

**Low Pay Commission (LPC) consultation  
April 2020 National Minimum Wage rates  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 As a group of tax specialists with interest and insight into the pay and tax issues facing the low-paid, we welcome the opportunity to respond to this consultation from the LPC.
- 1.2 We focus our response on two aspects of the consultation – the minimum wage post 2020 and on enforcement and compliance issues. Our comments are based on what we know about those parts of the system within our remit and are gleaned from contact we have had with workers through our websites.<sup>1</sup>
- 1.3 There is wide consensus that the minimum wage has been a great success – so far, it seems to have helped raise pay without any significant loss of jobs.
- 1.4 However, we believe care needs to be taken around increases to the National Living Wage (NLW) going forward. There is already some suggestion emerging that employers facing higher labour costs as a result of the NLW, are compensating by reducing jobs, hours or perks, to help them protect their profitability.

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<sup>1</sup> [www.litrg.org.uk](http://www.litrg.org.uk), [www.taxguideforstudents.org.uk](http://www.taxguideforstudents.org.uk), [www.disabilitytaxguide.org.uk](http://www.disabilitytaxguide.org.uk) and [www.revenuebenefits.org.uk](http://www.revenuebenefits.org.uk)

- 1.5 We also suspect that some of the cases of ‘false self-employment’<sup>1</sup> we hear of are being driven by the avoidance of the minimum wage – as well as the Pay As You Earn (PAYE) system and employment rights more generally and, of course, employer’s National Insurance contributions (NIC).
- 1.6 In terms of future NLW increases, we would urge that the LPC consider both worker need AND the affordability for employers, rather than simply pursue a target for its own sake. A small tolerance for negative employment effects could perhaps remain, but the key point is that the LPC’s work should be based on research, evidence and careful analysis of such, so that any impact on employment is one that has been understood so far as possible, and genuinely accepted as a price worth paying.
- 1.7 We would also recommend that any future increases in the minimum wage should be considered in the context of their interactions with tax, National Insurance and other systems, such as universal credit (UC) and tax credits.
- 1.8 Unfortunately, the introduction of the NLW, and subsequent bold increases, do not seem to have done much to address the problem of income inadequacy and in-work poverty. We think one of the reasons behind this is that other systems do not always work in conjunction with minimum wage increases – often, high marginal effective deduction rates mean that workers do not always feel much benefit in their pockets from minimum wage increases.
- 1.9 Those in receipt of carer’s allowance face a particularly toxic minimum wage increase/benefit interaction while paid care workers are vulnerable to confusing and unfair minimum wage, tax and tax credit interactions to do with their travel time and costs, which only serve to undermine the increases.
- 1.10 While we appreciate that problems like high marginal effective deductions rates are hard to avoid totally, the issues around carer’s allowance and care workers would appear to be the consequence of the lack of coordinated policy making between government departments such as the Department for Business, Energy and Industrial Strategy (BEIS), HM Revenue & Customs (HMRC) and the Department for Work and Pensions (DWP).
- 1.11 Post 2020, we think the LPC should have some kind of statutory responsibility to examine how other systems interact with the minimum wage. We would then like to see the LPC commenting on the structure and fairness of the systems and pushing for changes to them (for example, that earnings thresholds/disregards are linked to increases in the minimum wage) – to help ensure that increases to the minimum wage are maximised for workers and that disturbing interactions are negated or at least mitigated.
- 1.12 We appreciate that there will often be no easy answers and that the LPC may have reservations about expanding their role like this. No doubt, such work will be complex and

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<sup>1</sup> Treating a worker as self-employed when the true nature of his/her engagement is that of employment.

will require a lot of granular analysis, particularly when you factor in the dichotomy that can exist between individual and household outcomes. However, we are confident that the LPC have the skill set and expertise to do this.

- 1.13 Furthermore, we think that the LPC, leveraging the fact they are a trusted, independent body and held in very high regard across the board, could finally get the government departments involved in policy making around the low-paid, better communicating with each other, which further underscores this recommendation for the LPC's role.
- 1.14 In terms of compliance and enforcement, there is a need to improve enforcement of the minimum wage. If a policy decision has been made to increase the wage floor (and the costs and difficulties of doing so have been evaluated and accepted), then it *cannot* be allowed to be undermined by poor enforcement. It is therefore important that HMRC be adequately resourced to allow them to do this.
- 1.15 While 2017/18 year seems to have been a 'record' year for HMRC's minimum wage team, our feeling (which would appear to be supported by trends highlighted in the LPC's standalone non-compliance and enforcement report) is that HMRC are still largely focused on 'low-hanging fruit' within an employment setting.
- 1.16 In terms of the impact on workers, HMRC would be far more effective if they turned their attention to the arguably more serious breaches of minimum wage rules that tend to go hand-in-hand with false self-employment. While we appreciate these cases can largely be invisible to enforcement officers, data should be available (for example from HMRC's tax evasion intelligence) to help officers identify them. We also have concerns regarding HMRC's ability to handle 'worker' minimum wage cases.
- 1.17 On the other side of the coin, employers can easily fall foul of the minimum wage regulations and be liable to harsh HMRC enforcement action after making a genuine mistake.
- 1.18 To this end, we highlight that the regulations are not always easy to understand and apply by employers, especially small and micro-employers. Problems are then compounded by limited assistance from 'advisory' bodies like ACAS/HMRC and the fact that official guidance does not really cover areas that are grey or nuanced. To illustrate the points we make, we share a case study of an employer who (prior to our intervention) looked set to find himself stuck in a loop between HMRC and ACAS on a straightforward minimum wage query' we also look at the unhelpful GOV.UK guidance on 'salaried workers'.
- 1.19 The bottom line is that more should be done to support employers who want to be compliant – particularly with regards to information and guidance provision, as this would free up resources to deal with engagers at the other (deliberately non-compliant) end of the spectrum.

## **2 About Us**

- 2.1 LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 Introduction**

- 3.1 As tax specialists with an interest and expertise in problems facing the low paid, we are pleased to be able to input into the LPC's work.
- 3.2 It is impossible for those on low incomes to consider their overall financial position without understanding how their pay will interact with not only tax and National Insurance but also in-work benefits and other welfare entitlements.
- 3.3 One of our main roles is therefore to analyse the different systems that the low paid come into contact with, to try and understand and flag potential interactions, and how changes in one system may have an effect elsewhere.
- 3.4 Furthermore, from our contact with workers and our research into their problems, not to mention our understanding and experiences of how HMRC work, we feel we have a good understanding of what is going on at the bottom end of the labour market and why.
- 3.5 Our response therefore focuses on the questions around potential future arrangements for the minimum wage and compliance and enforcement. We feel we can add most value by making some fairly high-level comments in response to the following questions:
  - Given the Chancellor's statements in the 2018 budget, what are your views on the future trajectory of the NLW and other NMW rates after 2020? What considerations should inform this?
  - Reflecting on your experience of the NLW since its introduction in 2016, what lessons do you think should be learned for the period after 2020?

- What comments do you have on HMRC's enforcement work? What is your opinion on the quality and accessibility of the official guidance on the NLW/NMW?
- What more could be done to improve compliance with the NLW/NMW?

3.6 We are happy to discuss any aspect of our response in more detail if that would be useful.

**4 Given the Chancellor's statements in the 2018 budget, what are your views on the future trajectory of the NLW and other NMW rates after 2020? What considerations should inform this?**

4.1 In the October 2018 Budget, the Chancellor stated:

*'Next year we will need to give the LPC a new remit beyond 2020. We will want to be ambitious with the ultimate objective of ending low pay in the UK but we will also want to be careful – protecting employment for lower paid workers. So we will engage responsibly with employers, the TUC, and the LPC itself over the coming months gathering evidence and views to ensure we get this right – and I will confirm the final remit at the Budget next year.'*

4.2 We welcome the government's bold ambitions for the minimum wage. However, we would urge caution, particularly around the future trajectory of the NLW.

4.3 While raising pay and productivity are worthy aims, we are concerned about the extent to which low-income workers will be impacted as a result of any changes in behaviour by their employers.

4.4 The consensus seems to be that the negative effects of the minimum wage have, to date, been minimal. Indeed, in the foreword to the LPC's recent report celebrating 20 years of the minimum wage<sup>1</sup> it is stated:

*'The National Minimum Wage (NMW) came into force on 1 April 1999 amid considerable controversy. The conventional wisdom of the time was that minimum wages simply forced low-paid workers out of their jobs.'*

*'But over the last 20 years, the NMW has shown that this is not necessarily the case. It has raised pay for the lowest paid without damaging employment. And it has become an established part of the UK labour market, enjoying crossparty support and the backing of both employer and worker representatives.'*

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/790910/20\\_years\\_of\\_the\\_National\\_Minimum\\_Wage\\_-\\_a\\_history\\_of\\_the\\_UK\\_minimum\\_wage\\_and\\_its\\_effects.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790910/20_years_of_the_National_Minimum_Wage_-_a_history_of_the_UK_minimum_wage_and_its_effects.pdf)

- 4.5 However, it is not known at what point raising the minimum wage will have an unacceptable negative effect on employment (given there is already some tolerance of job loss for the NLW), which may be difficult to reverse.
- 4.6 The issue is that increases in the minimum wage obviously mean that extra costs are borne by the employer – not just the prima facie rate rise – but also increases in employer’s NIC, holiday pay and pension contributions based on the higher rates.
- 4.7 It should be remembered that over the past few years, many employers will have been contending with difficult trading conditions,<sup>1</sup> not to mention continually rising costs and obligations of being an employer. In addition to minimum wage increases, these include: no longer being able to reclaim sick pay, the administrative cost of running a payroll under the Real Time Information (RTI) system, pension contributions under the auto-enrolment programme, changes to the expenses and benefits regime that stop employers being able to offer salary sacrifice schemes, and for larger employers, the Apprenticeship Levy.
- 4.8 As a result, we think that some employers will have been struggling to absorb the bold NLW wage increases of late. Indeed, we understand there is already some suggestions emerging that employers might be starting to implement ‘trade-offs’ like cutting jobs,<sup>2</sup> offering fewer hours<sup>3</sup> and/or are trying to offset the additional cost of the NLW by removing or changing certain perks.<sup>4</sup> The recent LPC report on NMW non-compliance also notes a worrying ‘trend of increasing underpayment since the introduction of the NLW in 2016’,<sup>5</sup> which appears to be correlated with rises in the NLW rates.

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<sup>1</sup> Many high street retailers/restaurants, for example, seem to have been hit by a combination of the financial crisis, online competition, belt-tightening by consumers and rising business rates/rents.

<sup>2</sup> See this LPC blog: <https://minimumwage.blog.gov.uk/2019/02/01/effects-of-the-minimum-wage-on-employment-and-automaton-lpc-publishes-new-commissioned-research/> – ‘Using Annual Survey of Hours and Earnings data, they found no robust effect on general employment retention or hours worked, but did find some tentative evidence of negative effects on employment retention in the retail industry and among women working part-time.’

<sup>3</sup> See page 5: <https://www.resolutionfoundation.org/app/uploads/2019/05/Low-Pay-Britain-2019-report.pdf> – ‘It seems, however, that 2018 has brought a potential warning sign. Weekly pay fell (in both real and nominal terms) at the bottom of the distribution despite strong increases in hourly pay that came from the National Living Wage. This fall reflected a fall in average hours worked...It is right to ask whether this fall in hours is connected to recent strong increases in the minimum wage.’ (The authors do then do on to explain why they think this isn’t driven by the minimum wage.)

<sup>4</sup> <https://www.independent.co.uk/news/business/comment/can-bosses-legally-take-away-benefitsand-perks-because-of-the-national-living-wage-a7006331.html>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/)

- 4.9 Furthermore, from our considerable involvement with voluntary organisations and via feedback from members of the public to our website, we strongly believe there is an increasing problem with the ‘false self-employment’ of low-paid workers.<sup>1</sup> Historically, employer’s NIC has tended to be the driving force behind false self-employment; however, we think that avoidance of work protections, including the minimum wage, may now also be playing a part.
- 4.10 This raises difficult questions about whether it is possible to maintain the momentum of the NLW. On the other hand, we appreciate how important a decent pay rise can be every year, in terms of morale and productivity.
- 4.11 As the Chancellor alluded to in the Budget, there is an important balance to be found between worker need and employer affordability. To this end, we think that any future raises, no matter how well intentioned, should be done very carefully and slowly, rather than just based on reaching the arbitrary target of 60% of median earnings, subject to sustained economic growth.<sup>2</sup>
- 4.12 A small tolerance for negative employment effects could perhaps remain, but the key point is that the LPC’s work should be based on research, evidence and careful analysis of such, so that any impact on employment is one that has been understood so far as possible, and genuinely accepted as a price worth paying.

## **5 Reflecting on your experience of the NLW since its introduction in 2016, what lessons do you think should be learned for the period after 2020?**

- 5.1 The introduction of the NLW has no doubt benefitted some low-income workers who are really struggling. But the elephant in the room is that it does not seem to have done much for in-work poverty.<sup>3</sup>

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[797675/Non-compliance\\_and\\_enforcement\\_of\\_the\\_National\\_Minimum\\_Wage\\_WEB.pdf](#) (paragraph 2, page 2). The report does state that there are several caveats attached to the figures.

<sup>1</sup> We focus on this issue in much of our response to the recent employment status consultation (<https://www.litrg.org.uk/latest-news/submissions/180531-employment-status>) and look at what may be driving such behaviour on the part of engagers. Within that response, we include a selection of queries that we have received from workers presenting potential false self-employment.

<sup>2</sup> It is only loosely based on the OECD’s measure of low pay as 2/3rds median earnings. It is of interest that the DWP have themselves, recently announced that they will move towards a new way of measuring poverty: <https://www.gov.uk/government/news/new-poverty-statistics-developed-to-help-government-target-support>

<sup>3</sup> As set out here: <https://www.jrf.org.uk/report/budget-2018-tackling-rising-tide-work-poverty>

- 5.2 LITRG regularly hear from low-paid workers who, despite the NLW and subsequent bold rises, seem to be experiencing varying degrees of poverty, stress and strain as they try to make ends meet.<sup>1</sup>
- 5.3 We recognise that there are many reasons for this: precarious/insecure employment when people want full-time work, the fact the minimum wage does not cover the self-employed, and high costs of living – for example, because of having children or high housing costs.
- 5.4 But we think there is another reason: the interactions that exist between the minimum wage and tax and benefit systems mean that NLW does not necessarily translate into cash in the pockets of low-paid workers.
- 5.5 For example, higher pay means things like paying tax (usually 20% on anything over £240 a week in 2019/20), National Insurance (12% on anything over £166 a week in 2019/20) and paying more in pension contributions (up to 5% of your wages over £118 a week – although, in some cases, some of this may be made up from tax relief).
- 5.6 It may also impact on the amount of in-work benefits you receive, as the higher your wages, the less you get in benefits. For UC purposes, there is a 63% withdrawal rate on ‘net’ income over your work allowance (up to £503 per month). For working tax credit (WTC) and child tax credit (CTC) purposes, there is a 41% withdrawal rate on ‘gross’ income over £6,420 a year.<sup>2,3</sup>
- 5.7 To use a very basic illustration: Jenny, 35, a lone parent usually works around 20 hours a week in a pub, at the minimum wage. At £8.21 per hour there is no tax or NIC (earnings of £164.20 per week). Because she is on a low income, Jenny receives UC of £394.56 per UC assessment period.<sup>4,5</sup>

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<sup>1</sup> For some examples of such correspondence, see our May 2018 report: *Care workers – challenges of the tax and benefits system* (<https://www.litrg.org.uk/sites/default/files/180502-Carers-report-May2018.pdf>)

<sup>2</sup> The £6,420 threshold refers to WTC only and WTC/CTC claims. CTC only claims are subject to a higher threshold.

<sup>3</sup> Although tax credits are gradually being replaced by UC, the transition is still ongoing, meaning that tax credits are still available to claim in some limited circumstances and may continue for some existing claimants until 2023.

<sup>4</sup> She is entitled to maximum elements of £317.82 (basic) + £277.08 (child) of £594.90 per month. We have assumed she is not entitled to any housing costs element. Her monthly income of £821 is over the work allowance of £503 by £318. This means her award is reduced by £200.34 [(£821 - £503) x 63%].

<sup>5</sup> We have assumed for the purposes of this example that Jenny has five pay days in each UC monthly assessment period. However, in some months she may have four pay days.



- 5.8 If her hourly rate were to rise to £9 an hour (say) (£180 a week), then, based on current rates, her award would be £350.08 per UC assessment period. At £9 an hour, there is also NIC at 12% on her earnings above £166 per week (£1.68 per week) (but no tax).<sup>1</sup>
- 5.9 So, of her £79 increase in terms of gross earnings during her UC assessment period, the true value of the minimum wage increase to Jenny is only £26.12. The Treasury receives the remaining amount (£52.88) in reduced welfare payments (£44.48) and increased NIC revenue (£8.40).
- 5.10 Her marginal effective deduction rate (which measures the impact of earning an additional £1 on her tax and benefits) is therefore 67% – and this is before we consider whether she might lose any passported benefits – for example, free school meals.<sup>2</sup>
- 5.11 While we appreciate that marginal effective deduction rates are hard to avoid totally, welfare benefits are always going to be required to support some people (particularly those with children or other caring responsibilities). There would seem to be some small, practical steps that could be taken to ameliorate the positions of such people by allowing them to keep a little more of their pay in their pockets – for example, increasing the work allowance in UC when the minimum wage increases.<sup>3,4</sup>
- 5.12 There are other, less obvious, ways that the minimum wage system and tax/welfare benefit systems collide. For example, one of the conditions for carer's allowance (£66.15 per week in 2019/20) is that you must not earn more than £123 a week. Therefore, if you are working 16 hours at the NLW of £8.21 per hour (which you may need to do to claim WTC) you could lose all of your carer's allowance as your earnings would be £131.36.

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<sup>1</sup> Her net monthly income of £891.60 is over the work allowance of £503 by £388.60. This means her award is reduced by £244.81 [(£891.60 - £503) x 63%].

<sup>2</sup> Sadly, there is a sharp cliff edge for free school meals, above which an additional £1 of earnings will result in a total loss of free school meals which could actually leave someone in a worse position financially compared to their pre-pay rise situation and with marginal deduction rates of over 100%.

<sup>3</sup> The work allowance in UC is the amount a claimant can earn before their benefit starts to be progressively withdrawn.

<sup>4</sup> We welcome the fact that the work allowance has been increased by £1,000 per annum from April 2019 following earlier cuts – unfortunately, this increase is limited to households with children and people with disabilities, and will not assist all UC claimants.

- 5.13 Many unpaid carers rely on the financial support of carer's allowance and this toxic interaction can have a devastating impact on them. We have repeatedly called for the uprating of the carer's allowance earnings threshold for the NLW each year.<sup>1</sup>
- 5.14 A further example is around travel time and expenses for paid care workers. As the LPC will know, under the current minimum wage rules, it is not unlawful for home care workers to have their travel time and expenses unpaid, provided their pay averages out at or above the minimum wage, once the following are factored in: the time they spend in the client's home; time spent travelling between their different clients during the day and their associated out-of-pocket expenses.
- 5.15 However, not only can this increase the likelihood of minimum wage underpayments (and the higher the proportion of travel, the higher the risk) but it can cause significant problems with tax credits.
- 5.16 To explain: WTC is payable to claimants who are in 'qualifying remunerative work'<sup>2</sup> (one of the conditions of which is that the claimant is, or expects to be, paid) and who are on a low income. There are certain age and hours of work qualifications. Therein lies a major barrier to care workers – where their employer does not pay them directly for their travel time (even if their overall remuneration at least equals the minimum wage) their weekly *remunerative* hours may be insufficient to meet the minimum WTC requirement.<sup>3</sup>
- 5.17 We think the tax credit rules could also be rethought to accept unpaid travel time as remunerative hours of work. Alternatively, the minimum wage rules could be rethought so that they require travel time to be paid as a separate item. It is worth saying that they should be rethought in any case, to cover travel between home and place of work – to match the rules for 'itinerant' workers under tax law.<sup>4,5</sup>
- 5.18 Clearly these disconnections in the systems are disturbing in their effect on unpaid carers and care workers and illustrate the need for more thoughtful and co-ordinated policy between government departments like BEIS, HMRC and DWP.

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<sup>1</sup> <https://www.litrg.org.uk/latest-news/news/180711-press-release-unpaid-carers-action-plan-does-not-go-far-enough-says-litrg>

<sup>2</sup> Regulation 4, The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (SI 2002/2005)

<sup>3</sup> We look at the minimum wage rules and their confusing and unfair interaction with tax and tax credits in some detail in our most recent report on care workers: <https://www.litrg.org.uk/latest-news/news/180503-press-release-major-tax-and-benefits-challenges-face-care-workers-report>

<sup>4</sup> <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim32366>

<sup>5</sup> The minimum wage rules currently leave care workers out of pocket considering their typical working patterns of rushed visits around peak times and long gaps where there is little to do but go home.

- 5.19 As such, post 2020, we would like to see the LPC's current, fairly short-term and narrow remit extended to focus more on how to improve the outcomes of low-paid workers in the round. As part of this, we think interactions like these and the extent to which they are undermining policy ambitions to end poverty and improve workers' real life outcomes are something that need investigating by the LPC.
- 5.20 As a starting point, we would urge the LPC to undertake an assessment of the challenges faced by low-paid workers in terms of current linkages and trade-offs – potentially with a view to taking on a long-term advisory role to government and making comments and recommendations as to the changes required to other systems, to make them better 'fit' with the minimum wage.
- 5.21 We appreciate that there will often be no easy answers and that the LPC may have reservations about expanding their role like this. No doubt, such work will be complex and will require a lot of granular analysis, particularly when you factor in the dichotomy that can exist between individual and household outcomes. However, we are confident that the LPC have the skill set and expertise to do this.
- 5.22 Furthermore, we think that the LPC, leveraging the fact they are a trusted, independent body and held in very high regard across the board, could finally get the government departments involved in making policy around the low-paid, better communicating with each other, which further underscores this recommendation for the LPC's role.

**6 What comments do you have on HMRC's enforcement work? What is your opinion on the quality and accessibility of the official guidance on the NLW/NMW?**

- 6.1 We think HMRC need to improve enforcement of the minimum wage. If a policy decision has been made to increase the wage floor (and the costs and difficulties of doing so have been evaluated and accepted), then it *cannot* be allowed to be undermined by poor enforcement.
- 6.2 Improved enforcement needs to include HMRC being stronger and more robust when it comes to those employers who have a deliberate and flagrant disregard for the law. (Given our comments in the next section, it is worth saying that it probably also needs to include HMRC softening their approach to employers in cases of genuine confusion or misunderstanding where the resulting underpayments are small and, of themselves, probably do not cause significant worker detriment.<sup>1</sup>)

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<sup>1</sup> For more of our thoughts on this, see our recent response to the BEIS consultation on the minimum wage: <https://www.litrg.org.uk/sites/default/files/190227-LITRG-response-BEIS-salaried-workers-salary-sacrifice%20FINAL.pdf>

- 6.3 While there have been many positive developments – for example, increased funding,<sup>1</sup> the Director of Labour Market Enforcement’s input on strategy, more joint working between different agencies, etc. – there is more to be done. The increased funding to date is welcome, but in order to make further progress HMRC funding for this work needs to be adequate.
- 6.4 Although a record number of workers were helped by HMRC in 2017/18,<sup>2</sup> our feeling is that much of this ‘success’ has come from ‘low-hanging fruit’ within an employment setting. This seems to be supported by the LPC’s recent standalone non-compliance and enforcement report<sup>3</sup> which comments on different trends within HMRC’s enforcement function and highlights figures which seem to *‘suggest a caseload tilted towards ‘broader’ cases where a greater number of workers have been underpaid a smaller amount’*.
- 6.5 We think HMRC now need to turn their attention to the arguably more complex and serious breaches of minimum wage rules that tend to go hand-in-hand with ‘false self-employment’. We also have concerns regarding HMRC’s ability to handle ‘worker’ minimum wage cases, for example, those in the gig economy.<sup>4</sup>
- 6.6 We sympathise with HMRC that these types of cases are time-consuming and difficult to investigate – particularly as there will not usually be any official ‘employer’ data to scrutinise as a starting point. But this does not mean that they should not be undertaken where appropriate.
- 6.7 HMRC tax evasion data is likely to be a rich source of information in terms of identifying potential false self-employment.<sup>5</sup> Third party intelligence and research could also help, such as from charities who are on the ground helping people with problems at work (such as Citizens Advice and TaxAid)<sup>6</sup> as well as trade organisations and representative bodies who

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<sup>1</sup> The budget allocated to HMRC’s enforcement work has risen significantly in recent years, from £13.2m in 2015/16 to £20m the following year, £25.3m in 2017/18 and £26.3m in 2018/19.

<sup>2</sup> <https://www.gov.uk/government/news/record-156-million-underpayment-identified-for-workers-on-the-minimum-wage>

<sup>3</sup> See chapter 3:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/797675/Non-compliance\\_and\\_enforcement\\_of\\_the\\_National\\_Minimum\\_Wage\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/797675/Non-compliance_and_enforcement_of_the_National_Minimum_Wage_WEB.pdf)

<sup>4</sup> Gig economy workers seem to have many of the characteristics of self-employment (e.g. they decide when they work and use their own tools), but who often have less autonomy than genuinely self-employed people and may derive all or most of their income from the business that they work for. Thus, many may well fall under the definition of ‘worker’ and be entitled to the minimum wage.

<sup>5</sup> Workers may have reported such irregularities to the ‘cash in hand’ hotline for example.

<sup>6</sup> <https://taxaid.org.uk/>

may be keen to help stamp out wrongdoing in their sectors by reporting exploitation. Enforcement officers could also work with other parts of government, for example the Jobcentre Plus, to identify online job adverts that appear based on false self-employment or on degraded terms and conditions.

- 6.8 We comment on the quality and accessibility of the official guidance on the NLW/NMW in the question below.

## **7 What more could be done to improve compliance with the NLW/NMW?**

- 7.1 There are a lot of things that could be done to improve compliance, for example by making it easier for employees to understand their minimum wage positions and report any problems.<sup>1</sup> However, we will restrict our comments to the fact that we think there is an overall lack of guidance and support to help employers, who want to do the right thing, understand and comply with their minimum wage responsibilities (not to mention a lack of clarity in which body to contact for the guidance and support in the first place).
- 7.2 It should be remembered that the minimum wage regulations are complex and sometimes difficult for employers to apply (borne out, somewhat, by the sleep-in saga).<sup>2</sup> The burden of trying to understand the minimum wage rules around things like salaried workers, travel time and costs, uniforms and equipment, tips, salary sacrifice, etc., can be disproportionate – certainly for small and micro-employers – and it is not surprising to us that there can sometimes be administrative errors or technical failures.
- 7.3 We think that the challenges employers face are best illustrated by looking at this case study:

A trustee of a homecare-providing charity has recently been in touch with us. He evidently takes the welfare of his staff seriously and, having read our website section on issues for paid care workers, wanted to clarify the rules around ‘costs’ of travelling between clients (he was unaware that there was a minimum wage implication until he read our material – itself quite worrying).

He first looked for some official guidance on the matter. However, he could not find any with sufficient clarity to reassure him as to what was required. Note, neither the

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<sup>1</sup> As set out in our response to the Director of Labour Market Enforcement:

<https://www.litrg.org.uk/sites/default/files/files/171010-LITRG-response-Director-LME-FINAL.pdf>

<sup>2</sup> As explained on our website: <https://disabilitytaxguide.org.uk/news/item/social-care-compliance-scheme-what-if-anything-you-need-to-do-by-31-dec-201>

GOV.UK<sup>1</sup> nor the more detailed BEIS guidance<sup>2</sup> flags that unreimbursed travel expenses reduce pay for minimum wage purposes, let alone how to quantify them. For example, if using one's own vehicle, is it just the cost of the fuel or can some account be taken of wear and tear or other running costs?

He then rang ACAS who said that they did not think the minimum wage legislation covered travel expenses but that "HMRC 'owns' NMW so you had better ask them". The trustee then phoned HMRC who said, "we only deal with tax so here is a number to call for minimum wage guidance" – the number was for ACAS.

7.4 We also want to highlight the fact that tax and minimum wage rules interact and diverge somewhat on key issues, and this may be causing employers confusion. For example:

- Costs incurred in connection with employment are often not reimbursed by employers. This means they reduce employees' pay for minimum wage purposes. But employees can often claim tax relief on such costs to help restore their out-of-pocket position. Are employers just assuming that employees will apply for tax refunds and then somehow taking this to mean they do not have to worry about the impact of the unreimbursed expenses on minimum wage?
- Under minimum wage rules, if a worker has to pay for any type of uniform – even if it is just a pair of black trousers, black shoes and a white shirt – the cost incurred must be deducted from their pay to establish whether the minimum wage is being paid.<sup>3</sup> However, under tax law, the rules are harsher – disallowing a deduction on such standard attire from the worker's earnings for tax purposes.<sup>4</sup>
- Tips do not form part of minimum wage remuneration (so must be paid on top of minimum wage pay), however for tax purposes they are counted within ordinary taxable pay and are not viewed as anything extra or special.<sup>5</sup>
- The government has recently brought in some changes to stop salary sacrifice for tax/NIC purposes – except for benefits that it wants to encourage such as pension saving

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<sup>1</sup> <https://www.gov.uk/national-minimum-wage/employers-and-the-minimum-wage>

<sup>2</sup> <https://www.gov.uk/government/publications/calculating-the-minimum-wage/calculating-the-minimum-wage>

<sup>3</sup> <https://www.gov.uk/hmrc-internal-manuals/national-minimum-wage-manual/nmwm11220>

<sup>4</sup> <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim32475>,

<sup>5</sup> <https://www.gov.uk/hmrc-internal-manuals/national-minimum-wage-manual/nmwm09340>

and childcare vouchers.<sup>1</sup> However, for minimum wage purposes – all salary sacrifice is problematic if it takes your pay below the minimum wage – no matter what the benefit.<sup>2</sup>

- 7.5 While we understand that there are justifications for the different approaches (as the two systems are trying to achieve different things), we think more could be done to highlight and clarify such points of difference with employers. It is easy to see how small or micro-employers with little specialist payroll/HR support could find it difficult to understand such complexities (and so find it difficult to explain to employees).
- 7.6 Finally, when thinking about how employer resources could be improved, we take the opportunity to refer the LPC to our recent submission to the Welsh Revenue Authority on what makes good guidance.<sup>3</sup> While this is concerned with tax, the principles could apply equally to minimum wage guidance.
- 7.7 One comment we make is about the use of examples – widely recognised as an essential part of ‘good’ guidance – particularly those derived from actual experience.<sup>4</sup> However, it is often the case that these are missing or that if illustrative examples are given, they cover situations where the treatment is quite clear or undisputed; examples covering ‘grey’ or nuanced areas would be of much greater assistance.
- 7.8 We can see this problem in GOV.UK’s guidance on salaried workers.<sup>5</sup> In order to work out whether a salaried worker has been paid the minimum wage you must be able to work out the number of basic annual hours they are contracted for. This is actually more complex than it sounds, as usually contracted hours are not stated in annual amounts but weekly (and a year does not contain a nice round number of 52 weeks!).
- 7.9 However, the GOV.UK guidance says:

*Jeba’s contract says she must work 2,040 hours each year.*

*She’s eligible for the minimum wage rate of £7.70 per hour.*

*She gets paid monthly (12 times a year), so each pay packet covers an average of 170 hours (2,040 divided by 12).*

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<sup>1</sup> <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim42750>

<sup>2</sup> <https://www.gov.uk/hmrc-internal-manuals/national-minimum-wage-manual/nmwm09300>

<sup>3</sup> <https://www.litrg.org.uk/latest-news/submissions/171215-attributes-good-guidance>

<sup>4</sup> Paragraph 3.7, *Non-compliance and enforcement of the National Minimum Wage*, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/797675/Non-compliance and enforcement of the National Minimum Wage WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/797675/Non-compliance_and_enforcement_of_the_National_Minimum_Wage_WEB.pdf)

<sup>5</sup> <https://www.gov.uk/minimum-wage-different-types-work/paid-an-annual-salary>

*This means she must be paid at least £1,309 a month (£1,309 divided by 170 makes £7.70) for the basic hours in her contract.*

- 7.10 How many contracts state an annual number of hours like this? This example should explain to employers how they can ascertain the annual number of hours from contractual terms along the lines of: 'You are contracted to work 40 hours per week' or 'Your hours of work will be Monday to Friday 9am to 5pm' – both of which are far more 'real world'.
- 7.11 It is actually our understanding that it is not possible to ascertain an annual number of hours from contractual terms saying 'You are contracted to work at least 40 hours per week'<sup>1</sup> which means the worker is not a salaried worker but an unmeasured worker (with a different minimum wage basis). It is no wonder that the LPC perennially express concern about salaried workers being at high risk of underpayment!<sup>2</sup>
- 7.12 More should be done to support employers who want to be compliant. This would free up resources to deal with engagers at the other (deliberately non-compliant) end of the spectrum, which is where the potential for the most severe and harmful worker detriment must lie.

LITRG  
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<sup>1</sup> <https://www.gov.uk/hmrc-internal-manuals/national-minimum-wage-manual/nmwm07030>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/797675/Non-compliance\\_and\\_enforcement\\_of\\_the\\_National\\_Minimum\\_Wage\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/797675/Non-compliance_and_enforcement_of_the_National_Minimum_Wage_WEB.pdf) – 'Salaried workers – for whom it may be difficult to work out a simple hourly rate – experience higher levels of underpayment, suggesting complexity of calculation is a factor' (paragraph 6, page 6)