



## Low Pay Commission Review 2007

### Unite Evidence

#### Summary of the Main Recommendations

- **Adult Rate** - A significant rise above the increase in average earnings that brings the adult rate above at least £6.00 an hour by October 2008.
- **18 – 21 Year Old Workers** - The adult rate should be paid at 18 rather than at 22.
- **16 – 17 Year Old Rate** - The 16 and 17 year old rate should increase by more than the adult rate, to start closing the gap between the two.
- **Apprentices** - The LPC should again recommend a review of the exemptions for apprentices. This needs to be examined in the context of the Governments strategy for skills.
- **Voluntary Workers** - The Government should not exempt full-time voluntary workers from the NMW.
- **Bank Holidays & Statutory Leave Entitlement** - The introduction of increased minimum statutory leave entitlement should not affect the recommended increase in the NMW.
- **NMW / Regional** – The NMW must continue to set a nationwide floor on wages.
- **Arrears & Penalties Enforcement** – The following recommendations should be made:

#### **Arrears**

- **All arrears should be calculated at the current NMW rate but with additional thought to be given as to how variations according to the date of underpayment may be simply addressed without incurring the need for a low paid worker to become liable for self-assessment.**

## NMW Penalties

- There should be a fixed penalty per worker & a fine system should start from day one for failure to pay the NMW.
  - The penalty should be set at a minimum of £100 per worker.
  - The second stage penalty should be charged in accordance with the present penalty fine system.
  - The current maximum penalty of £5,000 is not sufficient for the worst offenders. The maximum penalty should be increased significantly to provide an adequate deterrent to any potential worst offenders.
  - HMRC should be able to prosecute the worst NMW offenders along the same lines as criminal prosecutions for tax evasion.
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- **Name & Shame Policy** - The LPC should recommend that a 'name and shame' policy is adopted towards those employers who are found to be in breach of NMW legislation.
  - **Enforcement for Undocumented Migrant Workers** - The LPC should focus on the issue of undocumented workers and call for a clarification in the law that employers may be prosecuted for not paying the NMW whether their workers have 'legal' contracts or not.
  - **Representative & Group Applications to Employment Tribunals** - The LPC should recommend that Trade Unions should be able to take group actions on behalf of workers who have been underpaid the NMW.
  - **Enforcement for Agency Workers** – Unite would also like to see the return of licensing for employment agencies.

## **Introduction**

The T&G merger with Amicus on the 1<sup>st</sup> May 2007 has made Unite Britain's biggest trade union, representing 2 million members across a broad section of the British economy, including road transport, finance, manufacturing, print, aviation, food and farming, public services and many others.

Unite is pleased to submit evidence to the Low Pay Commission (LPC) on its further review of the National Minimum Wage (NMW). Unite considers the NMW to be one of the most important successes of the Labour Government. Its introduction and subsequent increases have not had any adverse effects on the labour market, whilst it has benefited millions of low paid workers.

The last rise of 3.17% was a modest rise which didn't actually keep pace with current RPI inflation which was 4.1% on the 1<sup>st</sup> of October 2007 when the increase in the NMW took place.<sup>1</sup> In comparison directors pay has increased by 37% to 11 times the rate of growth in average earnings in the same period. Bosses now take home 98 times more than their employees, up from 93 times a year ago.<sup>2</sup> This staggering difference has seen low paid workers fall even further behind and has allowed inequality to rise in the past year instead of being reduced.

Unite therefore believes that the LPC needs to be bold in setting a NMW rate for 2008 that will have a significant impact on the working poor and start to tackle income inequality in this country.

## **The Role of the Low Pay Commission**

The LPC has been crucial in successfully co-ordinating the range of views that are shared by the different social partners and has made recommendations that have benefited millions of the most exploited workers. Unite would like to put on record its support for the work that has been done by the LPC and look forward to being a part of this productive process again.

## **The Economy and Labour Market Outlook**

### **Economy**

In his 11th and last budget as chancellor, Mr Brown highlighted his record of 10 consecutive years of growth. "The British economy is today growing faster than all the other G7 economies - growth stronger this year than the euro area, stronger than Japan and stronger even than America".

Before 1997 the UK had been "bottom in the G7 [group of industrialised nations] for national income per head - seventh out of seven, behind Germany, Italy, France, Canada and Japan. Now we are second only to America and ahead of all these countries," Mr Brown said.<sup>3</sup>

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<sup>1</sup> [www.statistics.gov.uk/pdfdir/cpinr0907.pdf](http://www.statistics.gov.uk/pdfdir/cpinr0907.pdf)

<sup>2</sup> The Evening Standard (London) August 29, 2007.

<sup>3</sup> <http://news.bbc.co.uk/1/hi/business/6474975.stm>

The UK economy is set to grow between 2¾ to 3¼% in 2007, and by 2½ to 3% in 2008 and 2009, as forecast in the budget.<sup>4</sup> This would see the UK economy grow faster than all other major economies in the world.<sup>5</sup>

Interest rates have moved up to 5.75% in the past year. However, following the US central bank's, the Federal Reserve, intervention in financial markets by cutting rates by 0.5% to 4.75% from 5.25%. Other central banks, including the Bank of England, are expected to follow suit.<sup>6</sup> Consumer Price Index inflation is 0.2% below the Government's target level of 2.0% in the year to August 2007 which is considerably below the rate of earnings growth.<sup>7</sup> Inflation is set to remain low and stable in the future according to budget forecasts.<sup>8</sup> Average earnings growth has been stable and the Treasury's independent forecasters predict earnings growth of 4.1% for 2007 and 2008.<sup>9</sup>

The economy remains strong and according to forecasters will continue to perform well over the next couple of years.

## **Labour Market**

The number of people in employment for the three months ending in July 2007 was 29.10 million, up 84,000 over the quarter and up 132,000 over the year, which is the highest figure since comparable records began in 1971. Total hours worked per week were 932.1 million, up 6.2 million over the quarter and up 5.9 million over the year.<sup>10</sup> The inactivity rate for people of working age was 21.2% for the three months ending in July 2007, virtually unchanged on the quarter but up 0.3% over the year.<sup>11</sup> Independent forecasters are predicting employment growth of 0.7% in the last quarter of 2007 and in the last quarter of 2008.<sup>12</sup>

The UK labour Market remains healthy with the total employment and hours worked increasing and the inactivity rate for people of working age remaining stable. Against this backdrop forecasters are predicting further increases in employment in the future.

## **Impact on Employment**

### **Whole Economy Employment**

The increases in the NMW have been achieved without decreasing levels of employment within the UK. Since the NMW's introduction on the 1<sup>st</sup> of April 1999 employment in the UK has actually increased by over 2 million or 7.46% and UK unemployment has actually decreased by 88,000 or 4.97%.

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<sup>4</sup> [http://budget2007.treasury.gov.uk/page\\_02.htm](http://budget2007.treasury.gov.uk/page_02.htm)

<sup>5</sup> <http://news.bbc.co.uk/1/hi/business/6474975.stm>

<sup>6</sup> <http://news.bbc.co.uk/1/hi/business/6999821.stm>

<sup>7</sup> [www.statistics.gov.uk/pdfdir/cpinr0907.pdf](http://www.statistics.gov.uk/pdfdir/cpinr0907.pdf)

<sup>8</sup> [http://budget2007.treasury.gov.uk/page\\_02.htm](http://budget2007.treasury.gov.uk/page_02.htm)

<sup>9</sup> HM Treasury – 'Forecast for the UK Economy.' Page 5-8, September 2007.

<sup>10</sup> <http://www.statistics.gov.uk/cci/nugget.asp?id=12>

<sup>11</sup> <http://www.statistics.gov.uk/cci/nugget.asp?id=12>

<sup>12</sup> HM Treasury – 'Forecast for the UK Economy.' Page 6 & 9, September 2007.

In the last year employment has increased by 192,000 or 0.67%. Unemployment has increased by 76,000 in the last year or 4.72% which is obviously disappointing, however the latest unemployment figure for the three months ending in July is 1,653,000, which is a fall of 31,000 since March and by 53,000 over the year.<sup>13</sup> It is also worth noting that the manufacturing sector has lost 45,300 jobs in the past year alone, which has had a profound impact on the unemployment figure.<sup>14</sup>

<b>UK Employment Figures</b>	<b>March 1999</b>	<b>March 2006</b>	<b>March 2007</b>	<b>Change Since March 1999</b>	<b>Change Since March 2006</b>
Employment	27,027,000	28,851,000	29,043,000	+2,016,000 / +7.46%	+192,000 / +0.67%
Unemployment	1,772,000	1,608,000	1,684,000	-88,000 / - 4.97%	+76,000 / +4.72%

Source: [http://www.statistics.gov.uk/downloads/theme\\_labour/WebTableA2.xls](http://www.statistics.gov.uk/downloads/theme_labour/WebTableA2.xls)

### **Low Paying Sectors Employment**

Additionally, there has been previous concern about the NMW decreasing levels of employment within the UK's low paying sectors (Retail, Hospitality, Social Work, Cleaning, Textiles, Agriculture, Security and Hairdressing). However, since the introduction of the NMW this has not proven to be the case. In fact, employment in the lower paying sectors within the UK has increased by 473,769 or 7.53%.

In the last year employment in the low paying sectors has increased by 36,100 or by 1.86%.

<b>Low Paying Sectors</b>	<b>March 1999</b>	<b>March 2006</b>	<b>March 2007</b>	<b>Change Since March 1999</b>	<b>Change Since March 2006</b>
Retail	2,524,676	2,802,200	2,826,400	+301,724 / +11.95%	+24,200 / +0.86%
Hospitality	1,557,231	1,765,700	1,751,500	+194,269 / +12.47%	-14,200 / -0.8%
Social Work	973,130	1,121,300	1,130,500	+157,370 / +16.17%	+9,200 / +0.82%
Cleaning	452,803	448,900	448,700	-4,103 / -0.9%	-200 / -0.04%
Textiles	285,703	111,400	106,100	-179,603 / -62.86%	-5,300 / -4.76%
Agriculture	270,508	203,400	220,700	-49,808 / -18.41%	+17,300 / +8.51%
Security	128,074	160,400	163,100	+35,026 / +27.34%	+2,700 / +1.88%
Hairdressing	98,106	114,600	117,000	+18,894 / +19.25%	+2,400 / +2.1%
All low-pay sectors	6,290,231	6,727,900	6,764,000	+473,769 / +7.53%	+36,100 / +1.86%

Source: Employment, Earnings and Productivity Division ONS.

The evidence so far shows that a NMW in the UK has had little impact on employment levels.

<sup>13</sup> <http://www.statistics.gov.uk/cci/nugget.asp?id=12>

<sup>14</sup> [http://www.statistics.gov.uk/elmr/09\\_07/downloads/Table6\\_05.xls](http://www.statistics.gov.uk/elmr/09_07/downloads/Table6_05.xls)

## **Impact on Profitability**

Employers are obviously concerned that the NMW reduces their levels of profit. With this said, Unite believes that it is only right that when a company is making profits that this success should be shared with their employees, especially at a time when UK corporations are making record profits of £81.9billion (bn) Q2 2007, which is up 14.8% on the year, which is the highest increase since Q4 1994.<sup>15</sup>

## **Retail Sector**

Within the UK retail sector for instance the Deloitte 2007 Global Powers of Retailing ranked 22 UK retailing companies within the top 250 companies in the world, of which Tesco's was 5th, which was the highest UK retailer.<sup>16</sup> Tesco's has since reported a staggering £2.65bn profit before tax to the year end February 2007, which was 18.7% higher than the year before.<sup>17</sup> So Unite would not accept that further significant NMW increases are beyond a company of Tesco's stature.

Beyond the big companies it is difficult to assess what affect the NMW would have had on the profitability of smaller companies but we do know that within food retailing in the UK it is increasingly controlled by a small number of multinational corporations. In the UK we now buy 88% of our groceries in supermarkets and around 75% from just four supermarket chains – Tesco (30.4%), Asda-Walmart (16.6%), Sainsburys (15.9%) and Morrisons (11.5%).<sup>18</sup>

In fact since the 1950s, food retailing in the UK has undergone a massive shift from high streets, covered markets and district centres full of small independent specialist food shops; grocers, greengrocers, bakers and butchers, to the domination of food retailing by the 'big four' supermarket chains; Tesco, Asda, Sainsbury's and Morrisons.<sup>19</sup>

So it is obvious that within the food retail market in the UK there has been consolidation by the major supermarkets which now dominate the market. It is this consolidation that is adversely affecting small retailers rather than additional costs associated with the NMW.

## **Hospitality Sector**

The UK hospitality industry is positive about its profit outlook, according to the American Express 2007 Hospitality Monitor survey with 80% of UK-based

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<sup>15</sup> <http://www.statistics.gov.uk/pdfdir/qna0907.pdf>

<sup>16</sup> <http://www.lib.iastate.edu:9050/tc275/pdfs/GlobalPowerRetailing.pdf>

<sup>17</sup> <http://www.fame.bvdep.com/cgi/template.dll>

<sup>18</sup> <http://www.gaff.org.uk/?lid=1915>

<sup>19</sup> Institute of Grocery Distribution – 'Grocery Retailing 2002: The Market Report.' September 2002.

hospitality businesses believing that profits will either remain stable or improve over the coming 12 months.<sup>20</sup>

British Hospitality Association chief executive Bob Cotton says business confidence in the industry is reflected by the increasing levels of investment within the industry:

"The challenge for the industry going forward, in addition to managing both competition and changing customer preferences, will be how to sustain growth in conjunction with delivering socially and environmentally sustainable policies."

Direct competition is cited as the most significant challenge for the industry (50%), followed by cost of goods (18%) and customer preferences (12%). Not NMW increases.

### **Closing the Gender, Ethnic Minorities & Workers with Disabilities Pay Gap**

Unite are pleased that the LPC has been asked to report on the effect that the NMW has had on gender, ethnic minorities and workers with disabilities.

#### **Gender**

Every increase in the NMW has had a significant impact on women's pay. Alistair Darling, the Trade and Industry Secretary, said the recent increase in the NMW would benefit around one million workers, two thirds of them women,<sup>21</sup> with the majority of those gainers likely to be part-time women workers.<sup>22</sup>

Despite the significant potential impact of the NMW on the gender pay gap, the reality is that we are years away from a position of parity between the genders. Some leading economic analysts have forecast that it would take 150 years for women to earn the same as men.<sup>23</sup>

Women earn 17.2% less an hour than men working full time according to the Fawcett Society. The hourly pay gap between women working part-time and men working full-time is 38.5%.<sup>24</sup> The report by the Women and Work Commission said that with part-time work women earn 59p for every £1 earned by a man.<sup>25</sup>

The NMW has become a vital tool in trying to reduce the gender pay gap due to the high concentration of women in low paid jobs and particularly those women in part time jobs. Childcare is a good example of a sector dominated

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<sup>20</sup> <http://www.hotelmanagement-network.com/news/news1883.html>

<sup>21</sup> <http://www.pinsentmasons.com/media/1896060241.htm>

<sup>22</sup> <http://www.tuc.org.uk/economy/tuc-11621-f0.cfm>

<sup>23</sup> <http://www.timesonline.co.uk/article/0,,2-2288680,00.html>

<sup>24</sup> <http://business.guardian.co.uk/story/0,16781,1639371,00.html>

<sup>25</sup> Women and Work Commission report

by low paid female workers where the introduction of the NMW has helped to raise pay in a sector where, as the Women and Work Commission recognised, pay is too low across the board. IDS reported that 45% of nurseries had taken action to restore differentials for other grades following NMW increases.<sup>26</sup> A survey by the Department for Education and Skills (DfES) also shows that there has been a real increase in pay levels for many childcare workers at above the average level of wage inflation since 2003. The increase in average hourly pay for all staff in the UK was 10% from 2003 to 2005. Pay increases for all staff, on average, in childcare settings was higher than this at 16%.<sup>27</sup>

Unite believes that a significant rise in the NMW above both inflation and average wage growth will have a beneficial impact in addressing the gender pay gap.

### **Ethnic Minorities**

Research undertaken in 2001 showed that Black and Asian male workers earn on average £97pw less than white workers. Only Indian men approach the earnings of white men, and Pakistani/Bangladeshi men earn £150pw less.<sup>28</sup>

	White	All black	Caribbean	African	Indian	Pakistani/ Bangladeshi
<b>Pay</b>	£332	£235	£217	£216	£327	£182
<b>Pay gap</b>	N/A	-£97	-£115	-£116	-£5	-£150

**Source:** TUC - 'Black & Underpaid Report' using Heath & Yu 2001 'Heath, A and Yu, S 2001.

Unfortunately, since then the situation has hardly improved. A more recent Cabinet Office report revealed that a Black-Caribbean worker will earn, on average, £5,000 a year or £96pw less than a white colleague doing the same job, in the same area, with the same qualifications. Worse still, a Pakistani man will earn £6,500 a year or £125pw less than their white colleague.<sup>29</sup>

With a high proportion of ethnic minority workers in the low paying sectors of the economy the NMW has a key role to play in tackling social exclusion.

### **Workers with Disabilities**

Unite is appalled to see in a report by the Department of Health and the Department for Work and Pensions that a "worrying" number of

<sup>26</sup> Incomes Data Services Pay Report 909 'Minimum wage exerts strong influence on pay rates.' Page 8, July 2004.

<sup>27</sup> <http://www.dfes.gov.uk/research/data/uploadfiles/RR764.pdf>

<sup>28</sup> TUC - 'Black & Underpaid Report' using Heath & Yu 2001 'Heath, A and Yu, S 2001. Explaining Ethnic Disadvantage. Mimeo.

<sup>29</sup> [http://www.psi.org.uk/events/event.asp?event\\_id=54](http://www.psi.org.uk/events/event.asp?event_id=54)

employers especially local authorities and those in the voluntary sector are breaking the NMW by under-paying staff with learning disabilities.<sup>30</sup>

In research by the Joseph Rowntree Foundation it stated that at any given level of qualification a disabled person is more likely than a non-disabled person to be low-paid. It also indicated that the disability pay gap is 10%.<sup>31</sup>

Previous research from the Labour Research Department and the Innovate Trust shows that disabled people earn up to 20% less than non-disabled workers, and more than half of disabled workers earn less than £10,000 a year.<sup>32</sup>

A significant increase in the NMW, above the projected rise in average earnings is desperately needed, if workers with disabilities are going to get nearer to the pay of their non-disabled working colleagues. This is particularly relevant at a time when there is political pressure to take disabled people out of supported employment such as Remploy and into the general labour market.

### **Setting a Bold Target for the Adult Rate**

Currently, official statistics show many companies pay more than the NMW. Many companies set their own minimum wages higher than the national rate, according to the Labour Market Trends survey by the Office for National Statistics (ONS). Many employers tend to pay at least £6 an hour rather than the NMW of £5.52 per hour for workers over the age of 22. The research revealed that the higher rates indicate that companies would rather set their own rates of pay at round numbers and absorb the extra labour costs.<sup>33</sup>

Half median earnings is a figure that has been commonly used for years to calculate low pay thresholds. The last ONS figures showed that full time male median earnings were £11.71 an hour as at April 2006.<sup>34</sup> After uprating\* by average earnings and then projecting forward in line with Treasury forecasts for earnings, growth of 4.1% for 2008.<sup>35</sup> Half male median earnings will be around £6.94, an hour by October 2008. Unite would like to see the NMW make a significant move towards this target.

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<sup>30</sup> <http://www.personneltoday.com/Articles/2006/08/03/36691/Government+report+accuses+charities+and+public+sector+of+exploiting+disabled+workers+by+paying+less.html>

<sup>31</sup> Joseph Rowntree Foundation – 'Monitoring Poverty & Social Exclusion 2005', York.

<sup>32</sup> <http://www.lrd.org.uk/issue.php3?pagid=1&issueid=300>

<sup>33</sup> <http://www.personneltoday.com/Articles/2006/03/13/34340/Minimum+wage+is+exceeded+by+many+UK+companies.html>

<sup>34</sup> Office of National Statistics – "2006 Annual Survey of Hours and Earnings.' Page 3, November 2005.

\* Uprated by Average Earnings Index (AEI) from April 2005 - 122.1 to May 2006 - 126.9 by 4.8%.

<sup>35</sup> [http://www.hm-treasury.gov.uk/economic\\_data\\_and\\_tools/forecast\\_for\\_the\\_uk\\_economy/data\\_forecasts\\_index.cfm](http://www.hm-treasury.gov.uk/economic_data_and_tools/forecast_for_the_uk_economy/data_forecasts_index.cfm)

**To this end the Unite asks that the LPC recommends a significant rise above the increase in average earnings that brings the adult rate above at least £6.00 an hour by October 2008.**

### **Rate for the Job**

Unite would ultimately like the NMW to apply as a flat rate from age 16 upwards on a 'rate for the job basis.' We believe that the principle of equal remuneration for work of equal value is an important one.

### **18 - 21 Year Old Workers**

**Unite recommend to the LPC that the adult rate of the NMW should be paid at 18 rather than at 22.**

### **16 - 17 Year Old Rate**

Where Unite is organised, part of our bargaining strategy is for the abolition of youth rates where they apply. In those areas where Unite has abolished youth rates by negotiation there is no evidence that this has led to a decrease in young people employed. This is largely because many companies are prepared to abolish youth rates in recognition that doing so aids recruitment, retention, motivation and productivity.

Unite argues that a significant rise in the NMW for this age group would help, rather than hinder, young peoples educational opportunities. As the Children's Rights Alliance have stated "low wages compel young people to work longer hours, damaging their education."<sup>36</sup> Research, particularly in the US, has shown that teenagers who work more than 20 hours a week suffer lower grades.<sup>37</sup>

There are also concerns that a higher NMW would encourage young people to leave school. However joint research by the British Youth Council and Children's Rights Alliance for England found 73% of young people would not change their choice to stay in education if the NMW was higher. The LPC also states that the effect of introducing a NMW for 16 and 17 year olds would have a small impact on education participation, and that GCSE results have a greater influence.<sup>38</sup>

Article 32 of the UN Convention on the rights of the Children (CRC) requires that State parties should: "Recognise the right of the child to be protected from economic exploitation..." and "Take legislative...measures to ensure the implementation of the present article."<sup>39</sup> Article 10(3) of the International

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<sup>36</sup> [http://www.crae.org.uk/cms/index.php?option=com\\_frontpage&Itemid=1](http://www.crae.org.uk/cms/index.php?option=com_frontpage&Itemid=1)

<sup>37</sup> <http://www.bctf.bc.ca/ResearchReports/99ei02/report.pdf>

<sup>38</sup> <http://www.epolitix.com/EN/Forums/National+Childrens+Bureau/077fcbbd-e686-4ce4-8e23-e6ca3ecc1775.htm>

<sup>39</sup> <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

Covenant on Economic, Social and Cultural Rights (ICESCR), also grants young people protection from economic exploitation.<sup>40</sup>

The UK Government ratified the CRC and the ICESCR in 1991 (removing its reservation to article 32 in 1999) and 1976 respectively. Under international law the Government is obliged to fully implement these treaties. In October 2002 the international monitoring board for the CRC issued a set of “concluding observations” in relation to the UK recommending that the UK government should, “reconsider its policies regarding the NMW for young workers with a view not to discriminate against the most vulnerable children.”<sup>41</sup>

Unite believes that the UK should move towards a position where workers are not discriminated against on the basis of age, but are paid the rate for the job.

**Therefore the LPC should recommend that increases in the 16-17 year rate should be set at a higher level than that of the adult rate.**

### **Training / Apprenticeships**

Unite accepts that lower rates of pay may need to apply to workers who are undergoing training.

Unite was encouraged to see that the LPC recommended a review of the apprenticeships exemptions in 2008.<sup>42</sup> It is time to reconsider the exemptions for apprentices who are under 18 or are under 26 and in the first year of their apprenticeship.

In a number of different sectors there are a considerable amount of apprentices earning less than £80 per week in 2005.<sup>43</sup> One of the main barriers to apprenticeship completion cited by the DfES is low pay for learners, leading many to leave the scheme to get a new job, often for better pay or prospects but without similar training.<sup>44</sup> Low pay is not going to help the government achieve target completion rates of 65% to 70% within the next 9 years.<sup>45</sup>

Unite’s other main concern when it comes to modern apprenticeships is the gender pay gap which is highlighted by the Equal Opportunities Commission (EOC) who said; “If we look just at Modern Apprentices, then the gender pay gap becomes evident as early as age 16 when young women and men move into different Modern Apprenticeship sectors attracting different rates of pay. Modern Apprenticeships are exempt from the provisions of the NMW. Over

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<sup>40</sup> [http://www.unhcr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhcr.ch/html/menu3/b/a_ceschr.htm)

<sup>41</sup> <http://www.byc.org.uk/downloads/Campaigns/NMW-16-17%20policy-briefing-paper.pdf#search=%2216%20and%2017%20year%20olds%20working%20to%20support%20themselves%20through%20full-time%20education%22>

<sup>42</sup> <http://www.lowpay.gov.uk/lowpay/lowpay2006/chapter3h.shtml>

<sup>43</sup> Ibid, fig 4.3, p21.

<sup>44</sup> <http://www.lsc.gov.uk/National/Partners/SENET/Guide2/appscomplete.htm>

<sup>45</sup> <http://www.lsc.gov.uk/National/Partners/SENET/Guide2/appscomplete.htm>

half of the young people on Modern Apprenticeships are not entitled to the NMW. The majority of those not receiving a rate of pay equivalent to the NMW are young women."<sup>46</sup>

There is a strong tendency for young women to take up modern apprenticeships in areas traditionally dominated by women, such as health and social care, childcare and hairdressing. These are traditionally low-paid sectors and a EOC survey showed that apprentices in childcare were being paid less than half of the rate of apprentices in the male-dominated fields of engineering and plumbing received.

Unite believes that young people, including those who are doing modern apprenticeships, deserve the right to receive the NMW. It would also be a significant step towards closing the gap between women's and men's pay and provide an incentive for young people to pursue vocational training."<sup>47</sup>

**The LPC should again recommend that the Government invite the Commission to review the exemptions for apprentices. This needs to be examined in the context of the Governments strategy for skills.**

### **Voluntary Workers**

The Government must not undermine the progress that has been made with the NMW by exempting full-time voluntary workers. If the Government does this then it will undercut the NMW and create a new minimum level within the voluntary sector which will be a backwards step and undermine the purpose of the NMW as well as lowering the quality and standing of the voluntary sector.

**The Government should not exempt full-time voluntary workers from the NMW.**

### **Bank Holiday Statutory Leave Entitlement**

Before the 2005 General Election the Prime Minister pledged to ensure workers get bank holidays on top of paid leave if Labour won the next general election, which they did. The Prime Minister felt the plans would benefit two million workers currently forced to take bank holidays off as part of their annual leave. Writing in the Daily Mirror, Mr Blair said the move would benefit mainly low-paid workers and women.<sup>48</sup>

Of significance when considering the level of overall annual leave is the amount of public holidays in the UK. As companies, with operations

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<sup>46</sup> <http://www.eoc.org.uk/default.aspx?page=15614>

<sup>47</sup> 'Minimum Wage for Modern Apprentices Would Help Close Gender Pay Gap', EOC press release, 31 October 2003.

<sup>48</sup> 'Minimum Wage for Modern Apprentices Would Help Close Gender Pay Gap', EOC press release, 31 October 2003.

elsewhere in Europe will be aware, the level of public holidays is lower for workers in the UK than virtually anywhere else in Europe. In the UK there are only 8 days, where as in Austria workers have 13 days, in Sweden, Italy and Portugal 12 days and in Finland, France and Denmark they have 11 days.<sup>49</sup>

Employers have absorbed increases in employee holiday successfully before with the Working Time Regulations in 1998 being the most recent example. The Government estimates that over three million people are now enjoying, for the first time, the right to a minimum of four weeks paid annual leave – a right introduced under the Working Time Regulations 1998.<sup>50</sup>

The increase in entitlement is already being phased in to make the change easier for employers. The introduction of additional statutory holiday was never meant to be a trade-off with the NMW. If future increases in the NMW are held back as a result of this increase in holiday entitlement then this would be effectively taking away with one hand what has been given with the other.

**The LPC should disregard the introduction of better minimum statutory leave entitlements in its recommendations for increases in the NMW.**

### **NMW / Regional**

Unite strongly opposes any changes from the current single national rate to a regional approach.

One key reason for this is simplicity. Having a single national rate makes it easier to advertise and enforce. However more importantly it also rightly gives out the message that low pay is a nationwide problem which is the same for everyone.

In the LPC first report, in 1999, they said: 'Low pay is found in all regions. Differences between most regions are generally small; more substantial variation exists within individual regions.'<sup>51</sup>

Sir Reg Empey, Minister for Employment and Learning, has also underlined his opposition to regional minimum wage rates. He asserted that such a policy would lead to a reduction of the level of the NMW in Northern Ireland:<sup>52</sup>

"Any cut in the current modest level of the minimum wage would be a real injustice for working individuals and would only serve to make poor people poorer and increase the number of working households that are in poverty.

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<sup>49</sup> Incomes Data Services - 'Working Hours and Holidays in the European Union 2003'.

<sup>50</sup> Stephen Byers, MP, Secretary of State, DTI: speech to the New Ways to Work Conference, London, 9 May 2000.

<sup>51</sup> Incomes Data Services Pay Report 984 - 'Should the NMW vary by region?' Page 2, September 2007.

<sup>52</sup> <http://www.delni.gov.uk/index/press-releases/press-releases-jul-sep-2007/empey-opposes-national-minimum-wage-regional-rates.htm>

“Lowering the minimum wage would run counter to the Executive’s policy of developing a high value-added economy. Improved levels of economic growth and prosperity will only be achieved if we compete by becoming more innovative and exploiting higher skills levels, leading to productivity growth and higher wages.”

Unite believes that the NMW is a national floor for the minimum pay that should be received by every worker up and down the country. The introduction of different regional amounts would only act in undermining the good work that has been done in establishing a NMW in the first place.

**NMW must continue to set a nationwide floor on wages.**

### **Enforcement Issues**

#### **Arrears & Penalties Enforcement**

Unite welcomes the Government’s recent consultation on imposing a new penalty to be applied to all employers who are caught underpaying the NMW and on proposals to ensure that workers do not lose out when their arrears have been accrued over a long period. A summary of Unite’s recommendations are as follows:

#### **NMW Arrears**

- **All arrears should be calculated at the current NMW rate but with additional thought to be given as to how variations according to the date of underpayment may be simply addressed without incurring the need for a low paid worker to become liable for self-assessment.**

#### **NMW Penalties**

- **There should be a fixed penalty per worker & a fine system should start from day one for failure to pay the NMW.**
- **The penalty should be set at a minimum of £100 per worker.**
- **The second stage penalty should be charged in accordance with the present penalty fine system.**
- **The current maximum penalty of £5,000 is not sufficient for the worst offenders. The maximum penalty should be increased significantly to provide an adequate deterrent to any potential worst offenders.**
- **HMRC should be able to prosecute the worst NMW offenders along the same lines as criminal prosecutions for tax evasion.**

## **Name & Shame Policy**

In addition to financial penalties Unite believes that a company should be named and shamed if they are guilty of deliberately paying their workers below the NMW. This would damage their reputation and provide a further disincentive to other companies who may be tempted to break the law.

Unite also requests that the **LPC recommends that a 'name and shame' policy is adopted towards those employers who are found to be in breach of NMW legislation.**

## **Enforcement for Undocumented Migrant Workers**

The most vulnerable workers in our economy are undocumented migrant workers, many of whom are being paid below the NMW. Unite does not believe that any worker should be exempt from basic employment rights. Unite believes that employers should face penalties for paying below the NMW whether their workers are documented or not. Unite's experience is of employers capitalising on the fear and insecurity of these workers and often only becoming interested in their status if a worker complains.

The maintenance of the NMW is dependent upon all workers irrespective of their employment status, to be paid no less than the NMW level. The current position encourages employers to recruit migrant workers (documented or otherwise) precisely because they are able to get away with paying significantly less than the NMW. This has had a downward (deflationary) pressure on the wages of indigenous workers at the lower end of earnings in the economy. This is clearly an unintended gap in the enforcement of the NMW and employment rights per se.

It is unacceptable that an employer who commercially benefits from paying low wages to an undocumented worker on the basis of illegality of contract, can escape subsequent penalties, based on the same illegal contract to which they were (as employers) party. Clearly undocumented workers will not make a complaint if they believe that the involvement of the authorities may lead to their detention and deportation, so enforcement in this case cannot rely on individual complaints by workers.

In practice, this means that each case is being treated separately and each individual is being required to prove they are covered by the NMW, before their particular circumstances can be looked at, which is time consuming and creating additional barriers to these workers receiving the NMW they are entitled to. As a minimum Unite would like to see a situation whereby a trade union can make a complaint on behalf of such workers where we feel it is appropriate and that in such instances HMRC enforcement officers should have access to such workers if they are detained.

**Unite recommends the LPC focus on the issue of undocumented workers and calls for a clarification in the law that employers may be prosecuted for not paying the NMW whether their workers have legal contracts or not.**

### **Representative & Group Applications to Employment Tribunals**

Unite requests that trade unions should be able to take group actions on behalf of workers who have been underpaid the NMW. Not only would this make enforcement easier and simpler, it would provide protection for many vulnerable workers who believe that if they make a complaint about underpayment they will be dismissed.

In the case of agency workers, of course, there are limited employment protections. Unite has encountered many cases where agency workers have been 'unassigned' from jobs because they have made a complaint about their employer.

**The LPC should recommend that Trade Unions should be able to take group actions on behalf of workers who have been underpaid the NMW.**

### **Enforcement for Agency Workers**

Unite's experience on the ground is that in recent years there has been a substantial increase in the use of agency migrant labour, especially in low paid sectors of the economy. Unite has found examples of NMW underpayment and other bad practice by employment agencies who often sub contract to labour providers further down the supply chain. (Examples of this can be found in Unite's consultation on Measures to Protect Vulnerable Agency Workers in the Appendix.) This sub contracting clearly makes enforcement more difficult. Unite again reiterates that domestic legislation that provides equal treatment for agency workers should be introduced as soon as possible.

The exploitation of workers in the agriculture and food processing sectors led to the creation of the Gangmaster Licensing Authority. Unite would also like to see the return of licensing for employment agencies. Unite does not believe that such a move would adversely affect reputable employment agencies, but would make enforcement much easier.

**Unite would also like to see the return of licensing for employment agencies.**

**Unite September 2007.**