



The Low Pay Commission

TUC response 2014

1: Introduction

The TUC is the UK's national trade union confederation. Our 54 affiliated unions represent 5.9 million people at work and our influence extends more widely through the coverage of trade union agreements and the advice that we give. The TUC is often said to constitute the voice of Britain at work.

This paper sets out the TUC's evidence to the Low Pay Commission's 2014 inquiry. Our submission looks at:

- the current economic situation and the prospects for 2015/ 2016, which is the period that the LPC's next report will cover;
- the case for further increases in the minimum wage rates for 2015, taking into account future economic prospects and the LPC's own consideration of the conditions that would lead it to enter a new phase of more generous recommendations; and
- the need to keep on building awareness and enforcement of national minimum wage rights.

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

- Employment has grown rapidly during the past year, and the low paying sectors are broadly keeping pace with (if not exceeding) growth in the rest of the economy.
- Economic growth and earnings growth are both forecast to strengthen during the coming years.
- Pay settlements continue to increase substantially faster than the ONS's measures of average weekly earnings, which is significantly impacted by a range of compositional effects.
- Economic modelling, including recent analysis conducted by the Treasury, suggests that the headroom for raising the minimum wage is substantial. Given that the recovery continues to strengthen, a well-judged increase that boosts the real value of the NMW would easily be absorbed by employers.
- There is both a moral and an economic imperative to ensure that the NMW plays as strong a part as possible in supporting the wages of low paid workers. Well-judged increases in the NMW help to increase labour supply by making work pay. The additional earnings are also an effective way of bolstering consumer demand without increasing private debt

liabilities, as minimum wage increases tend to go straight back into the local economy and boost the incomes of households who would otherwise only be able to improve their spending power through increased borrowing¹. Furthermore, NMW rises generate a modest but useful boost for the exchequer, as the tax/benefit equation improves.

- More must be done to raise awareness of the law and to enforce it. There have been incremental improvements to the regime including, this year, higher civil penalties and more naming and shaming. However, far too many employers are still getting away with non-compliance.

The TUC believes that it is now time for the Commission to make further progress in combating low pay by entering a new phase of more generous increases that are not bounded by the growth in average earnings. This is a year when the economy will be fully committed to recovery, and the evidence points to the scope for significant increases in NMW rates being substantial.

A revival of earnings growth is also a necessary component of a sustainable recovery, and the NMW has an important role to play in securing such a shift. Real household disposable incomes must rise if domestic demand is to be maintained.

It is not only the TUC making the case for stronger pay growth. The International Monetary Fund has recently issued a research paper warning that income inequality is bad for growth, finding that countries with high levels of inequality suffered lower growth than nations that distributed incomes more evenly².

The Bank of England also sees the need for stronger wages growth. In his statement accompanying the May Inflation Report, the Governor General turned his attention to the role of pay, with a warning that "the recovery is neither balanced nor sustainable. A few quarters of above trend growth driven by household spending are a good start but they aren't sufficient for sustained momentum.....wage

¹ Indeed, that Bank of England has recently noted that consumption growth has outstripped income growth and the saving ratio has fallen during the past two years.

² IMF, "redistribution, inequality and growth". Feb 2014:
<http://www.imf.org/external/pubs/ft/sdn/2014/sdn1402.pdf>

growth remains weak, and the household savings rate is likely to fall further”³.

The national minimum wage cannot cure the problem of slow earnings growth on its own and government, employers and trade unions will all need to strive to secure stronger pay growth in the years ahead. However, there is a strong sense that the minimum wage is an important part of the solution. The LPC must take its usual care in deliberating what the correct rates might be, but the current situation should lead them to consider carefully the dangers of undershooting as carefully as they consider the dangers of being too bold.

The economic data have improved substantially, and these welcome and long overdue improvements are increasing employers’ capacity to pay more. In its most recent Inflation Report the Bank of England recognised that employers’ margins are also improving, even despite strong recent employment growth.

The TUC therefore argues strongly for a much more generous increase in the rates for 2015 on the basis of the merits of the evidence, which is now so much sunnier than it has been in the past six years. The TUC urges the LPC to recognise that a new phase of NMW rises, where substantially higher rises are provided, is beginning.

2: Low Pay Commission remit 2013

The Low Pay Commission’s remit for its current report asks it to:

“1. Monitor, evaluate and review the levels of each of the different NMW rates and make recommendations on the levels it believes should apply from October 2015.

2. Consider whether:

- Any changes can be made to the apprentice rate to make the structure simpler and improve compliance; and
- The structure and level of the apprentice rate should continue to be applied to all levels of apprenticeship, including higher levels.

3. Review the conditions that need to be in place to allow the value of the minimum wage to increase in real terms. This would include an update on your advice on the future path of the NMW.

³ <http://uk.reuters.com/article/2014/02/12/uk-britain-boe-inflation-report-idUKBREA1B0SL20140212>

In making recommendations in the areas set out above, the LPC is asked to take account of the state of the economy, employment and unemployment levels, and relevant policy changes.”⁴

3: The UK economy during the past year

When the TUC gave oral evidence to the Low Pay Commission in November 2013, we said that the economic prospects generally looked to be exceptionally positive, although we acknowledged that there might still be some threats.

Thankfully these downside risks have not come to pass, and as the table below shows, on most of the key measures our predictions have largely been fulfilled. These indicators are much improved compared with last year’s figures.

GDP growth has strengthened, and the economy has finally returned to its pre-recession peak, a welcome if long overdue landmark. Inflation has fallen back, to the extent where it is perhaps even a little lower than we would expect in a strong recovery.

By far the most positive aspect has been the sharp fall in unemployment and an even sharper rise in employment during the past year, with the latest figures showing an increase of 440,000 employees.

Much of the focus in the media has been on the rise in self-employment. However, it should also be noted that the number of employees has now exceeded the pre-recession peak by just over a quarter of a million.

In contrast, AWE pay growth has been very disappointing. However, there is evidence that the average has been strongly depressed by compositional effects including a relative rise in employment in low paying sectors and an increase in the share of part-time employment. In addition, average earnings are forecast to recover, increasing in real terms in 2015 and 2016.

Latest figures for the UK economy showing change from last year

Economic indicator	2013	2014	Change 2013-14
Annual GDP growth	1.8 per cent	3.2 per cent	+1.5%
Employment (thous)	29,777	30,597	+820
Employees (thous)	25,283	25,724	+441
Claimant unemployment - SA(thousands)	1,428	1,007	-419

⁴ The consultation letter for the 2015 report, LPC, June 2014:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/321065/letter-to-chair-low-pay-commission.pdf

Claimant unemployment rate	4.3%	3.0%	-1.3%
ILO unemployment (thousands)	2,514	2,077	-437
ILO unemployment rate	7.8	6.4	-1.4
Average Weekly Earnings (total pay) (annual growth three month average)	0.8%	-0.2%%	-1.0%
Average Weekly Earnings (basic pay) (annual growth three month average)	0.4%	0.6%	+0.2%
CPI inflation (annual change)	2.9	1.6	-1.3
RPI inflation (annual change)	3.3	2.5	-0.8

Source: ONS

Latest figures: GDP Q2 2014; employment, ILO unemployment and earnings April-June 2014; claimant count and inflation July 2014.

The number of unfilled vacancies has increased by 22.2 per cent last year, up to 656,000⁵.

The rate of increase was slightly slower for the wholesale and retail sector, which as we discuss below has struggled to tread water during the past year, but unfilled vacancies still increased by 18.5 per cent in that sector.

However in the food and hospitality sector where low pay is widespread, the total number of unfilled vacancies increased by 29.1 per cent, suggesting that some of the pay rates on offer may no longer be competitive.

Earnings and pay settlements

While growth in Average Weekly Earnings (AWE) remains poor, the TUC believe that this measure is increasingly understating actual growth in pay rates.

There are three main sources of data on pay growth: ONS Annual Survey of Hours and Earnings (ASHE), ONS Average Weekly Earnings (AWE) and a small number of commercial indices of reported pay-rises (IDS, LRD, EEF and ExperianHR)

All of these sources have strengths and weakness. ASHE is a mandatory annual survey of a one per cent sample of PAYE employers. This is a relatively robust methodology,

⁵ ONS labour market data (May-July 2014.) 12 months previously the total stood at 537,000.

although it does not measure non-PAYE micro-employers, those in self-employment or the informal economy. Its main drawback is that the results are not very timely, as the survey is conducted in April and published in November each year.

As a result, many commentators prefer AWE, which is designated by the ONS as the lead survey on pay. However, ONS also says that:

"Average Weekly Earnings for any given month is the ratio of estimated total pay for the whole economy, divided by the total number of employees. In other words, it is a survey of pay- bills. As a result, AWE is not a measure of rates of pay and can be affected by changes in the composition of an enterprise's workforce.⁶" Indeed, its first purpose is "to measure the inflationary pressure emanating from the labour market⁷".

The indices of pay settlements are also matters of considerable interest, but their application is limited by their representativeness. The TUC's view is that they tend to collect information only from medium and large size businesses (with some help from unions) that are sophisticated enough to have an identifiable personnel function.

In order to take a snapshot of how the ONS surveys differ in practice, we can compare the ASHE and AWE results for April 2013, which was the date when the fieldwork for the most recent ASHE survey was conducted. The results are as follows:

- ASHE 2013 (mean) +2.1 per cent
- ASHE 2013 (median) + 3.0 per cent
- AWE total pay +0.6 per cent
- AWE regular pay +0.6 per cent

Given this evidence, we draw the inevitable conclusion that pay rates have actually been rising faster than pay bills. In addition, unusually, we note that the growth in lower paid jobs and the recent move towards re-weighting top remuneration packages away from bonuses and earnings have contributed to the very unusual outcome that pay was

⁶ ONS, quality and methodology information for the Average Weekly Earnings Survey, November 2011.

⁷ Ibid

growing faster at the median than at the mean, according to ASHE.

In addition, pay growth in ASHE was stronger for part-time workers than for all employees, showing a 2.6 per cent mean and 3.3 per cent at the median. This is quite important information, given the LPC will necessarily be interested more in those in the bottom half of the earnings distribution and that part-time workers tend to be concentrated in lower paying sectors.

ONS has also published an analysis of the extent to which AWE is affected by compositional changes rather than real changes in pay rates. The breakdown for the year to January 2014 shows that total earnings grew by 2.1 per cent and regular pay by 2.2 per cent⁸, once changes in the composition of the workforce are excluded. To put it another way, ONS found that compositional changes (e.g. the introduction of jobs that cost less because they work fewer hours or are paid less per hour) had depressed the headline AWE figures by about 0.4/0.5 per cent

The Bank of England concurs with this analysis, saying that:

*"During late 2013 and early 2014, compositional effects were bearing down on AWE growth. In other words, increases in employment in sectors with a lower average wage rates masked higher pay within sectors. More generally, changes in the skill and tenure mix of employment may be reducing annual wage growth by around ½ percentage point."*⁹

Meanwhile, three out of the four independent pay indices are reporting average settlements of around 2.5 per cent.

For most of the last century, average earnings have outstripped settlements. Real wages growth has resulted in people in the early twenty-first century being better off than their great grandparents. However, this factor, which we have taken for granted until recently, has been overturned since 2009. A forthcoming TUC-commissioned report, undertaken by IDS, will look at how this happened. It seems likely that the growth in involuntary part-time work and underemployment will have been a significant effect. Disproportionate jobs growth in low paying sectors has also been a factor.

Real pay growth will have to return and we will need to feel better off if the economy is to grow. In fact, it seems very likely that as the recovery continues these

⁸. <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/march-2014/dataset--earnings.html>

⁹ Bank of England inflation report, august 2014, p34:

factors will be alleviated. The speed of the recovery should eat into underemployment quite rapidly now, whilst rising investment would also be likely to help to create a better mix of jobs by pay. It also points to the need for the LPC to ensure that it does not draw firm conclusions about trends in changes in actual pay rates from recent aggregate trends in AWE.

Low paying sectors

The Commission will always want to check that the low paying sectors have not been negatively affected by the minimum wage. However, this check always has to be weighed against a strong desire that more people should be employed in well-paid jobs, which implies that fewer people should be employed in minimum wage jobs.

But in fact, at the moment the low paying sectors are doing rather well. The table below shows that the number of employees in the low paying sectors as a whole outstripped jobs growth in the whole economy, as the AWE figures might lead us to expect (as a result of the impact that compositional factors have on the series, as discussed above). There has been strong employee jobs growth in both cases, with the employee workforce as a whole growing by 1.5 per cent and the low paying sectors growing faster at 2.5 per cent.

Agriculture, food processing and building services all saw increases in the number of employees that topped 10 per cent on the LFS main jobs measure, whilst the number of hospitality employees increased by 89,000 (8.9 per cent).

In short, employment in the low paying sectors overall has continued to grow very strongly. There are certainly no signs that the minimum wage is constraining the creation of low paid jobs. Indeed, the TUC is more concerned at the moment that too many of the jobs being created are in low paid sectors.

Although the overall jobs picture is very good, it is also worth considering the low paid sectors where employment growth has been weaker during the past year. There are a range of explanations why some sectors do better than others, but there are no signs that the national minimum wage has been a factor.

We note that textile and clothing manufacture has been in long-run decline in the UK. The industry is now largely focused on high-end production, and employment numbers have fluctuated from year to year.

The recruitment industry is another area where employment has seen a small fall. There are strong signs that the recruitment industry will soon bounce back, as financial turnover has turned up sharply from January 2014 onwards. Indeed, REC reports that their affiliates have now enjoyed

a median increase in turnover of 13.6 per cent in the past financial year¹⁰. A reduction in demand for temporary staff can also be a sign of a strengthening recovery.

The quantity sold by the retail industry increased by 3.6% compared with last year, but discounting in pursuit of market share has meant that the average real price has remained the same¹¹. There is no doubt that the retail market is changing, with the amount spent online increasing by 13.4% in June 2014 compared with June 2013¹² and structural shifts therefore leading to reductions in retail staff with commensurate or stronger rises in warehousing and distribution employment. There has also been some use of new technology as a substitute for labour by certain chains, most visibly in the form of more self-service tills in busy city stores. This follows on from the earlier computerisation of stock control, which allowed stores to operate with lower inventory. However, retail sales are also obviously particularly susceptible to squeezed incomes, and the revival of real pay growth should quickly improve sales. The Centre for Retail Research makes the following forecast in terms of rising sales value: "2014 - 3.4%; and 2015 - 3.4% to 3.8%¹³", which is likely to lead to employment gains in the months and years ahead.

In the case of hairdressing, numbers have fluctuated greatly in recent years. It seems possible that the UK may have simply reached saturation point given current household spending power. There is currently about one hairdresser for every 120 working people in the UK, once self-employment is taken into account. Employment in the industry currently outstrips predictions made seven years ago for 2021¹⁴. In addition, it has been reported that the UK has been training more than four times as many hairdressers as there are vacancies¹⁵. Nevertheless, market

¹⁰ See "on the up", Recruitment Matters, June 2014, p14:
<http://issuu.com/redactive/docs/rmjune14>

¹¹ ONS, retail sales, June 2014

¹² Ibid

¹³ Centre for Retail Research:
<http://www.retailresearch.org/retailforecast.php>

¹⁴ Greater Manchester forecasting model cited in "spotlight on hair and beauty", LMI factsheet 2009.
<http://clc2.uniservity.com/GroupDownloadFile.asp?GroupId=20095333&ResourceID=2822134>

¹⁵ "Hidden talents: skills mismatch analysis, LAGA, 2012:
http://www.local.gov.uk/media-releases/-/journal_content/56/10180/3623238/NEWS

analysts think that economic recovery may lead to further growth in the high value end of the hair and beauty industry¹⁶.

UK Employees in low paying industries (thousands)

Industry	Spring 2013	Spring 2014	Change	Per cent change
Agriculture, hunting and forestry	121	146	+25	+20.7%
Primary food processing	119	133	+14	+11.8%
Textile and clothing manufacture	87	78	-9	-10.4%
Retail trade (not motor vehicles)	2,576	2,612	+36	+14%
Hotels and accommodation	306	302	-4	-1.3%%
Food and beverage service activities	1,039	1,128	+89	+8.6%
Residential care and social work activities	1,654	1,706	+52	+3.1%
Services to buildings and landscape activities	332	378	+46	+13.8%
Recruitment and employment agencies	196	178	-18	-8.2%
Hairdressing & other beauty treatment*	163	131	-32	-19.7%
Total employee jobs in sectors with high incidence of low pay	6,593	6,792	+199	+3.0%%
Non-low paying sectors	18,566	18,734	+168	+0.9%

¹⁶ "Hairdressing and beauty treatment in the UK: market research report", Ibisworld, May 2014. <http://www.ibisworld.co.uk/market-research/hairdressing-beauty-treatment.html>

All employee jobs	25,159	25,526	+367	+1.5%
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Source: LFS spring quarters, employees in main job only (e.g. excludes second jobs).

4: Future prospects for the UK economy

The LPC is currently considering the appropriate rates to apply for the period from October 2015 until September 2016. The Commission will want to set rates that will help low paid workers as much as possible without generating any negative economic side-effects.

The Bank of England has now become much more certain that the recovery is entrenched, recently stating that:

"The domestic recovery has continued to broaden, with robust spending by businesses and households, supported by lower uncertainty and continuing improvements in credit conditions. Four-quarter growth in business investment reached 11 per cent in 2014 Q1 and business surveys point to strength continuing." ¹⁷

The economic predictions for the UK¹⁸ show improvement for the next two years. Whilst such predictions are of course fallible, there is a strongly held general consensus amongst economists that the recovery is taking a firmer hold.

The first quarter's figures for 2014 saw an annual increase of 3.1 per cent in GDP, which was rather above the long-term trend¹⁹. Economic growth is expected to settle down near to nearer its long-term trend in 2015 and 2016²⁰. Employment has been increasing and unemployment falling and this looks set to continue. Inflation, which has certainly not been driven by earnings, has also now abated to a rate that is below the long-run trend.

Investment, profitability and productivity

The TUC has pointed out on a number of occasions that corporate reserves have been growing during the long-

¹⁷ Bank of England inflation report, August 2014, p5:
<http://www.bankofengland.co.uk/publications/Documents/inflationreport/2014/irl14aug.pdf>

¹⁸ The Office of Budget Responsibility (OBR) publishes its own forecasts on a twice yearly basis. HM Treasury also publishes a regular round up of independent economic forecasts for the following year on a monthly basis, and longer-term predictions every three months.

¹⁹ "GDP has grown by a compounded rate of 2.6% a year since 1948", long-term profile of GDP in the UK, ONS, Aug 2013

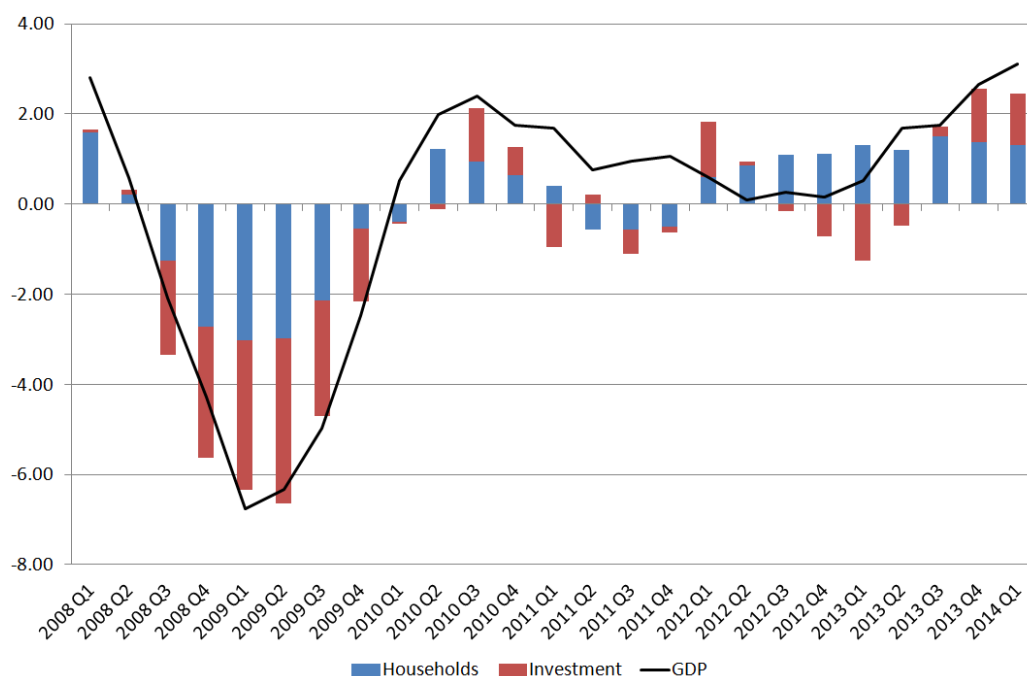
²⁰ Bank of England op cit, p6

running period of economic difficulty. The latest figures suggest that they stand at just over £650 billion²¹.

One encouraging factor is that the worrying pause in investment appears to be over. Household consumption and investment both fell heavily during the recession. Spending by households typically accounts for over 60 per cent of GDP and it grew at over two per cent for most of 2013. Investment is very responsive to business confidence and it is noticeable that it has picked up in the last two quarters.

In addition, fixed investment predicted to rise by 8.3 per cent in the current year, and to continue to grow strongly in 2015 and beyond.

Contributions to GDP growth: household consumption and investment, year on year, constant prices, seasonally adjusted



Turning to profitability, there are less detailed data available than the TUC would like, not least since we know that some corporations have grown adept at hiding profits in the balance sheets in order to avoid taxation. Nevertheless, there are ONS data on the profitability of the service sector corporations as a whole. This is

²¹. ONS UK "Blue Book" national accounts. Source, table: table 6.9.1, line AF2. Reserves of private non-financial corporations only

important, because the majority of minimum wage jobs are located in the service sector.

The table below shows that profitability has held up well in the service sector. The onset of recession only reduced the net return in the service sector by 1.4%. However, the rate has been recovering, and the latest figures show profitability above 2001 levels, for example.

More broadly, the TUC believes that there was something of a bubble in profitability during the last boom. The recession reduced general rates of profitability, but they are now back to pre-bubble levels.

The Bank of England says, more cautiously, that despite the higher costs associated with rising employment "margins in the consumer-facing sector have been squeezed since the start of the financial crisis, but are estimated to have recovered somewhat over the past two years."²²

Profitability of UK service sector corporations 2001-2014

Year	Net rate of return of all non-financial corporations	Rate of return of service sector corporations
2001	11.3%	14.7%
2005	13.5%	15.7%
2009	10.8%	14.3%
2013	11.3%	14.7%
2014 (q1 only)	11.9%	15.0%

Source: ONS, Profitability of UK companies Q1 2014:

<http://www.ons.gov.uk/ons/rel/pnfc2/profitability-of-uk-companies/q1-2014/index.html>.

Turning next to productivity, this of course still remains a concern, as the headline figures have been completely flat during the past year, including in the finance sector. As discussed earlier, pay growth has been depressed by compositional effects, including the disproportionate growth in relatively low paid, low skilled jobs and it seems likely that these factors have also inhibited productivity growth.

It is perhaps unsurprising that productivity growth has been poor during the economic downturn. The relative decline in high productivity sectors, low investment, slow growth in the economy and weak demand that accompanied the UK's economic difficulties have not been conducive to rapid

²² Bank of England inflation report, August 2014, p36.

increases in productivity but, as described above, GDP, demand and investment are now recovering, which should mean that productivity will also recover, after a lag.

Certainly fears that the UK was suffering from a "productivity puzzle", which would lead employers to shed workers at some point, have proved to be unfounded, and the quickening economy and strong recent employment growth has rendered such an outcome highly unlikely. Indeed, the opposite has happened, with rapid employment growth concentrated in the lower skilled, lower paid industries.

One under-studied area that may have impacted negatively on productivity has been the shift to self-employment. The TUC has been very sceptical about claims that this represents a new wave of entrepreneurship, not least because the latest figures show the average income from self-employment declared for tax purposes equating to only £207 per week²³. We hypothesise that a growing number of under-employed self-employed people working part time might hold back productivity growth rather than boost it.

The Bank of England has been surprised that productivity growth has not been stronger, but says that "there are ... reasons to expect that it will pick up as the recovery progresses"²⁴, including the likelihood that new employees will become more productive as they become more experienced.

They also note that 'although productivity and average household real incomes have yet to stage a meaningful recovery, the Committee envisages that they will rise over time, and so underpin a sustained expansion'²⁵.

We would also expect improvement as greater investment takes effect and new hirings settle in. As set out above, with investment performance already beginning to strengthen, and with both government and opposition committed to industrial and economic policy measures which seek to boost the UK's investment share, recent improvements look set to be sustained in the future.

In addition, corporate investment tends to have a significant multiplier effect. Investment in construction, for example, is spread down to smaller firms via the sub-contracting and supply chains, and increased hiring and earnings growth leads to more spending in retail and so on. The positive impacts of investment improvements will be felt widely across the economy, not only in the specific sectors they are concentrated in.

²³ Source: Family resource survey, DWP, 2012/2013

²⁴ Bank of England op cit, p30.

²⁵ Bank of England, op cit, p37.

The TUC recognises that in the long-run sustained productivity growth is vital if the recovery is to remain strong and wages are to rise across the economy, and as we set out above we also believe there is strong evidence to suggest that such an improvement is on its way.

Nevertheless, given the compositional change driving recent productivity trends it does not hold that aggregate productivity growth is an essential prerequisite for substantial NMW increases.

There are some promising signs. This is particularly the case when the focus narrows to productivity trends in minimum wage sectors, as output per hour has risen by 1.4 per cent in the hospitality sector, by 1.2 per cent in retail, and by 5 per cent in the textiles and footwear sector during the past year²⁶.

In contrast, some surprising non-NMW sectors appear to have been suffering productivity falls, with information and communication down 1.1 per cent, professional, scientific and technical activities down 1.3 per cent, and arts, entertainment and sport down by 4.2 per cent. In particular, productivity per hour fell by 1.1 per cent in the pivotal finance sector. There is, however, little doubt that finance will recover, especially as the return of economic growth will help to stabilise its position.

5: Young people

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

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

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

²⁶ ONS productivity statistics, Q1 2014:

<http://www.ons.gov.uk/ons/taxonomy/index.html?nscl=Productivity+Measures#tab-data-tables>

*Unemployment fell by 437,000 over the past year - and 132,000 in only the past 3 months - which is the biggest annual fall in 25 years.*²⁷

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

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

These changes are set against a long-run background of an increasing number of young people in this age group in full-time education. As the table below shows, this number has continued to rise during the recession but the trend has now stalled. This is likely to reflect the growing opportunities in the labour market, the rise of vocational training (especially apprenticeships) and the growing cost of accessing higher education.

Given the improving labour market, it is not surprising to learn that the number of 18-24 year old NEETs²⁸ has fallen by 14.5 per cent during the past year, down by 126,000 to reach 809,000 NEETs.

Our observation is that the recovery is now strongly boosting the labour market for young people in this age group, who are the best trained and educated cohort ever to enter the world of work.

18-24 year olds (thousands)

	Employment	Unemployment	In full-time education
1992	3,774 (65.4%)	703 (15.7%)	893
1996	3,256 (65.6%)	546 (14.4%)	1,026
2000	3,248 (67.2%)	386 (10.6%)	1,268
2004	3,526 (67.0%)	404 (10.3%)	1,428

²⁷ "Record fall in youth unemployment", DWP press release, 13 august 2013: <https://www.gov.uk/government/news/record-fall-in-youth-unemployment>

²⁸ DfE NEET quarterly brief April to June 2014, table 3: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346024/Quarterly_Brief_NEET_Q2_2014_FINAL.pdf

2008	3,665 (64.1%)	526 (12.6%)	1,628
2012	3,338 (57.5%)	809 (19.5%)	1,826
2013	3,265 (56.7%)	778 (19.2%)	1,887
2014	3,463 (60.4%)	605 (14.9%)	1,812

Sources: employment and unemployment: ONS Labour Market Statistics table A05. Figs for April-June. All in employment. Rate in brackets. Full-time education: ONS "educational status, economic activity and inactivity of young people. Figs for April-June

Moving on to 16-17 year olds, the number of people in this age group who are unemployed has fallen by 35,000, which constitutes a rate fall of 3.9 per cent over the past year

Young people in this age group are far more likely to be in full-time education than in the labour market, but many of those who are economically active are also in full-time education. As the table above shows, this number of 16-17 year olds in education continued to increase during the recession and has gone up marginally since the onset of the recovery.

There has also been a significant decline in the number of 16-17 year olds NEETs²⁹, which has fallen by 13.1 per cent during the past year, down by 22,000 to reach 146,000 NEETs.

There are thus solid indications that the position of 16-17 year olds in the labour market is improving.

16-17 year olds (thousands)

	<i>Employment</i>	<i>Unemployment</i>	<i>In full-time education</i>
1992	665 (48.4%)	154 (18.8%)	857
1996	665 (46.4%)	168 (20.2%)	976
2000	673 (46.7%)	177 (20.9%)	1,051

²⁹ DfE NEET quarterly brief April to June 2014, op cit.:

2004	632 (40.5%)	173 (21.5%)	1,144
2008	543 (34.2%)	183 (25.2%)	1,194
2012	352 (24.0%)	203 (36.5%)	1,210
2013	317 (21.7%)	196 (38.1%)	1,227
2014	311 (21.4%)	161 (34.2%)	1,232

Sources: employment and unemployment: ONS Labour market statistics table A05. Figs for April-June. All in employment. Rate in brackets. Full-time education: ONS "educational status, economic activity and inactivity of young people. Figs for April-June

6: Apprentices

Apprentice pay

As set out in section two of this submission, the terms of its remit ask the LPC to consider whether the minimum wage structure might be made simpler in order to improve compliance. The LPC has also been asked to examine how the minimum wage is applied to all levels of apprenticeship.

This request is set in the context of government taking a broader look at apprenticeships in England, rolling out the recommendations of the Richards Review. The intention is that apprenticeships should become "more rigorous" and higher quality, with "higher expectations on English and maths"³⁰.

In terms of the current state of pay, the first thing to note is that most apprentices earn much more than the relevant minimum wage rate, with median earnings reported as £6.09 per hour in an official survey carried out 18 months ago³¹.

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

³⁰ "Future of apprentices in England: Richardson review next steps, BIS, March 2014 <https://www.gov.uk/government/consultations/future-of-apprenticeships-in-england-richard-review-next-steps>

³¹ BIS "apprentice pay survey 2012: research findings," 2013, p31: <https://www.gov.uk/government/publications/apprenticeship-pay-survey-2012> the research covered England, Wales and Northern Ireland, and was published, after some delay, in October 2013.

set out in the Richards Review are to be met.

One quarter of all apprentices surveyed reported that they were paid amounts that were less than the applicable minimum wage rate, and four per cent reported that they were not paid at all. As the fieldwork for the survey was conducted soon after the October 2012 increase, it is possible that some respondents were considering the old 2011/2012 rate. But even on this measure, 24 per cent of apprentices were underpaid³².

In addition, four per cent of apprentices said that they did not receive any pay at all³³. One possible explanation for the latter is that college-led programmes may be surviving in some form. The conventional method is for colleges to act as a broker, facilitating introductions between employers and prospective apprentices. This may be a helpful thing, but it is possible that there may be some periods when jobs fall through and apprentices are still studying but not actually employed.³⁴ On the other hand, it may be an indication of a small group of extremely poor quality apprenticeships remaining part of the system.

Zero hours contracts are not generally permitted for apprentices, as there is a requirement for apprentices to be in employment for at least 30 hours per week. However, there is a worrying tendency for some employers, particularly in catering, to contract apprentices for 30 hours per week, but to write in a contractual requirement for them to work as many extra hours as the employer demands. Such arrangements often lead to weekly pay packets that are below the £95 rate specified by the old Apprentices Minimum Income Guarantee.

At the other end of the scale, a small proportion of apprentices report that they are contracted to work more than 50 hours per week, an amount that may put their health at risk³⁵.

³² Ibid, p31

³³ Ibid, p12

³⁴ See, for example, Barnsley College: "If you are a school leaver, currently unemployed or looking to start a new career, we can help you to find the right Apprenticeship and employer for you." <http://www.barnsley.ac.uk/employers/become-an-apprentice> . As second example, one of dozens that can easily be found is more interventionist. Highbury college advertises to employers that it will: "Agree the job description, wage and Apprenticeship programme with you ; Advertise the vacancy FREE of charge; (and) Match your vacancy to current students that would like to take up an Apprenticeship position". <http://www.highbury.ac.uk/client/content.asp?contentid=359>

³⁵ Bis apprentice pay report 2013, p18

Whilst there may be some employers who genuinely do not know the rules, the TUC is not convinced that all such protestations are genuine. Employers' organisations and others have actually produced a substantial amount of guidance and information about apprentice rates is easily available via the internet. To take just one sector as an example, there is ample guidance for employers in hairdressing:

- The National Hairdressing Federation produces guidance on how to comply with the NMW for their members: <http://www.nhf.info/news/naming-and-shaming-businesses-for-failing-to-pay-the-national/>
- Habbia, the sector skills council for the industry also produces guidance: <http://www.habbia.org/c/1750/minimum-wage>

However, we do acknowledge that some employers either do not understand the current rules or are careless about the relevant details. The introduction of the apprentice rate was followed rapidly by the total withdrawal of government spending on advertising and disseminating the minimum wage, followed after a couple of years by the restoration of about 10 per cent of the 2009/2010 dissemination budget. Action in this area is vital if employer knowledge and awareness is to improve.

The future of apprenticeships

The revival of apprenticeships has generally been a success story, rising from less than 100,000 apprentices to more than 800,000 in just a decade, but the strong expansion of the programme has also led to a number of flaws.

The rapid growth of the apprentice programme has led to quality issues in a substantial minority of cases. For example, 19 per cent of apprentices reported in the BIS survey that they received neither on nor off-the-job training, whilst 16 per cent report that they have no external assessor, or are simply never assessed.³⁶ The government is well aware that the programme now needs tightening in order to maintain the quality of the brand.

The TUC has strongly supported the revival of the apprenticeship model over the past decade. However, we have always argued for high quality apprenticeships that are paid fairly, which has implications for the LPC's current review.

As the table below shows, the number of apprentices has increased by 30 per cent since the apprentice rate was

³⁶ Ibid, p8

first introduced in 2010. The TUC's focus of concern has thus moved sharply from simply arguing for the introduction of apprentices rates towards considering whether the rates are too modest, with a significant minority of employers not content with drawing down government funding for training apprentices (and having the programme largely managed for them) but also seeking to use apprenticeships to undercut the general rates of the national minimum wage.

When the apprentice rate was introduced it extended some protection to most apprentices for the first time. In the first year afterwards, the number of apprentices rose by 35.6 per cent, demonstrating that the new rate was very far from a brake on apprenticeship creation. Many employers value apprentices and there is a real danger that low minimum wage rates may be setting a sub-optimal low pay norm.

Total funded apprenticeships 2008/9-2012/13 (whole year participation -thousands)

	Intermediate	Advanced	Higher	All apprenticeships
2008/9	274	171	Less than 1	445
2009/10	304	185	2	491
2010/11	415	247	3	666
2011/12	506	317	6	806
2012/13	502	377	13	869

Source: SFA/BIS "Further education and skills: statistical first release", updated June 2014, derived from table 5³⁷.

Our view is that the minimum wage regime for apprentices could now be strengthened and simplified.

First, it is no longer clear that any rate below the general levels of the minimum wage is still warranted for older apprentices. Pay rates are generally already far higher for this group, with median pay for the 25+ age group reported to be £7.15. In addition, more older workers tend to be in post before commencing their apprenticeship, with seven out of ten of all apprentices working for their current employer before commencing apprenticeships³⁸, and there are reports that some existing training has been rebadged as apprenticeships in order to attract government funding. Note also that the government wants to target

³⁷ <https://www.gov.uk/government/publications/learner-participation-outcomes-and-level-of-highest-qualification-held>

³⁸ BIS pay survey, op cit, p11

investment in the apprenticeship programme on younger workers, but 45 per cent of current apprentices are aged 25+³⁹. In this context it seems odd to provide a substantial pay discount for the employers of older apprentices.

Second, we can no longer see a case for allowing employers to pay lower levels of wages to advance or higher level apprentices, who make up 43.7 per cent of the total. Our view is that workers who already have an intermediate level qualification should be able to make a contribution that is more than the general age-based level of the minimum wage, so it is hard to see how a lower rate could still be justified. This view is supported by the fact that average earnings are already higher for these apprentices. Mean hourly pay for a level 3 (advanced apprenticeship) was £6.67 in 2012, according to the BIS pay survey⁴⁰.

Level 3 should be worth more than the apprentice minimum wage. Here are just three examples of level 3 apprenticeship duties, chosen more or less at random from the many job descriptions available on-line. They illustrate the high level of skill that apprentices in these positions are expected to have, and the extent of their substantial responsibilities:

Personal trainer vacancy, pay advertised at £100 per week:

- "To work unsupervised as a Personal Trainer in the gym
- To implement the delivery and planning of training programmes
- To monitor and record health and weight progress
- To advise clients on their diet and nutrition⁴¹"

Business Support Apprentice, salary - "competitive, plus benefits"

³⁹ Source: SFA/BIS "Further education and skills: statistical first release", op cit, table 5

⁴⁰ BIS pay survey, op cit, p9.

⁴¹ From "Apprenticeship Vacancies", a government website. Vacancy offered by Hartlepool Sixth Form College, extracted 19 July 2014.

<https://apprenticeshipvacancymatchingservice.lsc.gov.uk/Navms/Forms/Vacancy/VacancyDetails.aspx?Query=mt7vHmJFXs0j1H9YmdWyrLEnWCOCN84V2%2fc%2f6JLkCoNMvpWR2Jz0rOs1C%2bhhSwIQ5Z0pePffHQ47itLtpb98tbgitXCumN%2bCamBhkyIMh6WJRcaxVUY1a%2bPOgU72q4JizDchCKvhuYRBgha5c4oPoY9vIjD79UNUOaB9Ez4evesQ1VBBhwUj9YPwv0ROLMnTRvLtqDcK28C3aSkp%2b4Jt15HU%2fEi4gakHR%2bwUvzV2C3Uvp9%2btve9U4nUGY2bBr%2bOJ%2fIJ4CUAyk01Rzlvw%2feBQQ9eZyvqpxHxBHNPnGd2nmR8%3d>

"The candidate will be expected to fulfil a range of duties including:-

- Maintaining the upkeep and presentation of Front of House at all times.
- Greeting all corporate clients, partners, contractors and visitors to the organisation.
- Act as business interface so as to filter general information, requests and queries, screening phone calls.
- Ad hoc diary management for Directors.
- Inventory management and ensuring office supplies are up to date.⁴²

Business administration apprentice, advertised at £2.65 per hour.

Vacancy for "an expanding specialist agency dealing with the recruitment of qualified social workers into social work, drug, alcohol, criminal and justice fields". Five GCSE passes required. "Duties will include:

- Compliance for candidates
- Cold calling
- Registering and formatting CVs
- Managing the recruitment database
- Obtaining candidate references
- Sending out incoming vacancies to the team
- Resourcing and updating candidates
- Upkeep of websites and social media
- Assisting Directors with office ad hoc duties
- Reference chasing"⁴³.

On the basis of the job descriptions, these level three apprenticeships sound like they should actually be paid rather more than the standard minimum wage, not simply the apprentice rate.

The apprentice model has been successfully revived, as the TUC hoped, and numbers have continued to grow strongly in recent years. However, there is now a strong sense that the apprentice model is being refocused by government to

⁴² Business support apprentice, Wavex:
http://www.simplyofficejobs.co.uk/job/business-support-apprentice/2800597?utm_source=Indeed&utm_medium=organic&utm_campaign=Indeed

⁴³ Business administration apprentice for 3aaa Deptford:
<http://www.totaljobs.com/JobSearch/JobDetails.aspx?JobId=60180753>

concentrate in making apprenticeships better focused on younger workers, more rigorous and with higher expectations. These goals need to be supported by decent minimum pay rates.

In this context, the TUC also believes that as well as limiting its applicability there is a good case for raising the apprentice rate strongly, or even for simply making it the same as the 16-17 year old rate, which is itself quite modest. Such a measure would help to prevent exploitation, would be reasonable and affordable, and would have the added benefit of making the minimum wage simpler for both employers and apprentices to understand

The LPC's concerns will include considering whether the apprentice pay structure could be made simpler and improving compliance, as well as setting an appropriate rate of pay for Apprentices.

These considerations combine with our general view of the current state of apprenticeships and our vision of where the brand should go in the future to lead us to call for the following changes:

The TUC recommends that from October 2015 onwards, the apprentice rate should only apply to those undertaking intermediate level apprentices who are aged 16-18 and to 19-20 year olds in the first year of their apprenticeship. In addition, the LPC should consider setting the apprentice rate of the minimum wage at the same level as the youth rate. Other apprentices should be paid the relevant general age-based rate of the NMW.

7: The TUC's rate recommendations for 2015/16

As reported in sections 3 and 4, economic growth is returning to the UK economy and employment numbers are increasing very rapidly. Forecasts indicate that this trend is set to accelerate during the next two years, with pay growth measures also picking up and settlements likely to grow more strongly. In addition, a number of key independent commentators have referenced the imperative of pay growth strengthening in order to entrench the recovery.

The TUC has often argued that there has been more headroom to increase the national minimum wage without causing detrimental effects than most other commentators would have allowed. We have therefore welcomed the results from a number of recent econometric studies, which suggest that there is substantial scope for significant NMW rises.

As previously reported, research carried out for the IPPR by NIESR was reported that paying the living wage would be

likely to generate much smaller job losses than might have been expected.⁴⁴

However, a more recent report by Landman economics argued that the IPPR report was excessively pessimistic.⁴⁵ This report modelled the effects of adopting the living wage as a statutory standard. This demonstrated some significant offsetting economic benefits deriving from the increase in wages. It is argued that the resulting income growth would lead to an economic stimulus that would generate a £3.1 billion pound increase in GDP and the creation of 64,000 new jobs, off-setting, at least in part, the possible displacement identified in the IPPR's earlier report.

The TUC's view is that the positive stimulus effect of wage increases has been rather understudied in the UK. We hope that the LPC will give it due consideration during its current deliberations.

Perhaps unsurprisingly, HMT have been much more guarded, but have still found themselves able to suggest that raising the minimum wage to £7.00 this year would only have very modest negative side-effects at the worst, qualifying this fear by noting that "the empirical evidence on employment effects of the NMW through jobs rather than hours is inconclusive"⁴⁶. The sharp improvement in the labour market during the past year has outstripped many of the assumptions made in the Treasury's evidence. This suggests that an increase in the adult rate to £7.00 per hour and beyond should be very easily absorbed by October 2015, particularly given the consensus that the economy will continue to improve during the coming year.

The government has again invited the LPC to consider "the conditions that need to be in place to allow the value of the minimum wage to increase in real terms". The LPC consulted in this issue for its 2014 report, recalling that its own work had gone through phases of caution as well as times when the evidence pointed to the need for larger increases⁴⁷.

⁴⁴ "Beyond the Bottom Line", K.Lawton and M.Pennycook, IPPR, 2013:<http://www.ippr.org/publications/beyond-the-bottom-line-the-challenges-and-opportunities-of-a-living-wage>

⁴⁵ Howard Reed, "The Economic Impact of Extending the Living Wage to all Employees in the UK", Landman Economics, pps 12-15
2014:<https://www.unison.org.uk/upload/sharepoint/Briefings%20and%20Circulars/Landman%20Economics%20Living%20Wage%20Report%20-%20Final.pdf>

⁴⁶ BIS, Final evidence to the Low Pay commissions, Jan 2014, HMT section on fiscal impact, p17

⁴⁷ As described in LPC report 2014, p192.

Last year there was a certain amount of consensus amongst many of the stakeholders that in order to shift into a further phase of optimism, the LPC would need to be sure that the economic future was broadly set fair, with a reasonable degree of economic growth, and a robust labour market, with relatively high levels of employment. It would now be hard to find anybody who does not believe that these conditions will be fully met by October 2015, when the LPC rates under consideration are due to take effect.

A return to stronger pay growth for the majority of workers is also very likely, although not completely certain. As discussed above, current pay growth figures are depressed by compositional effects impacting on the AWE measures. There will be more survey data between now and the LPC's decision making point in the New Year. Given the limitations of AWE as a measure of actual pay rises if AWE growth is slow to revive during a strengthening economic recovery then the LPC should give more consideration than usual to trying to test whether employers really can afford to pay more, and to whether the AWE alone should be used as the main indicator of pay growth.

The TUC therefore believes that the evidence is such that the LPC should be preparing to enter a new phase of more substantial increases to the minimum wage rate.

The TUC recommends that the adult rate should be increased to significantly more than £7.00 per hour this year. We believe that this is a figure that can be absorbed without generating any measurable negative economic side effects. Indeed, we believe that the Treasury are likely to give a clean bill of health for a significant increase when the government submits its own evidence to the Commission.

The youth rate and development rate should both increase faster than inflation and the rise in average earnings, in order to help make up what has been lost during the recession years.

As discussed in the previous section, the availability of the discounted apprentice rate should be constrained to younger workers undertaking intermediate apprenticeships only, and the LPC should consider whether this rate could be raised to the level of the young workers rate.

8: The Agricultural Wages Boards

The government abolished the Agricultural Wages Board for England and Wales in 2013. Separate boards have been retained in Scotland and Northern Ireland.

Abolition was supported by large horticultural businesses in particular, under pressure from retailers on prices, and by the NFU in England and Wales. However, the Farmers Union of Wales was among the 86 per cent of Welsh respondents who opposed abolition.

The Agricultural Sector (Wales) Act (2014) maintains the statutory regulation for agricultural employment in Wales that would otherwise have ceased with the abolition of the AWB, and preserves the application of the Agricultural Wages Order (2012) for farm workers in Wales.

The matter was delayed for sometime because the Bill was referred to the Supreme Court. However, the hearing found in favour of the Wales Assembly government in July 2014, so the act is now in force. It places a duty on Welsh ministers to establish the Agricultural Advisory Panel for Wales and enables the minister to make future draft wages order on the basis of the panel's recommendations.

The trade union Unite, which represents workers in the industry, argues strongly that the makeup of the panel must be constituted so as to generate genuine tripartite bargaining.

The TUC's estimate is that the new body will set pay for around 14,000 agricultural workers in Wales. We regard this as good news, not least because these workers will now have better pay protection. The government's own estimate suggested that the abolition of the old body would reduce farm workers' earnings in Wales by £1 million over the next decade.

In contrast, agricultural workers in England have no such protection, and the government has predicted that wages will fall in this sector. It follows that the LPC should pay particular attention to this sector in this and coming years.

A Unite survey of members in England who had previously been covered by the AWB. The last statutory pay increases under the old legislation took place in October 2012. Only 56 per cent had received a pay rise since the AWB expired. Of those who had, 80 per cent had the increase imposed by their employer, and the average increase was smaller than that for the whole economy. These are significant grounds for concern.

The LPC should closely monitor the agricultural earnings and compliance with the minimum wage, giving particular attention to variation in trends between nations with and without Agricultural Wages Boards in place.

9: Awareness, guidance and enforcement

The TUC's view continues to be that awareness of the NMW and how it can be enforced has fallen, despite our own efforts to disseminate this information.

The government budget for advertising and disseminating information was cut from around £1 million a year to zero after the 2010 election. More recently, some funding has been made available for this important work, but only at around 1/10th of the previous level. In the past year BIS and HMRC have given more attention to generating media stories around the minimum wage, which gives a further platform for dissemination, but this laudable effort is not enough to plug the gap. Naming many more cases of non-compliance would also help, but clearly more funding is still urgently needed for dissemination, as is better tracking of public awareness of the relevant details.

More positively, we cautiously welcome proposals for a unified set of national minimum wage regulations that will take account of all the amendments made over the years, as this should make the law easier to understand. Nevertheless, we note that most workers and employers will go to the guidance rather than the regulations for information.

The Gov.UK guidance on the national minimum wage has been somewhat improved by adding links to some of the older text. Nevertheless, it still falls short in terms of both completeness and accuracy. It is vital that the government gives good guidance on this very important area of law. The text should be looked at again, in consultation with stakeholders.

The TUC has welcomed the introduction of higher civil penalties earlier this year⁴⁸, the removal of the early payment discount and plans to apply the current £20,000 per case maximum on an individual worker basis via the small business, enterprise and employment bill, announced in the Queen's speech.

As these penalties match the amount owed to workers, they do nothing more for small cases, but removing the early payment discount does mean that the average employer will pay more, and in the biggest cases, very much more.

Nevertheless, one of the problems with civil penalties is that the full details cannot be publicly reported. "Naming" merely takes the form of saying that X employer was found to have underpaid Y workers by £Z. There are some cases, particularly around what the TUC regards as the

⁴⁸ Government gets tough with employers failing to pay minimum wage, press release, 28 Feb 2014:
<https://www.gov.uk/government/news/government-gets-tough-with-employers-failing-to-pay-minimum-wage>

"aggravated" offences under the NMW Act, where it would be in the public interest to allow more detail to be reported. This would certainly create a more robust deterrent. It also seems to us to be a good principle of justice that more serious cases should be dealt with by the courts.

The TUC therefore proposes that the government should adopt a new prosecution standard, committing to prosecute at least a limited number of aggravated cases. Those suitable for prosecution should include repeat offenders, those who deliberately keep fraudulent records and those who obstruct HMRC's investigations.

In order to make this exercise worthwhile, the government also needs to raise the maximum penalties available to the courts on summary and indictment, including the possibility of imposing custodial sentences, so that the law can deal effectively with the worst cases⁴⁹. Given that the government plans to amend the National Minimum Wage Act in order to increase the maximum civil penalty, it should also take this opportunity to increase the maximum fines. Furthermore, there would strong merit in amending the act to create proper legal gateways to allow HMRC to exchange case information with local authorities and Maritime and Coastguard Agency, in order to uphold the law.

Turning next to naming and shaming employers caught cheating, as of July 2014 the government has named three dozen employers. This is a modest start, but we would expect to see the overwhelming majority of those caught being named. The government reports that in 2012/13 there were 708 cases where civil penalties were imposed⁵⁰. We would therefore expect to see about 700 employers being named this year, which means that the pace will have to pick up. Although, as set out previously, there are limitations to the information that can be reported via this process, the TUC still recognises that naming and shaming can provide an important means to boost enforcement and deter non-compliance. It would be therefore useful for the government to address this point in their own evidence to the LPC and to state how many employers have so far claimed the limited number of reasons that might stop them being named.

⁴⁹ We note that the penalties for offences such as the infringement of trademarks are very much more severe than those available to the courts in cases where employers systematically cheat low paid workers out of the minimum wage. Boot-legging shirts, for example, can lead to up to ten years in prison

⁵⁰ BIS, "final government evidence to the low pay commission", Jan 2014, p66

For a long time the TUC has argued that HMRC should be able to enforce the minimum statutory holiday rights. At the moment, HMRC can enforce the NMW rate, but if the minimum wage worker has not been able to have any holidays then they must be left to take their own case to an employment tribunal. This has been reported to use by unions as an issue amongst the vulnerable workers that they are trying to recruit. It is a significant loophole that allows employers to cut up to 10.8 per cent⁵¹ from minimum wage workers' earnings with little fear of reprisals.

The minimum wage is enforced either by complaint to HMRC or by workers and their representatives taking claims to employment tribunal. There is great concern that the introduction of employment tribunal fees are detracting the pursuit of national minimum wage cases, not least because the average amount owed per worker (£150⁵²) is actually quite substantially less than the fee to lodge the case (minimum £390)⁵³.

There is also concern that not all the arrears identified by HMRC are recoverable. Some employers go bankrupt to avoid arrears, whilst others simply vanish. In these cases, underpaid workers simply lose out. Drawing on work published by the Centre for London, the TUC proposes that the government should guarantee the minimum wage in such cases. There is already precedent for this kind of measure in the form of the State Guarantee Fund for Redundancy and Insolvency⁵⁴. Our estimate is that the amount guaranteed would not be more than £1 million per year and that this cost would be partly offset by an attendant reduction in claims for benefit.

Turning to types of non-compliance, all the previously reported scams can still be found, including under-recording of hours, unachievable piece rates and illegal deductions for tools, travel or uniforms.

In addition, there are still employers who cheat on the accommodation offset. We have heard it alleged that in some cases there has been close collusion between employers and accommodation providers to facilitate underpayment of the NMW.

⁵¹ 5.6 weeks statutory entitlement as a percentage of the 52 week year.

⁵² Bis op cit.

⁵³ HM courts and tribunal service. "Employment tribunal fees for individuals from 29 July 2013", 2013, p4:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254326/T435_1113.pdf

⁵⁴ <https://www.gov.uk/your-rights-if-your-employer-is-insolvent/claiming-money-owed-to-you>. Claims against the fund can be made using insolvency service form RP1

A 2007 government statement said that employers could not split their businesses into employment and housing divisions in order to avoid the constraints of the accommodation offset. The old DTI guidance⁵⁵ ruled out the use of the accommodation offset when:

- "the employer's business and the landlord's business have the same owner or business partners, directors or shareholders in common ; or
- the employer business, its owner, one of its business partners, shareholders or directors derives some financial and/or other benefit from the provision of accommodation and a family member of that owner, business partner, shareholder or directors is the owner, business partner, shareholder or director of the landlord's business."
-

This should be revived in the regulations and guidance.

The poor standard of some accommodation also remains a concern. Our often-stated view is that the offset should not be applicable to employers who provide accommodation that is either overcrowded or unfit for habitation in the legal sense of these terms, to those who provide tents for their workers or for caravans with no hot water or internal sanitation.

More simply, another scam that has been reported is that there are a number of employers who cynically and deliberately pay the minimum wage intermittently, knowing that most workers will not bother to pursue intermittent underpayment. This latter problem is found mainly amongst very small employment agencies, which may only consist of one staff member with a mobile phone.

There is also still concern that workers are wrongly being denied their true employment status by employers in order to try to avoid the minimum wage and other employment rights. There are still too many unpaid interns, but it seems that the rapid expansion of this type of work has slowed, no doubt driven both by bad publicity and the recovering labour market. There are, however, for the first time now, also some "commission only" intern posts on offer⁵⁶.

⁵⁵

<http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file38769.pdf> , p9

⁵⁶ One random example offering expenses plus commission, pulled from the many internships advertised on the internet, is for a "Business Development Manager Intern" for a property and relocation company in The Low Pay Commission ESAD August 2014

The rise of bogus “volunteer” jobs seems to have continued, including in the private sector as well as the public and charity sectors, where such jobs are particularly common. There is also still plenty of low paid false self-employment to be found, in occupations as diverse as cleaning, car washing and couriering.

In addition, a substantial minority of companies are actively looking for ways to avoid paying the NMW, including false self-employment, misusing piece rates, adopting zero hours contracts, making improper deductions for tools and travel and so on.

Umbrella companies are also still causing concern. These arms length companies take on many of the functions of the employer

Furthermore, the problem of the inappropriate expectation of free work continues in broadcasting, the performing arts, and some other sectors.

But perhaps the biggest change in recent years has been the rapid spread of zero hours contracts, which the TUC believes should be brought under much tighter legal control. Whilst such arrangements are not inherently illegal, they have been used as means to facilitate illegal behaviour.

The Government has also noted that zero hours contracts exacerbate non-payment of the NMW in social care. In a response to a question by Anne McIntosh MP expressing concern about care workers being employed on zero-hours contracts, the Secretary of State for Business Innovation and Skills said that:

*“The problem with domiciliary care is that there is almost certainly avoidance by companies to pay the minimum wage, and that overlaps with the problem of zero-hours contracts. We recognise that there are some very specific problems for workers in that sector.”*⁵⁷

London, which says that “we’re looking for someone who can learn and get up to speed quickly to help contribute to our business. After three months of internship the position could turn into a permanent role.” There is no suggestion that this example is breaking the law, but it does indicate a new trend in pay.

<http://www.gumtree.com/p/jobs/business-development-manager-intern/1072658339>

⁵⁷ Hansard, 26 June 2014, House of Commons:

http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140626/debt_ext/140626-0001.htm#14062665000011

As widely reported, there are many mobile social care workers who are not paid for travelling time between clients, taking their wages below the minimum wage, and social care remains the sector of greatest concern to the TUC. Competition to provide care is kept intense by letting contacts for individual clients on an auction basis, so that half a dozen providers are asked to bid for each customer, usually without the authority doing any reality check on whether the contract prices is sufficient to meet the minimum wage.

The net result is that non-compliance is very wide-spread. In March 2014, the National Audit Office published *Adult Social Care in England* which reported that an estimated 160,000 - 220,000 direct care workers in England alone are paid below the National Minimum Wage (NMW) in the adult care sector⁵⁸.

In their July 2014 report of an inquiry into adult social care, the House of Commons Public Accounts Committee picked up on this figure, stating that, "we are astonished that up to 220,000 care workers earn less than minimum wage and seemingly little has been done to rectify this".¹²¹ They also recognised the damaging implications, stating that "there are continuing risks to quality of care and continuity of services both because of pressures on providers and changing oversight arrangements."⁵⁹

A further point concerns the development of case-law concerning sleep-ins in social care. The situation has changed significantly in recent years, and this should be reflected in the NMW regulations and guidance.

In *Whittleston v BJP Home Support Ltd*⁶⁰, the President of the EAT held that a home carer who did 'sleepover' shifts in the client's home was working throughout the night, including when she was asleep. In an earlier case, *Esparon*

⁵⁸ National Audit Office, *Adult Social Care in England: Overview* (March 2014), Para 2.20 <http://www.nao.org.uk/wp-content/uploads/2015/03/Adult-social-care-in-England-overview.pdf>

¹²¹ Public Accounts Committee 6th report, July 2014, *Adult Social Care in England*, recommendation 5. <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/518/518.pdf>

⁵⁹ Op cit.

⁶⁰ UKEAT/0128/13/BA - <http://www.employmentcasesupdate.co.uk/site.aspx?i=ed18895>

*T/A Middle West Residential Care Home v Slavikovsky*⁶¹, the claimant was employed as a care worker in a residential care home who was required to work 'sleep-in' shifts. Here the EAT again found that she was working throughout the shift and pointed to the fact that there were statutory requirements of the employer to ensure such people were employed at all times to ensure the safety of the residents.

A new funding settlement is clearly needed for social care. This must ensure that both care and wages meet minimum standards.

However, enforcement cannot wait and HMRC should vigorously pursue employers who underpay.

The situation for other groups of workers who are particularly at risk remains much the same as was reported last year.

Domestic workers are particularly at risk, and those who live in the same establishment are simply, but wrongly, excluded from the right to the minimum wage. Regulation 2.2 should be amended to extend the minimum wage to such workers.

Similarly, many seafarers are still excluded from the minimum wage, unless they meet certain residency conditions or have a very close link to the UK. The trade union RMT is representing a number of workers who are employed only on ferry routes between two UK ports but still do not receive the minimum wage. The government should look again to see if it can do more to ensure that these workers are paid in line with UK law.

There is an entrenched subculture amongst employers in certain sectors that pushes strongly against the integrity of the national minimum wage, using one or more of the strategies described above. These attacks on low paid workers demand a push back from government, in the form of effective and visible enforcement of the existing rules and strengthening of the regime wherever this proves necessary.

TUC recommendations on enforcement:

- ***The LPC must keep up the pressure to improve the Government's guidance on the NMW.***
- ***The guidance should reflect the sleep-over EAT cases.***
- ***The budgets for NMW dissemination and enforcement***

⁶¹ UKEAT/0217/12/DA - <http://www.employmentcasesupdate.co.uk/site.aspx?i=ed22091>

should increase.

- *There should be a new prosecution strategy for aggravated offences such as keeping false records and obstructing HMRC's investigation. Repeat offenders should also be prosecuted.*
- *The maximum penalties for prosecutions under the NMW Act should be greatly increased*
- *The LPC should ensure that all employers caught underpaying are named.*
- *Government should guarantee the payment of minimum wage arrears in cases where they cannot be recovered because the employer is bankrupt or has absconded.*
- *A new legal gateway should be created so that HMRC can discuss minimum wage cases with local authorities or the MCA, where relevant.*
- *There must be sustained and ongoing attempts to enforce the minimum wage, covering both employers who try to deny workers the NMW by wrongly calling them self-employed, interns or volunteers, groups that are excluded from the full protection of the act, such as domestic workers and seafarers, and high risk sectors of employment.*
- *There is ever-growing concern about the social care sector. Targeted enforcement in this sector should continue, but a longer term solution involving more equitable funding is also needed.*

10 Wider measures to tackle low pay

The living wage

The living wage is based on a calculation of what workers need to live on, assuming that they claim all the tax credits and benefits that they are entitled to. It is calculated by the GLA in London, and, at the request of the Living Wage Foundation, by the Centre for Research in Social Policy at Loughborough University for the rest of the country. There are some moves underway to explore whether the two formulae can be harmonised.

The living wage campaign has achieved a great deal of political traction.

- The Labour and Conservative leaders and the Mayor of London all offer support
- The number of businesses paying the living wage and accredited by the Foundation has more than doubled in the past year.
- More than 600 employers have been accredited so far, including 10 FTSE100 companies, the TUC and a number of trade unions.
- Many more are paying the living wage but still to be accredited, including about 130 local authorities.

The TUC campaigns strongly for the living wage and TUC General Secretary Frances O'Grady has contributed to the report of the Living Wage Commission convened by Archbishop Sentamu, which aims to lift a million workers up the living wage during the next parliament, balancing roll-out in the public sector with a campaign to persuade some generally well-paid industries to adopt this minimum standard⁶².

In the coming period, we will be campaigning strongly for the extension of the living wage in the public, private and voluntary sectors, and for the adoption of the living wage in public procurement

New industrial pay and productivity bodies

The TUC has also been developing new policy focusing on sectors where many employees and enterprises that are trapped in a low pay, low productivity model. In these sectors, some new architecture is badly needed.

We have argued publicly that new pay and productivity bodies should be established, looking to the Low Pay Commission to play a leading role, as envisaged by former deputy chairman of KPMG Alan Buckle's report on pay⁶³.

To be specific, we are calling for the LPC to have new powers to convene employers and unions to investigate how productivity can be improved and to set a higher statutory minimum wage in those industries that can afford to pay more. We propose cleaning, care and food manufacture as suitable industries to start with.

The TUC would welcome an opportunity to meet the LPC to discuss these proposals.

Summary of the TUC's recommendations

- The adult rate should be increased to significantly more than £7.00 per hour this year. We believe this is a figure that can be absorbed without generating

⁶² The Living Wage Commission report 2014:

<http://livingwagecommission.org.uk/living-wage-commission-reveals-blueprint-for-lifting-1m-out-of-low-pay/>

⁶³ Alan Buckle, "Low pay: the nations challenge", 2014:

http://www.yourbritain.org.uk/uploads/editor/files/Alan_Buckle_review_FINAL_20May20142.pdf

any measurable negative economic side effects. Indeed, we believe that the Treasury are likely to give a clean bill of health to a significant increase when the government submits its own evidence to the Commission.

- The youth rate and development rate should both increase faster than inflation and the rise in average earnings, in order to help make up what has been lost during the recession years.
- From October 2015 onwards, the apprentice rate should only apply to those undertaking intermediate level apprentices who are aged 16-18 and to 19-20 year olds in the first year of their apprenticeship. In addition, the LPC should consider setting the apprentice rate of the minimum wage at the same level as the youth rate. Other apprentices should be paid the relevant general age-based rate of the NMW.
- The LPC should closely monitor agricultural earnings and compliance with the minimum wage.
- The LPC must keep up the pressure to improve the Government's guidance on the NMW.
- The guidance should reflect the EAT cases on sleep-overs.
- The budgets for NMW dissemination and enforcement should increase.
- There should be a new prosecution strategy for aggravated offences such as keeping false records and obstructing HMRC's investigation. Repeat offenders should also be prosecuted.
- The maximum penalties for prosecutions under the NMW Act should be greatly increased
- The LPC should ensure that all employers caught underpaying are named.
- Government should guarantee the payment of minimum wage arrears in cases where they cannot be recovered because the employer is bankrupt or has absconded.
- A new legal gateway should be created so that HMRC can discuss minimum wage cases with local authorities or the MCA, where relevant.

- There must be sustained and ongoing attempt to enforce the minimum wage, covering both employers who try to deny workers the NMW by wrongly calling them self-employed, interns or volunteers, groups that are excluded from the full protection of the act, such as domestic workers and seafarers, and high risk sectors of employment.
- There is ever-growing concern about the social care sector. Targeted enforcement in this sector should continue, but a longer term solution involving more equitable funding is also needed.