours Contracts and Labour Market Policy, October 2018

5. 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.

5.1 Youth rate recent developments

UNISON greatly welcomes the commission's recommendation that prompted the government to reduce the age eligibility for the "national living wage" to 23 years next year and 21 years in 2024.

UNISON has always argued the case for removing the age tiers of the minimum wage in the context of moving the minimum on to the Living Wage. Therefore, we note with some concern that the impact of reducing the age eligibility in the context of the "national living wage" is to pull down the average earnings figure on which it is calculated.

Therefore, most minimum wage workers will pay a price for equalising the rates. In normal circumstances, this may have been well cushioned by the uplifts necessary to achieve a two-thirds of average earnings target. However, against the background of the Covid-19 pandemic, the age eligibility changes could see a further downward pressure on the NLW rate alongside the impact of the general economic slide.

Nonetheless, as set out in our earlier section on the economy, we see the solution to this as primarily lying in smoothing the changes in the rates on the basis of anticipated average earnings in 2022, when the economy is expected to return to a steadier state.

5.2 Injustice of youth rates recognised by most employers

Though recognising the positive steps taken by the commission, UNISON believes that the lower National Minimum Wage rates that continue to apply to young workers and apprentices remain a fundamentally unfair and discriminatory feature of the minimum wage system. 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.

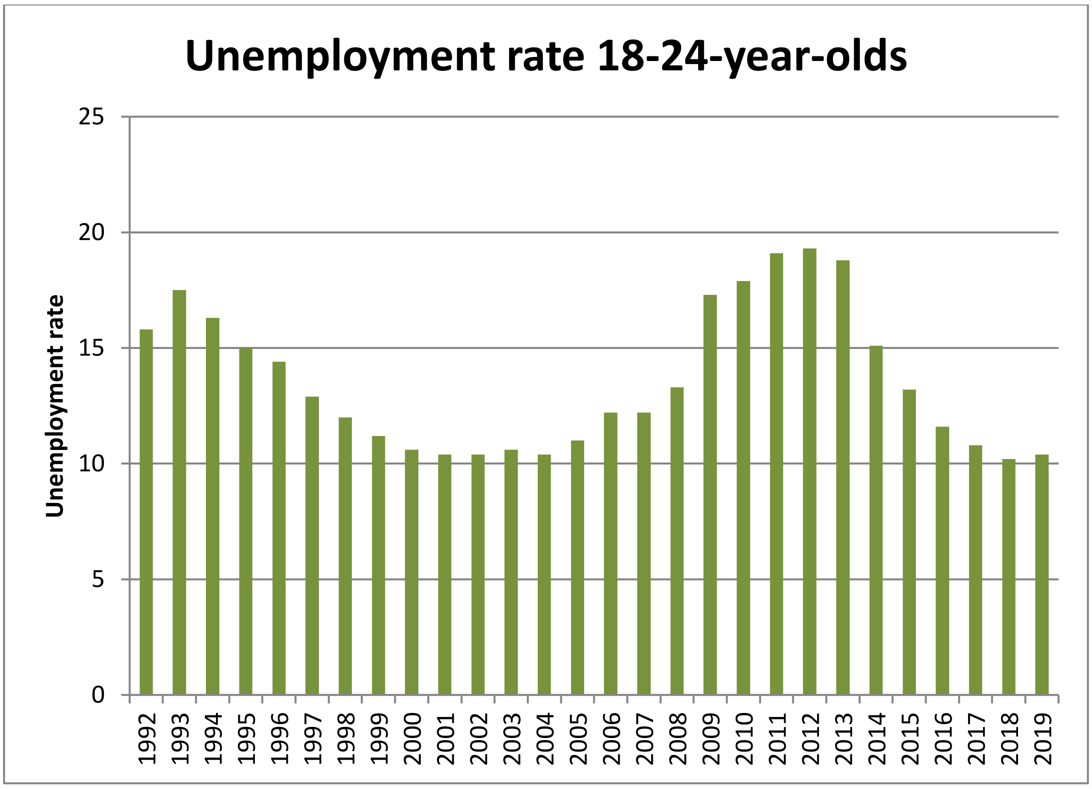
Even within the low-paying retail sector, research by Incomes Data Research for the Low Pay Commission has found that all the major supermarkets do not operate age related pay[17]. And, as noted in the previous chapter, no major public sector employer utilises the youth rates, preferring to apply the "national living wage" across the board.

[17] Incomes Data Research, The National Living Wage, October 2017

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.

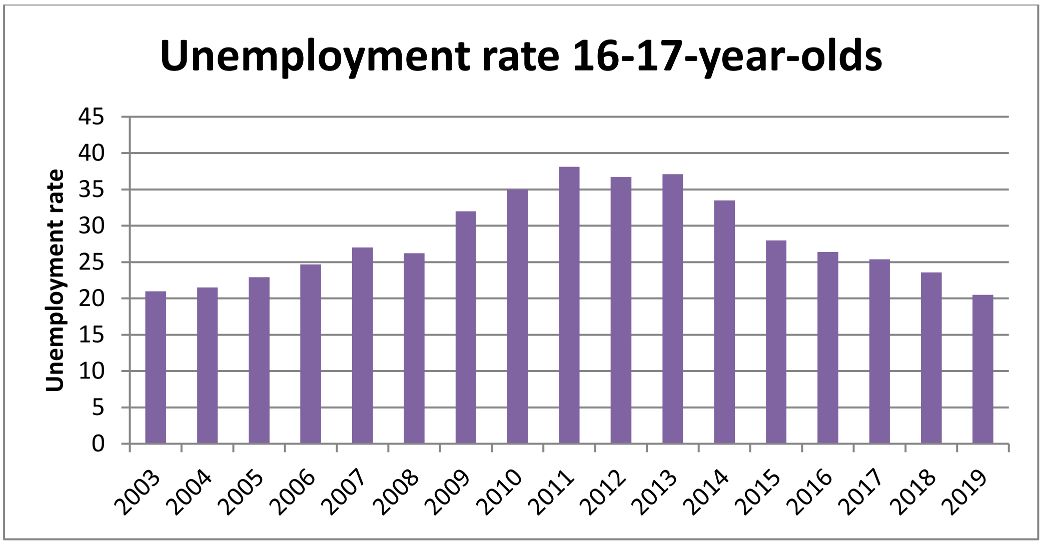
5.2 Employment and wage rates among young workers

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.



Source: ONS, Labour Market Statistics, April 2020 (seasonally adjusted rates)

Since 2012, the unemployment rate for 18-24-year-olds has almost halved and the 2019 rate remained around the lowest levels over almost three decades since ONS published figures begin.

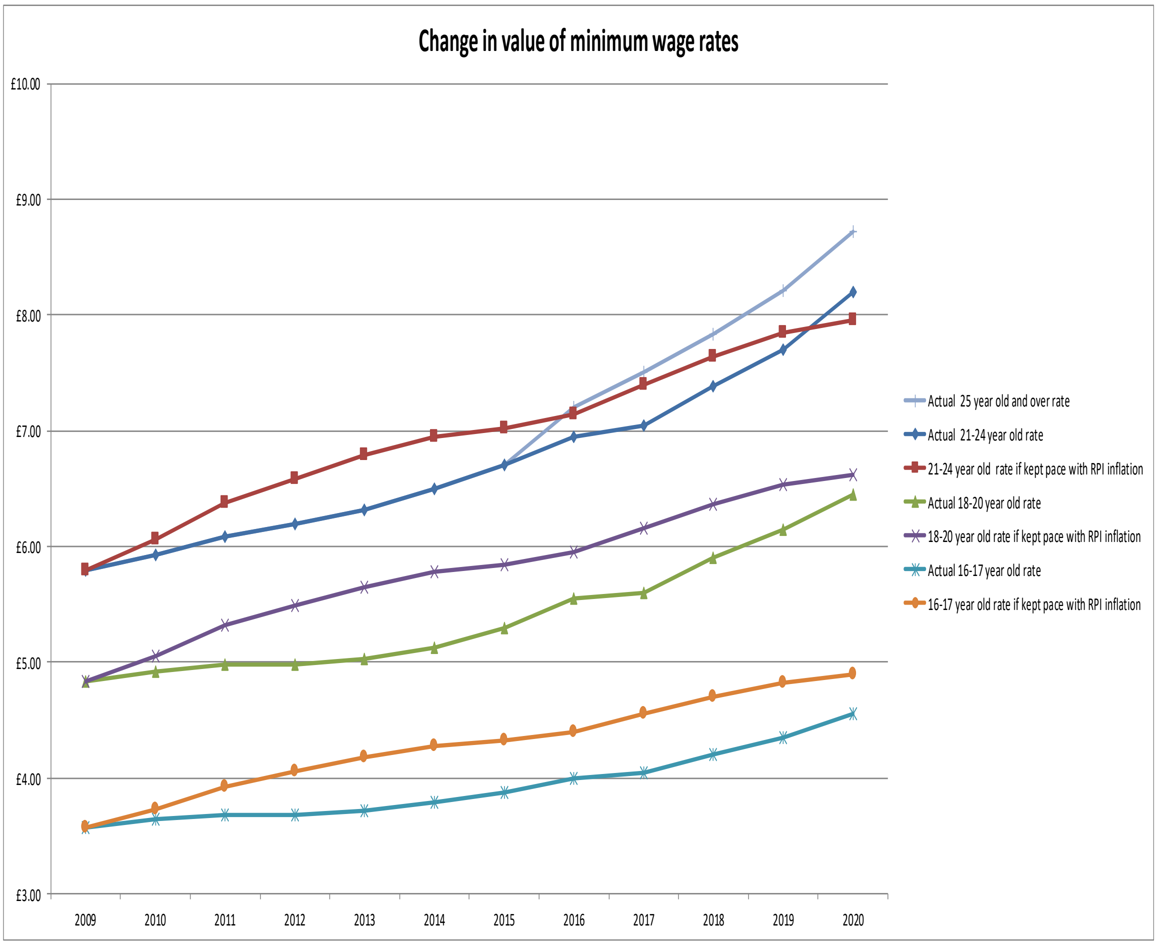


Source: ONS, Labour Market Statistics, April 2020 (seasonally adjusted rates)

Since 2011, the unemployment rate for 16-17-year-olds has almost halved and the 2019 rate was the lowest in 17 years.

5.3 Impact of inflation on value of youth rates

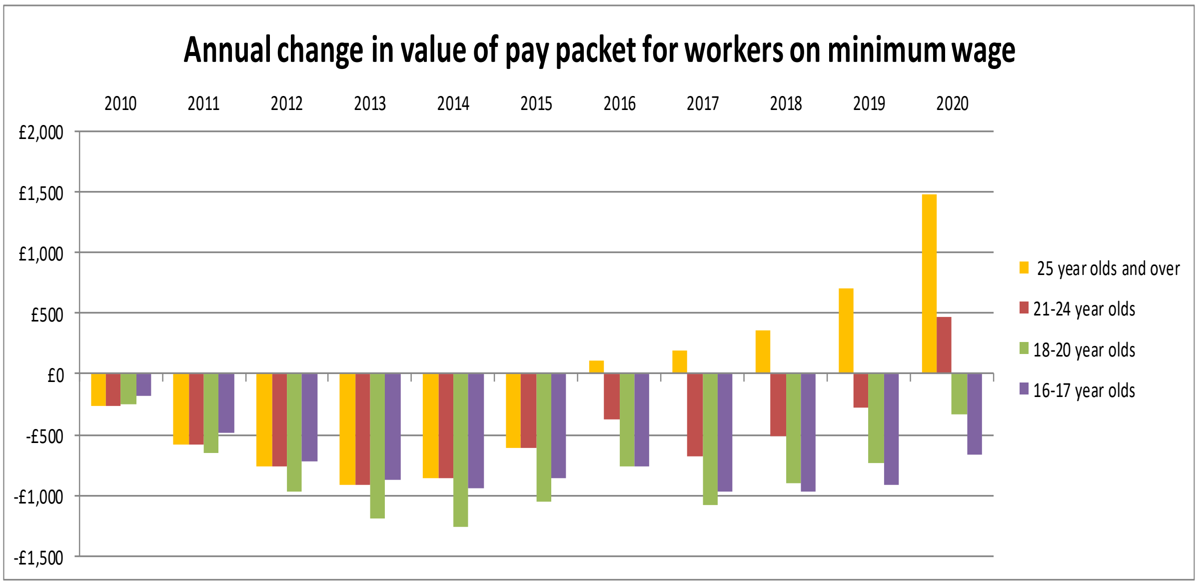
The graph below contrasts the path of the minimum wage rates with the path that they would have followed if they had kept pace with RPI inflation since 2009.



The graph shows that the real value of both rates for workers aged 21 or over exceeded their value more than a decade ago in 2009 for the first time.

However, both rates for those aged under 21 continue to lag behind their 2009 value – the rate for 18-20-year-olds is still worth 3% less and the rate for 16-17-year-olds is still worth 8% less.

This means that the value of a full-time minimum wage salary has followed changes 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 18-20-year-olds is still over £300 less than it was in 2009 and for 16-17-year-olds it has devalued by over £600. The cumulative impact of this devaluation since 2010 has been that, even now, workers aged 25 and over are £1,100 worse off than if their 2009 pay had kept pace with inflation. For 21-to-24-year-olds the pay packet hit has been £5,400, for 18-to-20-year-olds £9,200 and for 16-to-17-year-olds £8,400.

5.4 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[18], which was submitted alongside our evidence in 2017.

Many of the key findings of that research related to the 21-24-year-old age group. However, the following dimensions of the report continue to offer insights relevant to younger workers:

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 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.

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.

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[18] New Policy Institute, Young Adults and the Minimum Wage, June 2017

- 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 that 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.

5.5 Apprentice rate latest developments

UNISON welcomes the commission's latest analysis of the apprentice rate, which acknowledged much disuse of the rate for certain age groups (just 2% of those aged 25 or older in their first year) and the contribution of failure to pay for training hours in the huge numbers of apprentices not receiving their legal pay. We also see the consideration put forward by the commission to bring the apprentice rate in line with the youth rate for 16-17-year-olds as at least a positive step.

However, UNISON also remains of the view that the apprentice minimum wage is grossly inadequate and this position appears to have considerable support across both unions and 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.

In October 2018, the Commons Education Select Committee added their weight to concerns about the paltry rate that currently prevails by recommending[19] 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."

The most recent Apprentice Pay Survey[20] also confirmed the ability and willingness of employers to pay well above the apprentice minimum wage, with the finding that the median hourly pay for workers in their first year of the lowest grade apprenticeship stands at £6.85 – that's 65% above the apprentice minimum wage.

5.6 Research on the apprentice rate

In 2019, UNISON conducted a Freedom of Information survey on apprenticeships among 244 NHS Trusts across England. The responses revealed that almost two out of every three trusts paid more than the then prevailing apprentice minimum wage.

As part of UNISON's 2018 evidence, UNISON submitted research entitled "Apprentices and the Minimum Wage" by the New Policy Institute[21].

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.

[19] Commons Education Select Committee, The Apprenticeships Ladder of Opportunity, October 2018
[20] BEIS, Apprenticeship Pay Survey 2018/19 – Great Britain, January 2020
[21] New Policy Institute, Apprentices and the Minimum Wage, May 2018

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.

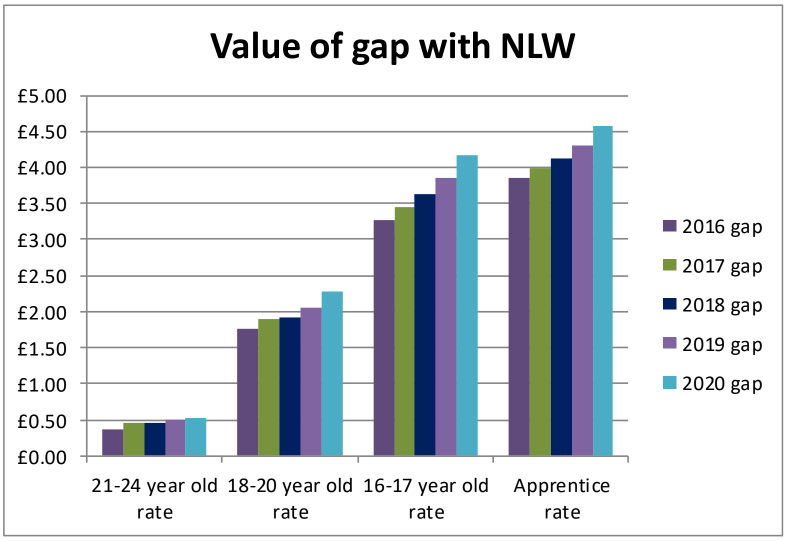
Higher wages may also improve both completion rates and retention rates. In this way, raising wages may indirectly encourage employers to offer more apprentice places in the long run, by reducing the net costs of apprenticeships as completion and retention rates rise. Improving completion rates is also 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.

5.7 Undermining of the "national living wage"

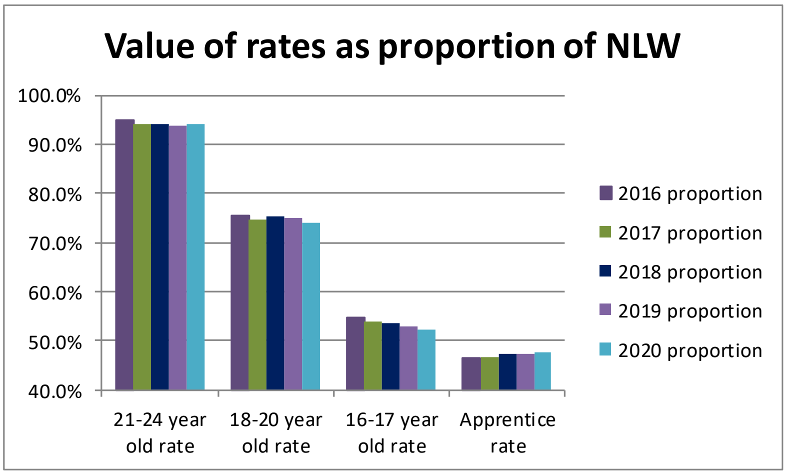
UNISON is concerned that the larger the gap between the "national living wage" and youth / apprentice rates the greater the incentive to violate equality legislation through age discrimination in the recruitment process and substitution of workers on full rates of pay.

The 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. Cost savings to an employer of an apprentice stand at over £4.50 an hour, for a 16-17-year-old at over £4 an hour and for an 18-20-year-old at over £2 an hour.

The graph below illustrates this trend.



As a proportion of the NLW, all rates have been in decline except the apprentice rate over the full period. This means that 21-24-year-olds are now on 94% of the NLW, 18-20-year-olds on 74%, 16-17-year-olds on 52% and apprentices on 48%.



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 21-year-old differently to a 20-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 to morale and productivity caused by differentiation;
  - Unemployment rates for 18-24-years-olds are at their lowest in around 15 years and their lowest for 16-17-year-olds in 17 years;
  - While the real value of the minimum wage for workers aged 21 and over has been maintained over the last decade, inflation has taken major chunks out of the value of rates for younger workers.
- 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 to restore the real value of youth rates to their 2009 level are a modest minimum target in the short term – 3% for 18-20-year-olds and 8% for 16-17-year-olds.
- Bringing the apprentice rate in line with that for the 16-17-year-olds represents a minimum step forward.

6. ENFORCEMENT OF THE NATIONAL MINIMUM WAGE

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.

6.1 Latest developments

The coronavirus outbreak has firmly put into the public's consciousness the importance of the work of social care workers and how undervalued they are. In addition to a growing recognition that care workers should have their pay rates increased, the crisis makes it even more unacceptable that endemic levels of non-payment of the minimum wage continue to occur in the sector.

Since our submission last year, we welcome the recommendation from the former Director of Labour Market Enforcement in his 2019/20 UK Labour Market Enforcement Strategy that BEIS/HMRC review the regulations on minimum wage records to be kept by an employer to set out the minimum requirements needed to keep sufficient records. We have long argued that poor quality minimum wage records act as a significant barrier to pay transparency and help to fuel non-payment of the minimum wage in the care sector. We are glad that, in their recent report on non-compliance, the Low Pay Commission join the Director of Labour Market Enforcement in recommending that the government reviews the regulations on records to be kept by an employer, to set out the minimum requirements needed to keep sufficient records. Whilst we are well aware of the demands that have been placed on the government by the pandemic, we urge them to announce whether they will be accepting this recommendation.

We also applaud the current Director of Labour Market Enforcement in making tackling non-compliance and enforcement in social care one of four areas of focus for his team's 2020/21 strategy. We also think it is appropriate to acknowledge that we welcome the willingness of both the Director of Labour Market Enforcement and the Low Pay Commission to meet with UNISON to discuss non-compliance issues in the social care sector.

Unfortunately, there remain a number of other problems that need to be addressed around non-compliance in the care sector.

6.2 Payslip changes

In April 2019, the government introduced a law that 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. Below, we build upon the concerns around this new law that we expressed in our submission last year.

In July 2019 we carried out a survey of 1,588 homecare workers who work variable hours.

714 homecare workers stated that they already had the number of hours that they had worked on their payslip prior to April 2019. This indicates that the measure would not lead to

any significant improvement to pay transparency for workers such as these because previous research from UNISON has shown that two-thirds of the workforce cannot tell from their payslip whether they have been paid properly. This is frequently because even where hours are recorded, they often do not reflect all hours worked. Instead, it shows only the scheduled contact hours, which do not correspond to the hours worked in practice, nor does it include time spent travelling.

702 homecare workers said they'd previously never had their hours worked listed on their payslips. Following the introduction of the new law, 54% of respondents still do not have the number of hours that they have worked listed on their payslips. This is a worrying finding, showing the new law has been ignored by a significant number of employers. This is not surprising given that there is no meaningful penalty for employers who refuse to adopt the new requirements. Instead, the burden is on individual workers to take their employer to an employment tribunal, which given the prevalence of zero hours contracts in the sector, is a daunting task. Additionally, the remedy available is for an employment tribunal to set out the details of the hours which should have been included in the payslip but were not. If a worker is on a zero-hours contract and works variable hours, these details will vary from pay period to pay period, raising the unrealistic proposition that workers would need to bring a claim in relation to every payslip if their employer did not change their practice. Furthermore, the UNISON survey also revealed that only 25% of the homecare workers knew that the government had introduced the new requirements around payslips, making it even more unlikely that employers will be held to account.

Of those homecare workers who responded to confirm that from April 2019 their hours worked are now listed on their payslips, only 56% say that the changes have made it easier for them to tell whether they have been paid properly for their working time. A sizeable 44% of those surveyed workers still struggle to establish whether or not they have been paid properly for all their working time.

From this same group of homecare workers, only 33% receive payslips that show how much travel time they have been paid for, whilst only 26% have payslips that list how much travel time they have worked. Almost three quarters (74%) of respondents from this group of homecare workers do not have information provided in their payslips which they require in order to verify whether or not they have been paid correctly in compliance with the National Minimum Wage. This is important information that HMRC would also require in order to determine whether employers are compliant with the National Minimum Wage as part of their enforcement role.

Over half (54%) of this homecare worker group state that they received payslips that clearly show if they have been paid different rates of pay for certain hours (e.g. a higher rate for working weekends or a lower rate for travel time). However, only 43% of these workers say it is now easy to tell from their payslip whether they are being paid for all the hours they're working (both travel time and contact time) and only 51% of them say that they think they are paid for all their working time. Of the workers who have seen their payslips change as a result of the new law, almost half, do not believe that they are paid for all their working time. So, even homecare workers whose employers have abided by the new law cannot determine whether they have been paid for all their working time.

By allowing homecare employers to avoid listing important information, such as how much travel time has been worked and what rates of pay they have received for what hours, the law continues to make it extremely difficult for homecare workers to tell if they have been paid for all their working time.

Most homecare workers surveyed already had the number of hours they had worked listed on their payslips before April 2019. When we look at their answers to the survey alongside the homecare workers who now have their hours listed from April, we still see that there are major problems and how this law has missed the mark.

Of the 1,588 homecare workers we surveyed only 39% say it is easy to tell from their payslip whether they are being paid for all the hours they're working (both travel time and contact time). Consequently, when asked if they believed that they were being paid for all the hours that they worked 47% said they did not. If we extrapolate these findings to the whole homecare workforce, then we can see just how unacceptable the situation is.

According to Skills for Care workforce report of August 2019, there are 685,000 jobs in the whole homecare sector, with 610,000 of these jobs being carried out by frontline homecare workers. Their research reveals that 58% of homecare workers are employed on zero-hours contracts. Therefore, as a minimum this gives a total of 353,000 workers who work variable hours. There could be more care workers who work variable hours but the data does not provide clarification on this. If the findings of UNISON's survey are applied to this figure we see the inadequacy of the new legislation:

Only 39% of these workers can easily tell from their payslip whether they've been paid for all their working time, equating to 137,670 workers.

Almost half (47%) of homecare workers believe that they are not being paid for all the hours that they work, equating to 165,910 workers.

The absence of pay transparency in the homecare sector demonstrates that the new measures introduced by the government continue to allow employers to obscure that they are not paying homecare staff for all the working hours to which the minimum wage applies and this in turn enables them to continue to pay unlawful wages. This new law, supposedly designed to help people who work variable hours determine whether they have been paid properly, does not benefit homecare workers and does not allow them to tell if they have been paid properly.

This is something that the government itself predicted in their Equality Impact Assessment (EIA) of the new payslip legislation. The EIA stated that, "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)...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."

The failure of the law to require employers to separate out contact time from travel time, despite repeated requests from UNISON, is a major barrier to pay transparency. By allowing employers to list how many hours workers have been paid for, rather than how many hours have been worked, further adds to the problem. The issue for workers is receiving pay for all the hours they have actually worked. We urge the government to recognise the shortcomings of this new law and take the steps outlined above to help tackle non-payment of the minimum wage in the care sector.

6.3 Changes to the naming and shaming scheme

Earlier this year, the government announced changes to the threshold that would result in employers being named and shamed for non-compliance with the minimum wage, increasing the level from £100 to £500. If we apply this new approach to past examples of social care employers who have been named and shamed then it would have resulted in 40% of the 140 care providers who have been named and shamed escaping this public censure because the arrears rates were below £500.

So whilst we have expressed criticisms with the scheme in the past, for instance around how low the arrears identified are and how they are too often only for individual workers, we believe that this new change is a retrograde step which will protect errant care employers. Indeed, the government in their 2018/19 evidence on compliance and enforcement highlight that the average level of arrears that HMRC was recovering per worker was just £110. Given that a significant proportion of employers have been named and shamed in the past with just arrears being identified for one individual worker (despite the likelihood that other workers would be subject to similar practices) further highlights the problem with this move.

6.4 Problems with self-correction

In February 2020, the government published their evidence on compliance and enforcement for 2018/19 and it highlighted problems with their reliance on self-correction. Table 7.1 shows that in 2018/19, 34 cases, each involving arrears of over £100,000, were closed for a total of over £17 million in arrears. These figures include arrears that were normally assessed (i.e. arrears assessed by HMRC) and those that were self-corrected. Only arrears that are normally assessed are subject to a penalty and are included in the naming announcements.

Yet again, this shows how self-correction, even for huge sums of money, allows employers to escape being named and shamed and being properly penalised. The government's evidence also shows that during the 2018/19 timeframe that 34 cases were closed with arrears in excess of £100,000.

UNISON has long highlighted how employers found to have significant levels of arrears avoid being named and shamed, so UNISON urges the Low Pay Commission to ask when the details of these employers will be made public. By making an example of such transgressors, UNISON believes it will help to improve minimum wage compliance.

Summary

- The Director of Labour Market Enforcement and Low Pay Commission have made welcome calls and commitments over the last year concerning measures to ensure sufficient records for workers to enforce their rights and enforcement within the social care sector in particular.
- An exhaustive UNISON survey of homecare workers has shown the widespread inadequacy of payslip regulations in enabling staff to identify whether they have been paid the minimum wage for all their hours worked.
- The raising of the threshold for naming and shaming of employers has enabled an estimated 40% of social care employers to escape public censure for failing to pay the National Minimum Wage.
- Self-correction, covering enormous sums in unpaid wages, adds to the ability of employers to avoid proper penalties and escape naming and shaming,

Conclusions

- We urge the government to accept and implement the recommendations made by the Director of Labour Market Enforcement and the Low Pay Commission around what standard of minimum wage records employers have to keep.
- The government's new payslip law needs to be strengthened so that employers are forced to provide a clear breakdown of all working time and the associated rates of pay and that employers are sanctioned if they refuse to comply.
- The recent changes for the naming and shaming scheme needs to be reversed and HMRC needs to ensure that the employers who have been found to owe significant amounts of arrears are publicly shamed.
- Changes should be made around self-correction so that employers do not escape punishment for non-compliance with the minimum wage.