Low Pay Commission consultation on the National Minimum Wage 2021

Written response from GMB

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Summary

- GMB believes that in this time of unprecedented crisis, the recovery must be built on high wages and high productivity. A weak increase to, or freeze in, National Minimum Wage rates would be rightly seen as a betrayal of the low paid key workers who have born the brunt of this pandemic, and it would harm the economic recovery.

- The Low Pay Commission should send a bold statement by recommending a substantial increase in National Minimum Wage rates to keep pace with the two thirds of average earnings target, strengthen spending power, and reflect the heroic contributions made by low-paid workers during the coronavirus outbreak. The Treasury should consider temporarily underwriting the cost of increases, particularly in inadequately funded sectors such as social care.

- We are deeply concerned about the lack of a National Minimum Wage 'floor' in the Job Retention Scheme. This has left some of members without adequate income, undermined the principle of a minimum wage, and set a dangerous precedent for future policy development.

- GMB believes that the Low Pay Commission should remain independent, and be afforded a wider remit to investigate the causes and consequences of low pay, and of how poor quality employment holds down wages and productivity growth.

- While we would like to see faster progress, we welcome the intent to abolish lower rates for 23 year olds next year, and the aspiration to abolish lower rates for 21 and 22 year olds from 2024. GMB firmly believes that the same rates should be paid for performing the same work, and that age discrimination in pay-setting is contrary to at least the spirit of the principles enshrined in the Equality Act.

- Our policy is that minimum wage rates should reflect a real living wage of at least £10 an hour.

Introduction

GMB is the UK's third largest trades union. We represent over 600,000 people in all sectors of the economy, ranging from low-paid workers in direct service roles to higher-paid technical and management grades.

Just over half of GMB's membership is in public services (including outsourced sectors). We have a strong and growing private sector membership, through sectors including retail, utilities, security, and transport.

GMB has a proud history of campaigning to raise the living standards of low paid workers. Through our collective agreements, GMB continues to organise to secure improved pay and conditions, and for employment protection during the unprecedented economic impact of the coronavirus outbreak.

Role of the Low Pay Commission

The independent, tripartite model of the Low Pay Commission has proved effective more than two decades, and GMB continues to support the work and to defend the reputation of the Low Pay Commission. We welcome trades union representation on the Low Pay Commission.

While GMB supports the current work of the Low Pay Commission, we believe that the organisation's remit should be expanded to include powers to investigate causes of low pay, and to make public policy recommendations. This could include, for example, the growing 'two-tier' workforce in sectors with high levels of contracting out, with consequential undermining of wages, terms and conditions.

GMB also believes that the current working definition of 'low pay' is inadequate. The National Minimum Wage is undeniably a form of low pay, but low pay and the National Minimum Wage are not one and the same. This submission includes examples of workers whose hourly rates are above the minimum wage floor, but who nonetheless due to their contractual arrangements have gross pay in line (and even below) FTE National Minimum Wage rates.

In March 2020, the BEIS Department published the remit for the Low Pay Commission's current round. Ministers asked the Commission:

- To make recommendations for 2021 in line with the aspiration for the full National Minimum Wage rate to reach two-thirds of median earnings by 2024

- To advise on whether the Government should revise its target and timetable based on emerging economic conditions – this request was made prior to the coronavirus outbreak, but it is particularly important in light of the extra-ordinary current economic situation and uncertainty over future forecasts.

This response aims to provide evidence on those points.

Definitions

At all points in this response, 'National Minimum Wage' means those rates that are covered by the National Minimum Wage Regulations. We believe that the Government's designation of the 25 and over rate as a 'National Living Wage' is unhelpful, as it leads to confusion arising between the centrally set full rate and the independently calculated rates set by the Living Wage Foundation.

Economic context

GMB believes that the Low Pay Commission's normal remit has in effect been overtaken by events. We recognise that the Commission was asked to consider whether an 'emergency break' should apply, and that it is doing so in the context of the severe economic effects of the outbreak.

The OBR projects that unemployment could rise by two million in Q2 of 2020, peaking at 10 per cent. Average earnings are projected to fall by 7.3 per cent this year. The OBR's initial model predicts a sharp 'V-shaped' recovery, with a quick rebound in economic growth. Against this prediction must be balanced the possibility on an 'L-shaped' recovery, with economic activity flatlining after the period of decline ends. Even in the OBR's potentially optimistic scenario, unemployment is not expected to return to pre-outbreak levels before 2025.[1]

If unemployment remains at around 3 million over the long-term then this recession will be comparable with the recession of the early 1980s.[2] Academic research has found that such 'mass unemployment events' are public health crises, with long-term (and even intergenerational) economic and health costs that can persist even after the headline employment rate recovers.[3]

We note that, due to the uncertainty caused by the coronavirus outbreak, the Commission has not published an indicative projection of future rates, and also that the Commission has said that 'assessing the effects of the Covid-19 outbreak on the economy and labour market will be central to our recommendations on the minimum wage this year.'[4]

It is undeniable that the coronavirus outbreak has had a severe and negative impact on the economy. The Government's handling of Brexit is another cause for concern. In last year's submission, we said that the prospect of the UK leaving the European Union without a deal 'has created uncertainty for UK households and businesses.' The same is true of the current prospect of ending the transition phase without an agreement on a trade deal, although it is hard (and perhaps not meaningful) to separate out data indicators the economic effects of this uncertainty from that associated with the coronavirus outbreak.

There is a public policy choice to be made in response. We recognise that the Low Pay Commission will likely come under pressure to recommend a freeze or real-terms cuts in National Minimum Wage rates.

In our view, suppressing economic demand by reducing (in real-terms) the wages of 2.1 million low-paid workers – many of whom are the key workers who have kept society functioning - would precisely the wrong response to the crisis. Key workers in low-paid sectors, including social care and retail, have born a heavy burden, and the safe resumption of wider economic activity will be dependent on their efforts. Higher wages paid to low-earners would be a highly effective means of strengthening aggregate demand, which is expected to be the biggest economic challenge once central subsidies are tapered off. Higher wages paid to low-earners are more likely to be spent in the local economy and more effectively support sustainable wider economic growth, due to the diminishing marginal utility effect.

Previous research undertaken for the Commission found that, during the last recession, National Minimum Wage upratings in the UK 'had no employment effects'[5] (although there was limited evidence of impacts on hours worked). The changes announced in 2015 to the full National Minimum Wage have been well absorbed in the wider economy, and even in these trying times, we believe that the Government should adopt an ambitious timescale for reaching two thirds of median earnings.

GMB believes that the principle of an 'emergency break,' and the criteria for 1 per cent GDP growth, have been overtaken by events. We urge the Commission to recommend a significant increase in National Minimum Wage rates on economic justice and utilitarian grounds. We recognise that the coronavirus outbreak has led to a significant reduction in many employers' revenues. The Treasury should give serious consideration to the underwriting of wage increases, on a sector basis if necessary, until sustained economic growth resumes.

The Job Retention Scheme and the National Minimum Wage

GMB is deeply concerned that the Job Retention Scheme does not contain protections for workers paid on National Minimum Wage rates, meaning that workers aged 25 or over can legally be paid £6.97 for their normal hours of work (with equivalent reductions in other rates). As the Government's advice puts it:

'Furloughed workers who are not working can be paid the lower of 80% of their wages or £2,500 even if, based on their usual working hours, this would be below their appropriate minimum wage.'[6]

This represents a fundamental breach with the founding principle that the National Minimum Wage should provide a 'floor beneath which wages cannot fall.'[7] The Treasury has broad powers under the Coronavirus Act to give HMRC 'such functions as the Treasury may direct in relation to coronavirus or coronavirus disease' (Section 76). GMB has urged the Treasury to use these powers to direct HMRC to include a floor to ensure that furloughed workers' pay does not fall below the relevant minimum wage rates for their normal hours of work (either contracted hours, or an average where a contract does not guarantee a minimum number of hours) over the earnings reference period.[8]

A related issue is that payments are based on the same month in the last year, or an average over the last year. This means that payments will not necessarily take account of the April 2020 increase in rates, leading to some workers continuing to effectively be paid on last year's rates.

GMB has successfully negotiated a large number of agreements that guarantee 100 per cent pay during furlough, but enforcement of a supposedly universal provision should be directed from Government. The lack of a minimum income floor in the Job Retention Scheme is a matter of serious concern. It has left some of our members in dire financial straits. It sets a dangerous precedent for future policy decisions. We ask that the Commission examines this issue as part of its report.

Continuing work

Enforcement

There are ongoing and well-established problems with National Minimum Wage enforcement. HMRC reports that more workers are more under-payed than ever before. According to figures contained in the Commission's 2020 report on non-compliance and enforcement of the National Minimum Wage, approximately five per cent of all workers paid at or below the National Minimum Wage threshold are paid a pound (or less) below their appropriate minimum rate.[9]

Underpayment is a sectoral issue, with particularly acute problems manifesting in childcare, hospitality, and social care. The broad 'human health and social work' category, for example, accounts for 12 per cent of low-paid workers, but it also accounts for a quarter of pay arrears.[10] MPs have warned that 'non-payment of the national minimum wage is widespread as a result of providers failing to pay care workers for their travel time, travel costs and 'sleep in' shifts.'[11] Low pay and insecurity is endemic despite the skill and dedication of our members in social care. A sectoral problem has a sectoral solution, and GMB continues to campaign for the establishment of sectoral bargaining structures, with the aim of agreeing clear and fair pay rates and paths for career development.

GMB will review and scrutinise the Government's proposals for a single enforcement body when they are published. We welcome progress on previous recommendations and the Commission's continued focus on this area. We would like to see a clearer role for trade unions in reporting violations of the Minimum Wage Regulations.

Apprentices

The Low Pay Commission's 2020 report on non-compliance and enforcement of the National Minimum Wage concluded that 'surveys continue to show very high levels of underpayment of apprentices' and that underpayment of apprentices is 'chronic.' Apprentices are around ten times more likely to be underpaid than the average worker.[12] Although the number of apprentices is relatively small compared to all workers, the number of apprentices is expected to increase, especially after the Prime Minister said in June 2020 that it is 'vital that we guarantee apprenticeships for young people.'[13] It is therefore vital that there is effective enforcement, and GMB strongly supports the Low Pay Commission's call for greater Government action in this area.

While GMB welcomes the inclusion of apprentices within the National Minimum Wage framework, we believe that the rates are too low, and lack a clear path for progression. The 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. We have seen some evidence of employers using low-paid, low-quality apprenticeship programmes as a form of job substitution, including under national bargaining frameworks that lack a clear provision for apprenticeship rates (such as local government and the NHS).

Tips

It is a matter of ongoing concern that action has not yet been taken to guarantee that all tips paid to service workers are retained by them. There has still been no formal response to the BEIS 'Tips, Gratuities, Cover and Service Charges' consultation which closed in June 2016. The Government has said that it intends to bring forwarded legislation on this issue in the forthcoming Employment Bill, however the timetable for that Bill to be introduced is unknown. We hope that there will be significant progress on this issue during the year.

Equality impacts

As the Commission has described, it is well known that some groups are at a much higher risk of being on low pay than others. Women, Black and Minority Ethnic (BAME), disabled workers, and younger workers are all more likely to be paid on National Minimum Wage rates.[14]

These issues have been thrown into sharp focus during the coronavirus outbreak, when workers who share protected characteristics have made a disproportionate sacrifice. A recent summary of evidence published by Public Health England concluded that infection and mortality rates were higher in deprived areas, with multiple interactions between class, race, disability, gender, and age.[15] The outbreak has thrown deep-seating, structural inequalities in our society into sharp relief, and this factor strengthens the case for the Commission to have a wider investigatory remit.

Low pay (non-National Minimum Wage)

GMB believes that a flaw in the current system is the conflation of the National Minimum Wage with the wider phenomenon of low pay. Minimum earnings are a form of low pay, but there are other categories of workers who, due to their contractual arrangements, receive similar or lower levels of gross pay despite nominally being paid above National Minimum Wage hourly rates.

School support staff are a prominent example. Accounting for over 800,000 workers in England alone, most support staff are now employed on term-time-only contracts, under which workers are paid on a complex annualised basis. Many workers in this sector have been forced onto inferior gradings, which do not reflect their experience or expertise, partially as a consequence of underfunding. The median gross earnings for teaching assistants was £12,919 in 2019.[16]

GMB believes that, as part of the proposed expansion of the Commission's investigatory powers, its remit should be widened to include consideration of structural examples of low pay that fall outside of National Minimum Wage issues.

Differentials

In recent years, significant increases to Minimum Wage Rates have led to a noticeable degree of compression for workers paid just above the minimum rates. This can cause problems for good working relationships and retention. In our experience, the compression of differentials can be a significant factor in workers becoming 'stuck' and unable to progress beyond minimum (or near-minimum) rates, as described in previous evidence to the Commission.[17]

These issues can be addressed where strong agreements are negotiated by trades unions, but the compression of differentials remains a significant problem in workplaces without good collective bargaining coverage.

Data improvements

GMB believes that more could be done to improve the quality of official data that is available to the Low Pay Commission and other parties. While the Annual Survey of Hours and Earnings is recognised as the most authoritative general source of information, there are limitations to the survey's outputs (such as the lack of information on educational background) which are compounded by restrictions on access to outside researchers.

The Labour Force Survey is more readily accessible, and it contains a greater range of variables, although the limitations of self-reported earnings data are well-known.[18] The Labour Force Survey's underlying sample size has also been cut by nearly a third (from 110,817 respondents to 77,903) between 2010 and 2020,[19] which has negative implications for the reliability of estimates for some occupations and industries (and also, in particular, for regional estimates).

Some workers that are particular risk of low pay are 'invisible' to official data collections. This is particularly true of outsourced workers, for which good quality aggregate data is only available for the social care industry – where the data demonstrates that low pay and non-compliance with minimum wage legislation and regulations is rife.[20] These workers cannot otherwise be identified in official data returns. The addition of a question to identify outsourced workers in the Labour Force Survey would significantly improve national understanding of low pay in this sector.

Wages not based on ages

GMB has long campaigned for equality of wage rates. We believe that the same rates should be paid for performing the same work.

The Government has not been able to provide any robust evidence that productivity is any lower among workers aged 21-24 than their older counterparts. Younger workers aged 21-24 were previously classed as adult workers under National Minimum Wage legislation, and to all intents and purposes will have the same cost of living and expenses as their older counterparts. In-work support from the state is far lower for younger workers too, meaning their wages are lower and there is less help available for them to get by.

GMB has previously estimated, based on Labour Force Survey figures, that approximately 660,000 workers aged between 16 and 24 were paid below the full adult National Minimum Wage rate. Of these, about 145,000 were paid below the rate for their age band.[21]

Discrimination against workers on the grounds of age – a protected characteristic – is only permissible under the Equality Act when it can be shown to be a proportionate means of realising a legitimate aim. There is no compelling evidence to support differential rates. While we would want to see faster progress, we support proposals to remove age discriminatory bands, which must not be lost in consideration of the coronavirus impact, and we would want to see serious consideration given to removing the final age-based bands.

GMB's National Minimum Wage policy

The National Minimum Wage was an important first step in tackling the problem of low pay, but in many cases it has now become the maximum wage that millions of workers can hope to earn. In many sectors, the minimum wage has become a ceiling on pay, rather than a base level from which employees could secure better pay- most notably in care work, and other sectors where outsourcing is particularly rife.

Even before the coronavirus outbreak, too many workers are in debt to meet their basic cost of living, or just-about-managing but with no slack in their household budget to save for emergencies. Although there was a welcome fall in the number of households estimated to hold 'problem debts,' 15 per cent of households in the lowest income decile were estimated to hold problem debts in March 2018 (the latest date for which figures were available) – this was significantly higher than for any other income decile.[22] A real living wage that means workers can have greater financial resiliency, meaning that sudden changes in circumstances or unexpected bills do not become crises.

GMB's wages policy is based on the principle that work should pay fairly, and that no-one in work should have to rely on benefits to make ends meet. While benefits are a safety net not a punishment, many of our lowest paid members and those in precarious employment are experiencing the introduction of Universal Credit as increasingly financially punitive - particularly where the payment cycle does not align with their wages. GMB is opposed to workers having to rely on top ups from family tax credits and housing benefits so as to make ends meet. We have continually highlighted many instances where large employers are making millions in profit and can well afford to pay above the National Minimum Wage.

GMB is concerned that many employers have made low-paid, insecure work part of their business model- particularly in many 'gig economy' companies that claim their staff are contractors rather than employees in order to circumvent the requirements to afford them the employment rights they deserve, and are entitled to under the law. Ultimately addressing low pay means ending these sorts of employment practices. Unions have a strong role to play - we hope GMB's ground-breaking agreement with gig economy employer Hermes[23] will be replicated elsewhere across the sector- but there is also a role for government in providing meaningful disincentives to reliance on insecure contracts and working patterns. One of the key tests for the Low Pay Commission should be the extent to which employer behaviour is changed by their recommendations, which will in turn have a tangible impact on addressing the drivers of low pay.

While GMB supports the admirable work of the Living Wage Foundation, voluntarism cannot replace a proper statutory real living wage without which, employers will seek to benefit from the unequal playing field by only paying the bare minimum trapping their workers in in-work poverty rather than providing a route out of it.

GMB's policy, as set by Congress, is to campaign for a real living wage rate of at least £10 an hour.

GMB recommendations for 2021

The National Minimum Wage has been a powerful tool for raising living standards since 1998. In 2021, the Low Pay Commission's statements will have a critical role in shaping the economic recovery. Our recommendations to the Commission are below:

- The Low Pay Commission should be ambitious in recommending fast progress towards meeting the two thirds of median earnings target, with an aim of achieving a real living wage rate of at least £10 an hour, to apply regardless of age.

- At this time of national crisis, the National Minimum Wage should be seen as a key stimulus measure to strengthen aggregate demand and aid the economic recovery.

- The Low Pay Commission should make recommendations regarding the undermining of the principles that underpin the National Minimum Wage during the coronavirus outbreak (and, in particular, through the absence of an earnings floor in the Job Retention Scheme).

- The Low Pay Commission should push for its remit to be expanded beyond its current narrow bounds, to include alternative definitions of low pay, and investigatory functions into the causes of low pay, with the power to make public policy recommendations.

- Better data collection could significantly aid our understanding of low pay in sectors of the economy not well accounted for in official statistics – in particular, in outsourced services – and the relevant national earnings surveys should be revised to better cover all groups of low-paid workers.

- At a time of significant pressure on funding, the Commission should make recommendations on the provision of central Government funding to help underwrite the cost of increases, with particular consideration given to underfunded sectors such as social care.

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