



Low Pay Commission 2007

The TUC evidence

Summary of main recommendations

- The national minimum wage must remain a truly nation-wide floor on wages.
- The Low Pay Commission must continue to be free to recommend the best minimum wage rates that can be sustained by the economy.
- For 2008, the adult rate should be increased to more than £6.00 per hour.
- The adult rate should be paid from the age of 18 rather than the present age 22. As a first step, the LPC should reiterate its recommendation that the minimum wage should be paid from age 21. The LPC should also ask the Government to set out the conditions under which this recommendation would be met.
- For 2008, the rate for young workers aged 16 and 17 should increase faster than average earnings.
- A central concern for the TUC is that the minimum wage enforcement regime must continue to be sharpened. The next steps should be to implement the current proposals to establish an initial penalty for all underpaying employers and to charge all arrears at the current rate of the minimum wage.
- However, more work will still be needed for all workers to be able to access their rights. This work would include: ensuring that the promised increase in funding for enforcement is delivered and fully utilised and checking that the increase is sufficient; increasing enforcement efforts to defend migrant workers; tougher measures to enforce the minimum wage for agency workers; stamping out illegal deductions; and increasing workers' awareness of their rights. There is a strong case for a legal duty for information about the minimum wage to be delivered through payslips or workplace posters.
- Sharpening enforcement should also include an enhanced role for the government's inspectorate, which would include a duty to pursue cases of detriment for workers claiming their minimum wage rights. There is also a strong case for allowing the inspectorate to enforce statutory holiday rights.
- In order to make trade union efforts to enforce the minimum wage more effective, they should be allowed to take representative and group actions to Employment Tribunals.
- In addition, the statutory duties of HMRC officers should be amended so that they can inform third party complainants of the outcome of their complaints. At the moment, lack of feedback on complaints that do not involve named workers is a very significant discouragement to trade union enforcement efforts.
- Tough new rules must be set to stamp out the abuse of unpaid work experience, which is on the increase.
- Casting agents must not be allowed to charge up-front fees without providing any work, or to make deductions that cut below the minimum wage.
- The Government should not go ahead with proposal to exempt certain voluntary workers from the National Minimum Wage.
- The LPC should reiterate its call for a review of the apprentice pay exemptions.
- The current loopholes that exclude many seafarers must be closed.

Introduction

The TUC is the national trade union centre. We represent 59 trade unions with nearly 6.5 million members.

This paper sets out the TUC's evidence to the Low Pay Commission (LPC). It has taken account of the range of views and experiences expressed by our affiliates across all sectors of the economy. The submission looks at the following issues:

- the current health of the UK economy as a whole;
- the health of the low paying sectors;
- recommending the minimum wage rates to apply from October 2008;
- the key question of ensuring that the enforcement regime is effective so that all workers can get their rights;
- a number of problem areas, including the abuse of unpaid work experience, unfair practices by casting agents, and the position of apprentices and seafarers respectively.

The NMW and the fight against poverty

The minimum wage has been a vital component of the Government's strategy of 'making work pay' and combating poverty. Much of the focus of this submission is on the economic and industrial evidence for a higher minimum wage but we should not forget that there is also a compelling case based on the pursuit of social justice. The UK is a rich country that can afford to set decent minimum standards. It is surely right that our Government must strive to ensure that all its citizens are lifted out of poverty.

It has often been said that in the 1980s 'greed was good' and poverty was the fault of the poor. The 1980s menu of mass unemployment cuts in the real value of social benefits, the growth of low wage exploitation at the bottom end of the labour market and the privatisation and contracting out of public services led directly to the 1990s experience of poverty increasing dramatically among the working age population. Low wage rates were forced down even further and women workers in part time and insecure jobs suffered the most.

The Labour Government deserves real praise for ending the mass unemployment that caused much of the obvious poverty of previous decades. Although there is still much to do, society has become less callous today and the language and attitudes are different.

Real progress has been made but the fight against poverty must continue. Setting the minimum wage at the highest sustainable level is a vital part of the battle to build a fair society.

To remind ourselves how important it is that we pursue this goal with the utmost vigour it is worth pausing for a moment to recall the effect that poverty has on children.

Research consistently shows that children from poor families are more likely to die in infancy, have learning difficulties, have emotional and behavioural problems during infancy, develop childhood health problems such as asthma. As children from poor families grow up, they are more likely to do poorly at school, to be unemployed,

become involved in crime, substance abuse or early pregnancy. Poverty can often become a self-reinforcing cycle. This cycle can and must be broken.

Clearly the human cost of poverty is massive, but there is also a huge cost to the state and the broader economy, which includes lost productivity, lost tax revenue, extra benefit spending, more crime, and increased demand for health and social services.

These are significant figures with, for example, the cost of 16-18 year olds not in employment, education or training being estimated at around £1 billion per year¹.

We have a duty to do as much as we can to eliminate in-work poverty. For employers, this duty includes supporting a robust minimum wage that is set at the highest sustainable level.

Campaigning beyond the national minimum wage

Trade unions regard the minimum wage as an important support for their campaigns to establish decent pay levels. The minimum wage sets a legal floor on wages that directly helps more than a million workers each year. It has set a limit on the competitive pressures that would otherwise lead some employers to 'race to the bottom' on pay.

However, the minimum wage has not been sufficient to do all that is needed to establish decent income levels. There is also a proper role for decent tax credits and in-work benefits.

Trade unions also have an important role to play. The diverse nature of the labour market means that many employers can afford to make their lowest rate higher than the minimum wage.

Trade unions continue to pursue this issue through collective bargaining and often work towards targets for occupations and industries that are well above the minimum wage².

In addition, many unions continue to be involved in living wage campaigns, often working in coalition with community group such as London Citizens.

The London Living Wage campaign, which has the support of the Greater London Authority, has produced notable victories for UNISON, UNITE and the GMB trade union. London is the home to the headquarters of many successful and profitable companies, including the major financial institutions. The London Living Wage campaign has succeeded in increasing the pay of outsourced support staff in a number of banks, universities, hospitals and even the Houses of Parliament. For example, Barclays recently set a rate of £7.50 per hour for its 'third party' staff such as contract cleaners.

Trade unions will continue to campaign and to win pay deals that lift many low paid workers beyond the minimum wage and to ensure that employers play as full a part as

¹ Godfrey, C., Hutton, S., Bradshaw, J., Coles, B., Craig, G. and Johnson, J, *Estimating the cost of being 'not in education, employment or training' at age 16-18*, DFES Research Report No 346 (2002), p55.

² Contemporary examples include local government unions negotiating for £6.00 per hour and UNITE's campaign for a £10 per hour minimum rate for LGV drivers.

possible in the fight against low pay. A minimum wage that is set at the highest sustainable level and robustly enforced is a vital support for this work.

The minimum wage must continue to apply on a national basis

From time to time, some commentators have suggested that the minimum wage should move from a national to a regional basis. Whilst there is no indication that such a proposal is actually on the Government's agenda, it is perhaps worth restating that the TUC's view is that any attempt to move away from a truly national minimum wage would lead to lower rates being set in the regions and nations of the UK with lower levels of average earnings and higher levels of deprivation. This would exacerbate poverty in these areas.

It would also broaden existing regional differences by weakening earnings in these regions. This would have other detrimental side effects, such as weakening consumer demand.

In addition, we believe that there is no real labour market case for a regional minimum wage. The Government Offices of the Regions are administrative areas that bear no particular relation to the geographical location of actual labour markets. Crucially, pay divisions are bigger within regions, and even within local authority areas, than between them.

Furthermore, one of the strengths of the minimum wage has been that its simplicity makes it relatively easy to understand and enforce. Setting different rates for each of the English regions, Scotland, Wales and Northern Ireland would mean that the 3 rates that currently exist would increase to 36 rates. It is hard to see how this would help either workers or their employers.

- ***Recommendation: The minimum wage must continue to set a nation-wide floor on wages.***

The role of the Low Pay Commission

The TUC's view is that the successful development of the minimum wage has been driven by the work of the LPC. This unique body has succeeded in drawing together the expertise of representatives from the social partners and independent experts in order to make the National Minimum Wage a success. The Government could usefully consider how this successful model could be used to improve the quality of some other public policy decision-making processes.

Given the strength of the LPC process, it is not surprising that the TUC has criticised the Government for not acting on the LPC's recommendation to pay the adult rate at age 21. If there *is* a strong case to be made against such recommendations, then it needs to be more clearly expressed than it has been so far.

Nevertheless, the Government has always given the LPC a remit that is broad enough to allow them to reach their own conclusions. The LPC will always take great care in forming its recommendations, so it would be unwise to argue, as some employers have done, that the LPC's judgement should be formally limited by reference to any mere mechanical index.

- **Recommendation: The Low Pay Commission must continue to be free to recommend the best minimum wage rates that can be sustained by the economy**

The health of the UK economy

One very important consideration for the LPC will be to gauge the ability of the UK economy to absorb the next minimum wage increases.

It is certainly true that difficulties within the financial sector in the USA have caused ripples round the world, including the recent problems that recently beset Northern Rock.

However, most commentators are agreed that the UK economy as a whole is in good shape, and the Director General of the CBI says that although growth is expected to be slightly slower in 2008, 'the fundamentals of the economy are sound'³

The economy and the labour market 2006-2008

	2006	2007	2008 (forecast)
GDP growth rate	3.1%	2.9%	2.3%
Employment growth rate	1.0%	0.7%	0.8%
Employment growth (000s)	331,000	221,000	255,000
Claimant unemployment (000s)	945,000	910,000	930,000
Average Earnings Index	4.1%	4.0%	4.2%
RPI inflation	3.2%	3.9%	2.8%
CPI Inflation	2.3%	2.1%	2.0%

Sources: HMT round of independent economic forecasts for the UK Economy (Aug 2007) for 2008 statistics (median forecasts).

Notes: 2006 whole-year averages from ONS website. Forecasts for 2008 are not directly comparable with 2007. The table reports the median data taken from HMT's round up of 43 independent forecasts published in September 2007. Employment numbers estimated by applying forecast percentage increases to 29.1 million total in work (eg both employees and self-employed) in May-July 2007 on workforce survey definitions. Claimant totals consistent with claimant unemployment rate of less than 3 per cent. CPI is Consumer Price Index (CPI) used to define the Bank's inflation target of 2 per cent.

This view is born out by the key economic and labour market indicators reported in the table above. Looking at data for the past year and the latest independent predictions for 2007 and 2008, we find that it is very unlikely that slower growth will have a negative impact on the labour market.

On the contrary, it is predicted that a quarter of a million new jobs will be created next year and that the growth in average earnings will accelerate slightly. These figures suggest that the most recent increases in the minimum wage have been absorbed without

³ CBI press release, 18 September 2007.

generating any macro-economic problems, and that independent forecasters expect that the same will be true for the 2007 increase.

The LPC will also want to consider the position of the low paying industries. As we are committed to eliminating low pay, we might not always be concerned if the number of low paid jobs was declining. If workers were able to move from low paid jobs to higher skilled, higher paid employment, we would consider this grounds for celebration.

In fact, whilst overall employment grew by 255,00 last year, employment in sectors with a high concentration of low pay also saw a slight net increase of 37,000 extra jobs. This suggests that these sectors have, as a whole, been robust enough to cope with the most recent minimum wages increases.

The table below shows that most low paying sectors have experienced modest jobs growth or have been stable during the past year. Apart from the textile industry, which has been in long-run decline, only the hospitality sector has seen a modest fall in total employment.

Employee jobs in low paying sectors

	Employee jobs March 2006	Employee jobs March 2007 (thousands)	Change since 2006 (thousands)	Change since 1999 (per cent)
Retail	2,802	2,826	+24	+0.8
Hospitality	1,766	1,751	-14	-0.9
Social work activities	1,121	1,130	+9	+0.8
Cleaning	449	449	-	-
Agriculture	203	221	+18	+8.9
Security	160	163	+3	+1.9
Textiles and leather goods	121	116	-5	-4.1
Hairdressing	114	117	+3	+2.6
All low-pay sectors	6,736	6,773	+37	+0.5

Source: http://www.statistics.gov.uk/elmr/09_07/downloads/Table6_05.xls

Given that there have been some uncertainties in the retail sector in recent years, it is cheering to be able to report that there was modest employment growth in the sector last year, delivering a net total of 24,000 extra jobs. Furthermore, ONS report that the underlying growth in retail sales 'remains firm'⁴, with the volume of retail sales increasing by 6.5 per cent for non-food items last year and by 4.3 per cent overall.

Productivity, profitability and investment

Looking at the whole economy, output per hour worked increased by 2.8 per cent last year⁵. This growth outstripped the real increase in earnings, which, after discounting CPI inflation, was a modest 1.8 per cent.

⁴ <http://www.statistics.gov.uk/cci/nugget.asp?id=256>

⁵ Source: ONS website

The profitability of UK private non-financial corporations has now recovered from last year's dip down to 13.9 per cent⁶. The current rate of 15.5 per cent⁷ is internationally competitive and has actually increased by about a quarter during the past five years.

Furthermore, profitability is much higher in the service sector, which has the greatest concentration of minimum wage workers. In this sector, the profitability of non-financial service sector corporations has now reached 21.1 per cent⁸, which is the highest level since records began nearly twenty years ago.

In the light of the above, perhaps it is not surprising that across the whole economy, business investment in fixed capital alone has increased by 7.4 per cent in real terms in the year to spring 2007⁹.

These figures support the consensus view that the UK economy as a whole is robust and healthy.

Business start-ups and survivals

The rate of business start-ups and survivals are also important indicators. The table below looks at the latest figures for business creation and survival in the five low paying sectors that can be identified from the VAT statistics. The figures show that 42,255 new businesses started up in the five sectors during 2005, which was an increase of 29.9 per cent over the previous year. This was largely driven by the fact that start-ups for bars and restaurants doubled¹⁰.

The net survival rate also improved, so that whereas in the previous year the total number of businesses in the five low paying sector increased by a modest 2,015, this had increased to a net gain of 7,105 by the end of 2005¹¹. This was greatly helped by the recovery in the retail sector, where a small net loss in the previous year's figures was transformed into a gain of 4,380 businesses during 2005.

It is particularly worth noting that the rate of start-ups and the increase in the total number of businesses have been greater for these low paying industries than for the whole economy.

⁶ The rate of return was 13.4 per cent in the first quarter of 1999, just before the NMW was introduced.

⁷ <http://www.statistics.gov.uk/statbase/tsdtables1.asp?>

⁸ Source: ONS website

⁹ Ibid

¹⁰ Source: DTI Small Business Service VAT Statistics 2006

¹¹ Ibid

Furthermore, the evidence also shows that the small business sector is continuing to thrive. The latest figures available show that enterprises employing 1-49 employees increased both their share of overall employment and their share of overall turnover¹².

Vat registered businesses in the low paying sectors - January 2006

Sector	Stock of VAT registered businesses	Start-ups in previous 12-months	Start-ups as a percentage of stock	Change in previous 12 months	Change in previous 12 months as a percentage of stock
Retail	201,935	20,800	10.3	+2,860	+1.4
Hospitality	132,965	18,875	14.2	+4,380	+3.3
Cleaning	11,340	1,205	10.6	+270	+2.4
Textiles and leather products	10,095	645	6.4	-410	-4.1
Security	5,830	730	12.5	+45	+0.8
Identifiable low-pay sectors ¹³	362,165	42,255	11.7	+7,145	+2.0
All UK economy	1,853,200	177,900	9.6	+25,000	+1.3

Source: DTI Small Business Service VAT statistics 2006. Updated statistics will be published in October 2007.

The UK economy is sustaining a record number of business as well as record levels of employment. Clearly the minimum wage has not had a negative effect on the UK's entrepreneurial spirit nor the ability of businesses to succeed.

Increasing the minimum entitlement to annual leave

The Government has asked to LPC to consider the effects of the planned increases to the statutory minimum entitlement to paid annual leave. This will rise to 4.8 weeks per year on 1 October 2007 and to 5.6 weeks per year in April 2009.

The second increase to leave entitlements will come half way through the minimum wage period that is the subject of the LPC's current inquiry.

¹² BERR statistical press releases URN 07/92 (22 August 2007), p1, and URN 06/92, 31 August 2006, p1. Small business share of employment increased from 46.8% to 47.1%. Small business share of turnover increased from 36.4% to 37.2%.

¹³ Note that data on social care and hairdressing cannot be identified from the DTI VAT statistics, which are based on 3-digit ONS industry codes.

There are a number of reasons why the TUC believes that the increases to paid holiday entitlements will be easily manageable:

- Many of those gaining extra holidays will not be minimum wage workers. For example, 23.6 per cent of the beneficiaries will be managers, professionals or associate professionals¹⁴, none of whom are likely to be on the minimum wage.
- Many of those gaining from the new rights (39.0 per cent) will not get the full increase as their current entitlement is between 4 weeks and 5.6 weeks¹⁵.
- The impact has been overstated by government surveys, which assume that all those who are getting less than the current four weeks leave will automatically get their rights when the entitlements are increased. As a result, the TUC believes that there will actually be around 3 million beneficiaries, which is about half of the government estimates.
- BERR's Regulatory Impact Assessment (RIA) makes no estimation of the compensatory personnel benefits for employers. Although these benefits can be hard to measure, they do bring real financial gains that will offset the cost of the new rights. For example, exploratory research has suggested that every extra day of annual leave may reduce sickness absence by 5 per cent¹⁶.

Taking these points into account, the TUC estimates that the net cost to employers of both increases to paid annual leave will be between £1.1 and £1.9 billion, and not as the RIA suggests, between £3.3 to £4.4 billion.

Given that the minimum holiday entitlement will apply to all UK businesses, employers will also be able to pass some of the increased cost forward via modest price increases. We therefore conclude that the increase will be absorbed without generating any detrimental economic side effects.

Setting the rates - TUC recommendations for 2008

Successful Government macro-economic policy since 1997 has ensured economic stability and, despite some ripples caused by problems with the US economy, the general economic outlook for the next year is favourable. Whilst the minimum wage may have proved uncomfortable for some individual businesses, the indications are that the sectors with a high concentration of low pay, with the exception of textile manufacturing, are doing reasonably well. This augurs well for a further increase to minimum wage rates.

The adult rate

¹⁴ Source: LFS Microdata service (autumn 2005).

¹⁵ Ibid.

¹⁶ M.Ercolani and M.Robson, "Does Raising the Pay of Low-Wage Employees Reduce their Rate of Sickness Absence? Evidence from the Impact of Minimum Wage Legislation.", paper to the Royal Economic Society annual conference, April 2007

The TUC's starting points are that we do not think that the minimum wage has yet reached its highest sustainable level. The TUC is concerned that the 3.2 per cent minimum wage is likely to fall back slightly against the predicted 4.0 per cent growth of average earnings in 2007¹⁷. Our view is that the labour market and the economy is strong enough to bear an increase that is both somewhat ahead of the predicted growth in average earnings in 2008/2009 and picks up the modest amount of slack generated by the 2007/2008 increases in the rates. Having taken into account the general state of the economy and the specific position of the sectors with a high concentration of low pay, we believe that there is room for the adult rate to rise to more than £6.00 per hour.

- ***Recommendation: The adult rate of the minimum wage should be increased to be more than £6.00 per hour in October 2008.***

The Age Threshold for the Adult Rate

The TUC has consistently argued that the adult rate minimum wage should be paid from age 18 rather than age 22. This would reflect the social norm that adulthood starts at 18 and be consistent with the trend back towards paying the adult rates at the age of 18.

The LPC has recommended on a number of occasions that the qualifying age should be lowered to 21. The TUC believes that the LPC has based this recommendation on very sound evidence but the Government has so far rejected it on every occasion.

The LPC should hold to its established position in the coming report. If the government is concerned about the current labour market condition of 21 year olds then it should say what it plans to do to address the problem and it should set out the conditions under which the LPC's recommendation would be accepted.

It is said that the Treasury has been concerned about a modest upward 'blip' in the unemployment figures for 21 year olds. The table below examines the labour market position of 21 year olds in more detail.

Labour market position of 21 year olds

	All 21 year olds (thousands)	Economically active (per cent)	Unemployment rate (per cent)	Economically inactive students (per cent)
2001	720	72.5	10.5	17.6
2005	725	70.1	12.9	17.9
2006	756	72.9	13.1	17.1
2007	767	71.0	12.9	18.2

Source: LFS Microdata service (spring quarters)

Whilst there are no grounds for complacency in these results, they are certainly not disastrous. The overall number of 21 year olds has increased by 6.5 per cent (47,000) since 2001. The labour market has not yet absorbed this growth, leading to a 15,000 increase in the number of unemployed 21 year olds and a 13,000 increase in the number

¹⁷ See table on page 6.

of economically inactive full time students of that age. These are quite small changes, which might be subject to some measurement error.

The TUC does not consider the labour market position of 21 year olds to be a bar to lowering the age at which the adult rate of the minimum wage is paid next year.

However, given the fate of past recommendations, the LPC should also ask the Government to set out the conditions under which this recommendation would be met, and to actively intervene to improve the labour market position of these workers. Turning back to the broader 18-21 age band as a whole, although we are particularly concerned that young people should not be unemployed during the early years of their working life, granting them a lower standard of employment rights is also likely to have some detrimental effects.

A major plank of the Government's labour market strategy has quite rightly been 'making work pay'. One concern is that work does not pay very well for 18-21 year olds in minimum wage jobs, which may be depressing their willingness to take employment. Furthermore, inequitable treatment in the workplace can demoralise young workers and some will choose to gear their effort to their pay rates.

Recommendation: The adult rate should be paid from the age of 18 rather than the present age 22. As a first step, the LPC should reiterate its recommendation that the minimum wage should be paid from age 21. The LPC should also ask the Government to set out the conditions under which this recommendation would be accepted, and to strengthen efforts to improve the labour market position of 21 year olds.

The young workers' rate

Turning to 16 and 17 year old workers, we find that 1,299,000 (84.0 per cent) are in education or training on a full or part-time basis, 488,000 (31.6 per cent) are in employment, and 386,000 (25.0 per cent are in *both* employment and education or training). Finally, 11,000 are not in employment, education or training¹⁸.

It appears that the position of 16 and 17 year olds in the labour market has worsened in recent years. For instance, for young workers the rate of unemployment on the ILO measure increased by 1.4 per cent during the last 12 months¹⁹.

There certainly has been a real decline in the employment rate of 16 and 17 years olds, which is only partly offset by a more modest increase in involvement in education and training. Nevertheless, we should also be aware that the widespread focus on education and training and changing incentives such as the introduction of the Educational Maintenance Allowance might make the labour market difficult to read for this age group. There is some suspicion that young workers who are involved in education and training may be continuing to say that they are looking for work when they are really concentrating on their course and are really economically inactive.

¹⁸ Source for all figures in this section: LFS Microdata Service (winter quarters)

¹⁹ Source: LFS Microdata Service (winter quarters)

Total employment for this age group fell by 30,000 last year, whilst the number who were in education or training and economically inactive increased by 17,000.

A further reason why these headline figures should be examined with care is that they involve a small number of workers. The 1.4 percent increase in unemployment equates to just 7,000 more unemployed young workers, so whilst we are certain that there has been some medium term increase in unemployment for this age group, the apparent decline *last year* was actually too small to be certain that it is real.

It would greatly improve the labour market position of this age group if the public sector were to provide more jobs for 16 and 17 year olds. At the moment, the public sector employs 26.6 per cent of the workforce, but has only 5.1 per cent of the jobs for young workers.

The TUC's conclusion is that the current minimum wage rate for young workers aged 16 and 17 is modest. We are confident that there is sufficient headroom in the labour market for an increase in 2008 that outstrips the growth in average earnings given that latest statistics indicate either a very small or non-existent fall in employment for this age group.

Recommendations: For 2008, the LPC should recommend an increase for 16 and 17 year olds that is more than the growth in average earnings. The public sector should re-examine its employment practices and provide more jobs and training opportunities for young workers.

The Enforcement Regime

One of the TUC's key concerns is that all workers should be able to enforce their minimum wage rights. HM Revenue and Customs, who have the lead responsibility for enforcement, have consistently reclaimed more than £3 million for underpaid workers each year. However, there is also a body of evidence indicating that a large number of workers feel that they cannot enforce their right to the minimum wage. Furthermore, trade unions are actively looking for ways in which to make their own efforts to help workers more effective.

We should note first that during the past year significant progress has been made in strengthening the enforcement regime. Most notably, the Government increased the budget for minimum wage enforcement by 50 per cent and increased the penalty notice due for failing to pay arrears from a minimum of £10.70 per underpaid worker to £224.70 per worker.

In addition, some further reforms are already in the pipeline. At the moment, penalty notices are only applied to employers who fail to pay arrears once they are caught. The Government has also recently consulted on imposing a new penalty to be applied to all employers who are caught underpaying, and on proposals to ensure that workers do not lose out when their arrears have been accrued over a long period.

The TUC has argued that all employers who are caught underpaying the minimum wage should face an initial penalty of £100 per worker or the arrears; whichever is the lesser²⁰. As the average arrears recovered amounts to £220 per worker, this will mean that most employers will pay the full penalty. However, we are also concerned to ensure proportionality, so we have argued for the principle that the penalty should not be greater than the arrears from income tax law.

In this model, the incentives to pay are greatly sharpened, and the penalties would increase for those who do not comply swiftly, with the initial penalty being followed after 4 weeks by the penalty notice, and repeat offenders also being prosecuted under the act.

The TUC also supports the proposals to introduce 'Fair Arrears'. At the moment, employers who underpay their workers can benefit from the use of the money that they withhold, for example, by gaining interest on it. In contrast, low paid workers who are struggling to make ends meet have been further squeezed during the period of underpayment.

One of the proposals under consideration in the recent government consultation was to force underpaying employers to pay interest on arrears. However, this would have the serious drawback of generating a liability for the recipient to pay self-assessed income tax. Therefore, the TUC favours simply making all arrears payable at the current rate of the minimum wage.

²⁰ The TUC responded separately to the BERR consultation. A copy of our response has also been submitted to the LPC.

In their speeches to the TUC conference, the Prime Minister and the Secretary of State for Business, Enterprise and Regulatory Reform both promised that these measures would go ahead in some form. These measures should be implemented at the earliest possible opportunity.

A number of other issues relating to enforcement of the NMW are also now matters of concern to the TUC.

- We need to know how the extra money for enforcement will be spent. Our key priority is that there should be more enforcement officers, as HMRC's current staff of 110 Compliance Officers are hard pressed, but there will also be some role for building awareness of the minimum wage and how it is enforced.
- In our view, there should also be some role for joint projects with trade unions, local authorities and community organisations.

Although a lot has been done, a lot more reform will still be needed before all workers can enforce their rights.

- We will need to ensure that the promised increase in funding for enforcement is delivered and fully utilised and then to check that the increase is sufficient.
- A greater number of obstructive employers and repeat offender should be prosecuted.
- The current maximum penalty allowed by the law is not commensurate with the worst offences uncovered by HMRC. The maximum penalty of £5,000²¹ is very low indeed when compared with, say, the law that protects trademarks, where the maximum penalty is an unlimited fine and up to 10 years in prison²².

A sweatshop owner is likely to be treated far more harshly by the law for counterfeiting popular brands of shirts than for underpaying their workers.

To give a further example, the maximum penalty for failing to comply with the Information and Consultation Regulations is £75,000²³ - 15 times the penalty for minimum wage offences.

A substantial increase to the current penalties in the National Minimum Wage Act is needed in order to redress this situation.

In addition, a high proportion of the minimum wage problems experienced by low paid workers involve employers keeping poor records. In many cases, this is due to employers deliberately trying to avoid paying the minimum wage. Although this is already an offence under the National Minimum Wage Act²⁴, most cases are unsuitable for prosecution. It would therefore be worth considering introducing a fixed penalty for this offence.

²¹ National Minimum Wage Act 31.9 sets a maximum fine of scale 5 - currently £5,000.

²² The Copyright Etc. and Trade Marks (Enforcement) Act 2002, section 6 provides these penalties on indictment. The maximum sentence for a summary conviction is 6 months in prison.

²³ Information and Consultation Regulations 2004, Section 23:2.

²⁴ National Minimum Wage Act 1998, section 31:2

Third, efforts to defend migrant workers must be increased, as those entering the low paying sectors are particularly likely to be vulnerable.

The TUC welcomes the Home Secretary's promise that the new web-based system for applying for work permits will include information about the minimum wage and other rights at work.

However, creating the robust system that is urgently needed would also involve removing the rules and incentives that inhibit closer working between agencies. There are already some lessons to be learned in this area from the Joint Workplace Enforcement Pilot projects, and these are being reinforced by the emerging findings of the TUC's Commission on Vulnerable Employment.

Employers who flout the law usually commit multiple breeches. It is therefore deeply unhelpful that, for example, HMRC inspectors do not tell HSE about suspected breeches of health and safety law or local authority environmental health departments about accommodation that is overcrowded or unfit for human habitation, even though they have checked if the accommodation offset to the minimum wage has been correctly used in such a case.

It would also greatly improve the enforcement of the minimum wage if the law were changed to allow HMRC to enforce the law concerning workers who suffer detriment or dismissal for trying to claim their right to be paid the minimum wage. At the moment, workers are left to take such cases to Employment Tribunal (ET) on their own.

On a similar point, the TUC argues that HMRC should be able to enforce the minimum statutory holiday entitlements. Minimum Wage inspectors often find breeches of the current entitlements under the Working Time Regulations as part of their investigations, but are unable to take up such cases as, once again, the law leaves enforcement to the individual workers taking an ET case.

Trade Unions and Enforcement of the NMW

Trade unions are particularly keen to be able to do more to help workers enforce the minimum wage. Two reforms are urgently needed.

The first problem stems from the configuration of HMRC's confidentiality rules. Section 19 of *The Commissioners for Revenue and Customs Act* (2005) sets a maximum penalty of two years imprisonment for officers who wrongfully disclose information. The fact that the act does not allow any information to be given to third parties, even when they have a proper interest in the outcome or are acting as an agent for the principal party means that trade union officers have largely been excluded from the process.

In practice, this means that no feedback at all can be given about a complaint made by a third party. So if a union officer complains about the site next door they will never know the outcome.

Furthermore, these rules mean that the process for getting feedback on minimum wage cases involving named workers such as trade union members is unnecessarily bureaucratic. First, the worker involved must write to HMRC to specify that the union

officer is acting as their advisor. This allows HMRC to tell the union officer when there is a development in the case, but not what the development actually is. This means that the officer must then contact the worker to find out what has happened. In practice, this often leads to delays and misunderstandings.

These problems could be resolved by amending section 18 of the 2005 Act in order to allow disclosure in these circumstances.

The second problem stems from the current rules on minimum wage applications to Employment Tribunals. There are obviously serious difficulties in persuading any underpaid worker to be the first to put their name on an ET application. Furthermore, ET judgements only apply to the workers named on the application even though there may be many others at the relevant workplace facing underpayment. Taken together, these two shortcomings load the system in favour of underpaying employers.

It would therefore be a significant improvement if workers and their trade unions could take representative and group cases²⁵ to Employment Tribunals, rather than every single underpaid worker having to submit a separate application.

Representative actions²⁶ and Group Litigation Orders²⁷ are already allowed in the courts in certain circumstances. It is therefore an anomaly that Employment Tribunals cannot hear representative actions and that their powers to manage group litigation in a way that would help to defend low paid workers from exploitation are less extensive than those of the courts.

Making these changes would greatly strengthen workers' ability to enforce the minimum wage and would help to overcome the very substantial difficulty in finding workers who are sufficiently brave to enforce their rights in the face of a hostile employer.

NMW Enforcement and Vulnerable Workers

The emerging findings of the TUC Commission on Vulnerable Employment and the Government's Vulnerable Workers Enforcement Forum confirm that many of the problems for migrant workers stem from abuse by unscrupulous employment agencies. The TUC has therefore called for the adoption of an EU directive on the equal treatment for agency workers, the reintroduction of licensing of agencies, the Employment

²⁵ Representative action - where one or more persons represents another or a group of others on a claim (known as a 'class action' in the USA). Group action - where there are a large number of claims with common or related issues in fact or law. These may be case-managed to ensure greater consistency and save costs.

²⁶ Civil Procedure Rules, parts 19.6/19.7

²⁷ Ibid, parts 19.10-19.15

Agency Inspectorate to be given more resources and greater powers and for higher penalties for agencies that break the law ²⁸.

In addition, the TUC calls on the LPC to recommend that employment agencies be made a priority target for enforcement. HMRC should also make them a key focus of their existing programme of targeted enforcement.

The Gang masters Licensing Authority (GLA) was introduced in order to regulate a sector where many vulnerable workers were found to be at risk. Clearly many employment agencies are now effectively acting as gang masters, particularly those who supply migrant workers. Furthermore, closer regulation has led rogue gang masters to move into other sectors such as construction. One useful way of tackling the severe problems faced by many migrant agency workers would be to broaden the GLA's remit on an incremental basis to include other high-risk industrial sectors.

Earlier this year, the Government introduced new guidance on the use of the accommodation offset. This was aimed at stamping out illegal deductions. These were especially rife in the employment agency sector. These guidelines now need to be reviewed to ensure that they are working properly.

The result of the court of appeal case that ruled out employers making extra charges for utilities that cut below the accommodation was very useful in clarifying workers rights

²⁹.

However, the TUC is still concerned that illegal deductions are still being made for transport, tools and meals and so on. We know that HMRC is currently pursuing some complaints on this issue. This illegal practice must simply be stamped out.

The TUC has also given some thought to how more agencies can play a part in enforcement. Whilst we want HMRC to continue to be the lead agency for enforcing the minimum wage, we believe that there may be merit in allowing local authorities to supplement this work by giving local authorities the power to check that the minimum wage is paid as part of their existing inspection regime. Clearly, not every authority would want to make use of such a power, but those who are committed to fair employment standards would take it up. It could also be that some local authorities would find that stronger enforcement would have a favourable impact on their tax/benefit ratios.

The Government should also look favourably at proposals from local authorities and community groups for joint enforcement projects.

Finally, there is some concern that not enough workers know their minimum wage rights or how to complain. Serious consideration should be given to the possibility of creating

²⁸ The TUC responded to BERR's consultation on the power of the Employment Agency Inspectorate and the penalties for law breaking. A copy has been sent to the LPC. The Secretary of State announced at the Labour Party conference that the inspectorate would be given more resources.

²⁹ Leisure Employment Services Ltd. v HM Revenue and Customs (2007)

mandatory requirements to include information about the minimum wage on payslips or to display information posters in workplaces.

Recommendations: To sharpen enforcement:

- *The proposals for 'fair arrears' and creating an initial penalty for all underpaying workers must be implemented.*
- *The increased funding for enforcement promised in the budget must be rolled out and subsequently reviewed to ensure that it is sufficient.*
- *The LPC should recommend that the maximum fine for minimum wage offences should be substantially increased.*
- *They should also consider whether penalty notices should be applied for keeping false records.*
- *Future enforcement efforts must take full account of the difficulties facing migrant workers in the low paying industries.*
- *In particular, enforcement needs to focus on the role of employment agencies.*
- *The LPC should check whether the new guidance on the accommodation offset is working and recommend that further measures be taken to stamp out illegal deductions.*
- *The rules and incentives that govern interaction between the various enforcement agencies must be reconfigured to facilitate information sharing and closer working.*
- *HMRC should have the right to pursue cases of detriment and dismissal. They should also be given the right to enforce holiday entitlements.*
- *HMRC's confidentiality rules should be amended to allow them to share information with worker's advisors such as trade union representatives, and to give some feedback on third party complaints.*
- *Trade unions should be allowed to take group and representative actions to Employment Tribunals to enforce the minimum wage.*
- *The LPC should consider whether the remit of the GLA should be extended to other industries with a high concentration of gang masters, such as construction.*
- *The LPC should consider whether local authorities should also have the power to inspect for minimum wage compliance.*
- *The Government should encourage joint enforcement projects.*
- *The LPC should consider whether employers should have to display information on the minimum wage in the workplace or on wage slips.*

'Up front fees' charged by casting agencies in the media

There is a problem with unscrupulous agents in the media charging up-front fees and commission to performers. There are also a number of scams that exploit the desire of members of the public to get on television by charging exorbitant fees for bogus auditions.

Deducting upfront fees often means that low paid performers receive less than the minimum wage.

The trade unions Equity and BECTU have collected evidence on a range of such cases, which can be forwarded to the LPC if they wish³⁰.

Recommendation: The Low Pay Commission should examine the minimum wage rules applying to casting agents in order to ensure that they are sufficiently rigorous and are fully enforced.

The Government should not exempt voluntary workers in the National Youth Volunteering Framework from the National Minimum Wage

The Government has recently consulted on proposals to exempt full-time voluntary workers in the National Youth Volunteering Framework (NYVF) from the minimum wage, with the goal of enabling them to be paid an allowance of £60 per week.

The background is that voluntary workers are volunteer workers who have a contractual relationship with an employer. They are not to be confused with volunteers, who clearly do not have such a contractual relationship. Voluntary workers can only be paid expenses otherwise liability to pay the full minimum wage will be triggered.

Therefore, the Government's proposals aim to create a way of paying a small number of young voluntary workers who would otherwise be unpaid, a small allowance in order to allow them to commit themselves to a short period of full-time voluntary work.

The TUC supports the creation of the NYVF. However, there is a real danger that exempting more voluntary workers will undermine the minimum wage settlement that has been painstakingly negotiated in the voluntary sector by generating pressure to further extend the exemptions.

The TUC therefore proposes a different solution, which is that the proposed opportunities for young people to become full-time voluntary workers for a period should be reclassified as part of the New Deal voluntary sector option.

Such an option would allow these young people to be paid an allowance, since it is already exempt from the minimum wage. More importantly, it would also need to include some training, which would be greatly valued by young people.³¹)

³⁰ See also 'Unions Join Forces To Stop Scams', joint Equity and Bectu press release 16 November 2006.

³¹ Further details can be found in the TUC's submission to the BERR review 'The National Minimum Wage and Voluntary Workers' (September 2007).

Recommendation: The LPC should reject BERR's proposal to exempt voluntary workers in the NYVF from the minimum wage, and should ask the Government to find another way to allow the new full-time voluntary worker post to be paid.

The LPC should reiterate its call for a review of the apprentice pay exemptions

There is evidence that a significant minority of apprenticeships are poorly organised or simply exploitative. The TUC wants to ensure that all apprenticeships deliver what they promise. Bogus apprenticeships must be stamped out, whilst taking due care to ensure that genuine opportunities are not harmed.

The Government has ruled out a review of the apprentice exemptions from the minimum wage this year, arguing that they are currently considering plans to increase the participation age in education, which will include plans to expand the number of apprenticeships.

The TUC is concerned that the extremely low pay rates offered by some apprenticeships in largely female occupations have led to the gender pay gap being wider for apprenticeships than in the whole economy.

In addition, there is evidence that low pay is contributing to high drop out rates.

We are also concerned that the £80 minimum payment for apprentices, which is a contractual requirement demanded by the Learning and Skills Council for apprenticeships in England, is not being properly enforced. In addition, we would also like to be sure that apprentices in other parts of the UK are properly protected, which suggests that there might be a stronger role for the minimum wage. Taking this into account, the LPC should reiterate its call for a review of the exemptions for apprentices and the Government should ask the LPC to conduct it as part of the 2009 inquiry.

Recommendation: The LPC should again call for a review of the exemptions for apprentices

Set tough new rules to stamp out the abuse of unpaid work experience

There is strong evidence from a range of quarters, including the NUJ, Equity and BECTU, that many employers in the so-called glamorous careers such as the media, journalism, public relations, politics and prestige retailing are exploiting young people who seek work experience in their industries by demanding a period of unpaid work as the price of a job. In the case of the film industry, for example, some 'interns' are expected to work as 'runners' for up to a year without pay.

Some progress has been made during the last year. New guidance has been agreed for the Houses of Parliament and the broadcast industry respectively. However, it is not yet clear that these measures are sufficient and they have yet to be extended to the other sectors, allowing a general spread of unpaid work to continue unabated.

Whilst the TUC is keen to ensure that genuine opportunities for young people to gain from properly structured work experience continue, we are also equally keen to ensure that the pernicious practice of demanding a period of free work as the 'toll' for entering a desirable career is stamped out.

Recommendation: The LPC should review the rules on work experience to ensure that they are sufficiently rigorous to rule out exploitation and are fully enforced.

Ensuring that seafarers are protected by the minimum wage

The current exemptions from the minimum wage exclude many seafarers who do not live in the UK but work for UK companies, even when their work regularly brings them to UK ports. We are also concerned that UK resident officers and seafarers are excluded if they work abroad for UK companies.

In addition, the TUC's view is that the National Minimum Wage Act should be extended to apply to workers within the continental shelf area, which includes the UK's oil and gas exploration sites.

Recommendation: The Government should close the current minimum wage loopholes that exclude many seafarers from its protection

The TUC's recommendations to the Low Pay Commission - summary.

- The minimum wage must continue to set a nation-wide floor on wages.
- The Low Pay Commission must continue to be free to recommend the best minimum wage rates that can be sustained by the economy
- The adult rate of the minimum wage should be increased to be more than £6.00 per hour in October 2008.
- The adult rate should be paid from the age of 18 rather than the present age 22. As a first step, the LPC should reiterate its recommendation that the minimum wage should be paid from age 21. The LPC should also ask the Government to set out the conditions under which this recommendation would be accepted, and to strengthen efforts to improve the labour market position of 21 year olds.

- For 2008, the LPC should recommend an increase for 16 and 17 year olds that is more than the growth in average earnings. The public sector should re-examine its employment practices and provide more jobs and training opportunities for young workers.
- To sharpen enforcement, the proposals for 'fair arrears' and creating an initial penalty for all underpaying workers must be implemented. The increased funding for enforcement promised in the budget must be rolled out and subsequently reviewed to ensure that it is sufficient. The LPC should recommend that the maximum fine for minimum wage offences should be substantially increased. They should also consider whether penalty notices should be applied for keeping false records. Future enforcement efforts must take full account of the difficulties facing migrant workers in the low paying industries. In particular, enforcement needs to focus on the role of employment agencies. The LPC should check whether the new guidance on the accommodation offset is working and recommend that further measures be taken to stamp out illegal deductions. The rules and incentives that govern interaction between the various enforcement agencies must be reconfigured to facilitate information sharing and closer working. HMRC should have the right to pursue cases of detriment and dismissal. They should also be given the right to enforce holiday entitlements. HMRC's confidentiality rules should be amended to allow them to share information with worker's advisors such as trade union representatives, and to give some feedback on third party complaints. Trade unions should be allowed to take group and representative actions to Employment Tribunals to enforce the minimum wage. The LPC should consider whether the remit of the GLA should be extended to other industries with a high concentration of gang masters, such as construction. The LPC should consider whether local authorities should also have the power to inspect for minimum wage compliance. The Government should encourage joint enforcement projects. The LPC should consider whether employers should have to display information on the minimum wage in the workplace or on wage slips.
- The Low Pay commission should examine the minimum wage rules applying to casting agents in order to ensure that they are sufficiently rigorous and are fully enforced.
- The LPC should reject BERR's proposal to exempt voluntary workers in the NYVF from the minimum wage, and should ask the Government to find another way to allow the new full-time voluntary worker post to be paid.
- The LPC should again call for a review of the exemptions for apprentices.
- The LPC should review the rules on work experience to ensure that they are sufficiently rigorous to rule out exploitation and are fully enforced. The Government should close the current minimum wage loopholes that exclude many seafarers from its protection.