Usdaw

Union of Shop, Distributive and Allied Workers

2021 LOW PAY COMMISSION CONSULTATION

USDAW RESPONSE

Executive Summary

1. The impact of the Coronavirus crisis continues to be felt across our economy and society, even as we emerge from the current restrictions. It is also clear that further restrictions over the next 12 months remain a distinct possibility. Workers in retail, distribution and many other low paid industries have shown just how vital they are to keeping the UK economy afloat during a time of extreme pressure.

2. As we emerge from the pandemic, these key workers must not be forgotten. They stepped up during the crisis and it is right that their contribution continues to be recognised going forward, with a wage they can live on.

3. The impact of the Coronavirus pandemic on the hours available to workers varied significantly across different sectors. Workers deserve a right to a normal hours contract to end the uncertainty many face.

4. The priority policy across Government and Government bodies must be to bring confidence back to the economy and ensure that people get spending again, by putting more money in people's pockets.

5. The National Living Wage should be increased at least in line with the planned target to reach 66% of median earnings by 2024. Usdaw continues to campaign for an immediate National Living Wage of at least £10 per hour for all workers.

6. The cost of living and the impact of long term cuts to in-work benefits are a major concern for Usdaw and for low paid workers more generally, particularly women and black workers.

7. There has been no indication of cuts to jobs as a result of increases to the National Living Wage.

8. Usdaw maintains that the National Living Wage should be paid to all workers, regardless of age.

9. The Low Pay Commission should go ahead with its intention to raise the Apprenticeship Rate to the same level as the 16-17 year old rate and youth rates should abolished as soon as possible.

10. Rigorous enforcement must continue to be a priority, with stringent penalties and prosecutions to ensure a credible deterrent.

1. About Usdaw

Usdaw is the UK's fifth largest Union, with around 400,000 members. The majority of our members are employed in the Retail Sector, but we also have significant membership in road transport, warehousing, food manufacturing, pharmaceuticals, call centres and home shopping.

Usdaw holds national agreements with four of the UK's biggest food retailers – the Co-op, Morrisons, Tesco and Sainsbury's, and we are also the recognised trade union for Asda stores in Northern Ireland. In the non-food sector we negotiate pay with Argos, Next Distribution and Poundland nationally, as well as Primark in Northern Ireland. We also hold a range of agreements covering food manufacturing and distribution sites at national and local level. Usdaw conducts around 180 separate pay negotiations each year, mainly in low paying industries, giving us a valuable insight into the state of the labour market.

As a Union representing workers in low paying sectors, the National Living Wage is a key issue for Usdaw and we have consistently engaged with the process of setting the National Minimum and Living Wages. Usdaw strongly supports an increase in the National Minimum Wage to at least £10 per hour, to cover all workers.

Economic Outlook

2. What are your views on the economic outlook and business conditions in the UK for the period up to April 2022?

The UK economy

The Coronavirus pandemic continues to have a significant impact on the economy, although with considerable variation and divergence across different sectors. However, whilst the possibility of future lockdowns and further disruption cannot be discounted, the opening up of wider society and the removal of restrictions has led to brighter forecasts for the economy as a whole.

As restrictions continue to be lifted in the weeks and months ahead, the economy is likely to grow relatively strongly. The Organisation for Economic Co-Operation and Development projects that GDP will rise by 7.2% in 2021, having contracted by 9.8% in 2020. This strong forecast for the UK economy reflects the progress made with the vaccination roll-out and the removal of some restrictions. Similarly, data from the Office of National Statistics shows that 87% of UK businesses were trading in the second half of May 2021, with a further 3% intending to restart trading in the following fortnight. In spite of this, it is also projected that the UK's growth rate could be 0.5% a year lower than previously expected going forward, demonstrating the potential for long-term economic ramifications.

Unemployment remains relatively low, with the LFS unemployment rate falling to 4.7% in the three months to April 2021. In the short-term, the extension of the Government's employment support schemes will likely limit any significant rise in unemployment. However, the significance of the Government's furlough scheme means that when it ends, unemployment is likely to rise, perhaps substantially. While the number of retail workers on furlough has dropped, the latest provisional data shows that over 600,000 retail workers were still on the scheme at the end of April.

As society has opened up, inflation has jumped, up to 3.3% RPI and 2.1% CPI according to the Office of National Statistics. The jump in CPI May, from 1.5%% in April was influenced by what happened last year during the first lockdown and driven by fuel costs and clothing prices. The further lifting of restrictions on the economy mean further increases are highly likely over the coming months.

Growth in average total pay (including bonuses) among employees for the three months February to April 2021 was 5.6% and growth in regular pay (excluding bonuses) was also 5.6%. In part this was driven by compositional effects of a fall in the number and proportion of lower paid employee jobs. Current average pay growth rates are being affected upwards by a fall in the number and proportion of lower paid jobs, compared with before the pandemic. It is estimated the net impact of recent job losses is to increase the estimate of average pay by approximately 1.5%, suggesting an underlying wage growth of around 4.1%.

With regards to future pay prospects, according to XpertHR, the median basic pay award in the three months to the end of April 2021 was 1.9%, which is the median's highest level since the quarter to the end of November 2020. Following a period of four consecutive rolling quarters at 1%, the median has moved upwards due to April 2021's pay deals entering the sample. Whilst pay freezes continue to be common within this month's XpertHR sample, they make up a smaller percentage of the sample than in the previous rolling quarter, accounting for 23.5% of pay deals, down from 33.5%. Alongside this, almost half (49.25%) of the pay deals effective in April 2021 within the sample are worth 2% or more. This suggests that pay settlement levels are now beginning to recover from the initial economic shock of the Coronavirus, with more recent pay deals trending upwards.

Some areas of the economy performed well during lockdowns, including online and food sales, areas typically staffed by key workers. A policy response must focus on the lowest paid workers who have been on the frontline helping get the country through the pandemic and are the workers with the greatest need for a meaningful increase to their pay. This will both acknowledge the extraordinary contributions of key workers as we continue to navigate through the Coronavirus pandemic but also help to deliver strong growth by putting money in the pockets of those most likely to spend it as our economy and society continues to open up.

In recent months, there has been a significant increase in the number of job vacancies across the economy. Recent ONS figures show that there were 657,000 vacancies on 18 May, an increase of almost 300,000 during the course of this year. The number of vacancies is likely to have grown since significant parts of the economy have continued to re-open. Recently, UK Hospitality estimated that there was a shortfall of around 188,000 workers in the hospitality industry alone.

With the economy reopening and labour shortages in some sectors following the end of free movement, there are clear signs of labour market tightening. This is likely to result in an upward pressure on pay.

Retail Sector Performance and Prospects

The Coronavirus had 'two-speed' impact on the retail sector. Food retail and DIY stores saw significant increases in sales and online retailers have fared very well through the crisis. Food sales were up 5.4% in comparison to the previous years and online sales were up 30.2%. However, non-food retail was negatively affected as a result of the requirement to close stores, with a fall in sales of 12.4%. Retailers that continued to operate throughout the pandemic saw significant numbers of customers throughout.

The impact of easing restrictions, including the re-opening of all non-essential retail from 12 April in England and Wales and from 26 April in Scotland, has been to check the progression of some of these shifting trends. Retail sales grew 9.2% in April off the back of these changes, driven by non-food increases, such as increased sales of 69.4% in clothing stores. All retail sectors reported a fall in their proportions of online sales as physical stores reopened and the overall volume of sales increased by 2.6% in the three months to April 2021 compared to the previous three months.

It is forecast that such developments will continue through the year. Forecast UK Retail Sales Growth from the Centre for Retail Research is that food sales will fall 1.6% and online sales will fall 9.1% when compared to 2020, but that non-food sales will increase 15.1%. Overall, the online share of retail is projected to be 27.1% in 2021, down from 29.8% in 2020 but still significantly up from 2019 and earlier.

The easing of restrictions and reopening of large sections of retail has led to a significant increase in retail footfall through April and May and it is widely predicted that this will continue through the next year, reflecting pent-up demand for physical shopping in stores. However, this will not in itself make up for what was a bruising year for our high streets.

3. To what extent have employers been affected by other major trends in the economy and labour market: for example, Brexit, the shift to homeworking or any changes in the numbers of migrant workers in the UK.

Shift to Homeworking

Many retail workers have been working throughout the pandemic, on the frontline, to keep our country going. In non-food retail stores that did close, many were supported by the Government's furlough scheme.

Brexit

The impact of Britain's exit from the European Union remains of concern to retailers. UK retailers selling imported goods from the EU or exporting products to the EU have faced huge changes in the way they do business. Rules of origin and the issue of associated tariffs remain complex points and the British Retail Consortium has reported that at least 50 UK retailers have struggled with the new trade rules. Publicly, Tesco has raised concerns and has held talks with the Irish and UK governments over the rules of origin, as they are designed for a type of international trade very different to the supermarket distribution networks long established between the UK and Ireland, which is essentially a domestic distribution model. Furthermore, supermarket suppliers have threatened to exit the Northern Ireland market if there is no border deal.

The Chairman of JD Sports, Peter Cowgill, has also raised concerned saying Brexit red tape and delays in shipping goods to mainland Europe will lead to "double-digit millions" in extra costs. JD Sports has raised the possibility of opening a separate distribution centre within the European Free Trade Area in an effort to avoid delays and red tape.

As previously highlighted, Brexit also appears to have caused a tightening of the labour market as previous migrant workers have returned home, frequently as a result of Covid concerns, and the restrictions on freedom of movement.

4. What is your experience over the past year in the following areas?

- **Prices and profits**
- **Productivity**
- **Pay structures and differentials**
- **Wider benefits available to workers (including premium pay and non-pay benefits across the workforce)**
- **Quality of work, including contract types, flexibility and work intensification (e.g. greater expectations for workers to work more flexibly, with greater effort, to higher standard etc)**
- **Progression and job moves**
- **Training**
- **Investment**
- **Business debt**

For many years the retail sector as a whole, in particular the High Street, has been experiencing significant and fundamental challenges, caused by a range of structural issues. Such challenges include changing customer habits, business rates and the significant advantages enjoyed by online retailers over bricks-and-mortar stores. Many of these structural challenges and ongoing trends have been accelerated by the Coronavirus pandemic. Where job losses and closures have occurred, these have usually been related to these challenges, company performance and market competition. When the various streams of Government support, including furlough, end more job losses and store closures are likely to occur. Since its introduction, Usdaw has not dealt with any closures or job losses that have been attributed to the National Living Wage.

Particularly in light of the last year and the ongoing impact of the pandemic, there is an urgent need for a recovery plan for the retail sector. Such a plan must involve Government, retailers and workplace representatives working together, to truly tackle the major issues facing retail, including reforming business rates, investing in training and skills and attracting more consumers to physical stores. It is our belief that a key tenant of such a plan should be a £10 per hour minimum wage, as well as workers having a right to a contract based on their normal working hours.

However, Usdaw firmly believes that the current crisis across the retail sector is caused by structural issues affecting the sector, the uneven playing field between online and bricks-and-mortar retails and Coronavirus restrictions. The issues all require significant intervention and support from Government and without this support the sector is likely to fail to prosper. The scale of these issues, and the impact on the sector, is unlikely to be significantly impacted by the recommendations of the Low Pay Commission.

A further key method of both resolving long standing issues affecting the sector and responding to the effects of the Coronavirus crisis is to improve productivity. The relationship between higher wages and improved productivity is long established and organisations across a variety of sectors that pay the Living Wage Foundation-accredited Living Wage, have reported improvements in staff loyalty, engagement, productivity, staff turnover, absenteeism and stronger corporate reputation. Through improving terms and conditions in retail, and across the economy, it is clear that we will be able to deliver improvements to overall productivity.

Such an approach to improving productivity is likely to be more effective than automation. Even when used in a positive way, to ensure automation increases productivity employers still need workforce buy-in. Automation, as well as new technologies and the use of Artificial Intelligence to manage staff, remains an issue of concern for Usdaw and our members. In a recent survey of our members, conducted in September 2020 alongside the Institute for the Future of Work, 33% reported that their role had been 'extremely' changed by new technology since Covid-19. Just 4.6% felt that their employer would invest in staff over the next five years. 66% disagreed with notion that they were confident that the new technology used by their employer had been designed with their best interests in mind and 55% felt that increased technology over the next five years would make staff wellbeing worse.

Rather than being used as an excuse not to invest properly in staff and to start a race to the bottom on workers conditions, new technology must be used to enhance the quality of work and enrich jobs. In order to do this, the retail sector must adapt, starting with retailers consulting properly with their workforce over the introduction of new technology, rather than taking a short-term cost cutting approach.

Recent Pay Settlements

XpertHR figures show that the median basic pay award in the three months to the end of March 2021 was 1%, which was unchanged for the fourth consecutive rolling quarter. Pay freezes continue to be a feature, making up 33.5% of pay deals. Where a pay increase has been awarded, the most common increase was 2%. The trend of a majority of workers receiving a deal worth less in percentage terms than last year's pay award has continued, with 76.9% receiving a lower percentage increase. 16% of workers in the sample received the same percentage increase as last year, with 7.1% receiving a higher percentage increase.

The Co-operative Group
Hourly rate for Customer Team Members increases to £9.50 per hour, up from £9.

Morrisons
Hourly rate increases to £10.00 per hour, up from £9.20.

Sainsbury's
Hourly rate increases to £9.50 per hour, up from £9.30.

Tesco
Hourly rate increases to £9.55 per hour, up from £9.30, effective from 5 September.

Poundland
A new basic hourly rate of £9.00 per hour, up from £8.72. This is the first time that the basic hourly rate in Poundland has been above the level of the National Minimum/Living Wage.

5. Apart from the minimum wage, what other factors affect workers in low-paying sectors and occupations?

The Cost of Living for Low Paid Workers

Those most vulnerable to the effects of a turbulent economy are always those with the lowest personal income. This group is therefore the least resilient to economic change. During the pandemic, the impact on low-paid workers diverged significantly. In online and food sales, demand during the past year as a result of increased sales meant that many workers were able to work more hours, through increased overtime opportunities. However, in non-food retail and other areas of the economy that were hit hard by the pandemic, or forced to close for some time, workers experienced a cut in their hours or take-home pay, including many who were on furlough. In some of these businesses, low paid workers in retail were some of the first to be impacted by the Coronavirus downturn and some of the last to return to work. Loss of hours and furlough have plunged many low paid workers, who were already in a precarious position, into severe financial uncertainty.

Recently, inflation has risen significantly to 3.3% RPI and 2.1% CPI according to the Office of National Statistics. Further increases are highly likely over the coming months and higher levels of inflation may become a consistent feature for the short and medium-term. XpertHR's full-year forecast for RPI inflation is 2.6%, with a forecast that inflation could peak at 3.3% in Q4.

For many low paid workers, the overall inflation rates do not reflect the true cost of living. For example, according to the most recent figures, almost all Local Authorities in England have raised Council Tax in 2021, with 83 of those authorities increasing rates by more than the 5% cap recommended by the Government. There are 13 councils that have increased rates by more than 6%, including East Riding of Yorkshire, Wrexham and Hammersmith and Fulham. In addition, The Family Childcare Trust survey, released in February 2021, showed that childcare costs have continued to outstrip both inflation and average earnings. On 1 March 2021 rail fares in England and Wales increased by 2.6% (the first time the Government has chosen to put up prices above RPI inflation since 2013).

Such costs have meant that many low-paid workers are struggling to make ends meet. In a recent cost of living survey of our members, 42% of respondents have had to rely on unsecured borrowing to pay everyday bills in the past 12 months. Although the cost of living does not currently feature within the remit of the Low Pay Commission for setting the National Living Wage or Minimum Wage rates, Usdaw is of the firm view that it should be a key consideration. The overwhelming majority (98%) of Usdaw members have told us that the National Living Wage should take into account the cost of living for low paid workers.

It should also be noted that whilst low paid workers were previously able to rely on in-work benefits to top up low pay, this vital safety net has been significantly undermined in recent years as a result of the following:

- A 'two-child policy' for support through Child Tax Credits, Universal Credit (UC) and Housing Benefit, meaning that the child elements of UC and Child Tax Credits will not include a third or subsequent child born after 6 April 2017 (with limited exceptions).

- The 'first child premium' within UC and the equivalent family element within Tax Credits (worth £545 per year) are abolished for new claimants.

- Parents claiming UC, including lone parents, will be expected to have work focused interviews when their youngest child turns one year old, start work preparation when they are two years old and look for work when they turn three years old.

- 18 to 21 year olds who have been claiming UC for six months will have to apply for either training or apprenticeships or attend a work placement (unless they are exempt because they are considered to be vulnerable).

- The withdrawal of Housing Benefit entitlement for some 18 to 21 year olds.

The next stage of Universal Credit was rolled back following concerns about the controversial new benefits system. Analysis by the Resolution Foundation think-tank suggests that 3.2 million households could lose an average of £48 per week. Since the start of the Covid-19 crisis, 3.6 million people have made new claims for Universal Credit. Although the Universal Credit uplift has been extended, it is set to end in September 2021.

The National Living Wage

6. What has been the impact of the NLW in the past year?

The majority of Usdaw members currently earn above the National Living Wage. The four major supermarkets with which Usdaw negotiates pay all staff a basic rate which is higher than the National Living Wage and seek to maintain a gap above the statutory minimum.

The relatively small increase in the National Living Wage in April 2021 has meant that many retailers have used this opportunity to open up a more significant gap between their rates of pay and the National Living Wage.

The table below shows basic pay rates across a number of major retailers.

Employer	Hourly Rate	London
Aldi	£9.55	£11.07
M&S	£9.20	£10.45
Morrisons	£10.00	£10.85
Asda	£9.18	£9.76
Ikea((Living Wage Accredited)	£9.50	£10.85
Lidl	£9.50	£10.85
Sainsbury's	£9.50	£10.10
Argos	£9.50	£10.10
Tesco	£9.55 (from 5 Sept)	£10.23 (from 5 Sept)
Co-op (Co-op Group)	£9.50	£9.50

From the above, it can be seen that whilst the National Living Wage has had an impact on a number of retailers, many are still electing to pay significantly above the statutory rate, especially in London.

Away from major supermarkets and food retail, in some sectors, such as warehouse and distribution, the National Living Wage has had more of an impact on pay rates and Usdaw notes a recent survey from Incomes Data Research which shows that nearly half the employers in their survey sample increased their lowest rates of pay in pay in order to comply with the new statutory minimums in April 2021.

Usdaw's aim is to negotiate a real Living Wage for all our members, in line with the Living Wage Foundation rates which take into account the amount needed to maintain a decent standard of living. We are campaigning for a National Minimum Wage of at least £10 per hour for all ages.

7. To what extent has the NLW affected different groups of workers, particularly those with protected characteristics (for example women, ethnic minorities) and migrant workers?

It is clear that women are over-represented in low paid jobs. The recent cost of living survey of our members showed that women are less than 50% as likely to earn over £10 per hour. The reasons for this are complex. Work undertaken by women has been traditionally undervalued, particularly in sectors such as retail. In addition, studies continue to show that women spend significantly more time on housework and domestic chores and are more likely to be balancing their work with unpaid childcare and caring responsibilities. This frequently means that women do not get the same opportunities to progress in the workplace. This is likely to have been exacerbated the pandemic. Our recent survey found that two-thirds of working mothers who had to take time off work to look after a child due to the pandemic lost pay as a result and 49% of working mothers have been financially affected as a result of home schooling, including losing pay or purchasing equipment. Usdaw's evidence shows that an increase in the National Living Wage to £10 per hour would have a significant positive impact on closing the gender pay gap.

Black workers are overrepresented in low paid, insecure, jobs compared to higher paid jobs. The Usdaw survey results show that black workers are significantly more likely to be worried about paying monthly bills (52% to 41%) and future job security (64% to 46%). These results reflect findings from other organisations showing that Black workers and their families are at the sharp end of austerity and any cutbacks to the social security system. Such work has built upon findings from the McGregor Smith review looking at racism at work found that the UK economy could benefit by £24 billion if black workers progressed at work at the same rate as white colleagues, demonstrating the barriers to participation and progression at work that black workers face. Usdaw continues to strongly support mandatory Ethnicity Pay Gap reporting.

8. How has the NLW's impact varied across different areas of the UK?

Where we have national agreements with companies, the vast majority have a single rate of pay across all locations, except for some which have a higher rate in London, as in the table provided in response to question 5. A few, such as Ocado, do have marginally different rates in different parts of the UK. However, where base rates have risen any higher rates have tended to rise by a similar amount. As such, any regional variation of the impact of the National Living Wage has been negligible.

9. The Government's remit for the NLW is based on achieving a target of two-thirds of median earnings by 2024. Based on forecasts, our current central projection for the April 2024 NLW rate is £10.33. What are your views on this target?

Figures show that average earnings are increasing again as we come out of the Coronavirus pandemic, driven in part by compositional effects of a fall in the number and proportion of lower paid employee jobs. Growth in average total pay (including bonuses) and growth in regular pay (excluding bonuses) among employees for the three months February to April 2021 was 5.6%%. Current average pay growth rates are being affected upwards by a fall in the number and proportion of lower paid jobs, compared with before the Coronavirus (Covid-19) pandemic. It is estimated the net impact of recent job losses is to increase the estimate of average pay by approximately 1.5%, suggesting an underlying wage growth of around 4.1%. Analysts from XpertHR have forecast overall average earnings growth for 2021 at 3.8%.

It is important that any growth in average earnings continue to outstrip inflation. Following the financial crisis of 2008, it was clear that allowing wages to stagnate slowed down the recovery and brought about a long-term decline in real wages. Increases to average earnings should not be used as an excuse to downgrade or miss the Government's target. Significant growth in the minimum wage is needed as a policy tool to aid economic recovery and reward the nation's key workers, by making sure that those more likely to spend their money have more money in their pockets, in order to stimulate the economy.

Low paid workers in the UK need, and deserve, a higher rate of pay sooner than 2024. Usdaw's evidence demonstrates why the rate of the National Living Wage should be increased to at least £10 per hour for all workers.

10. How have employers responded to the lowering of the NLW age threshold to 23?

Usdaw believes that all staff should receive the same rate for their role, and that to pay young people less demeans the vital contribution they make to the industries they work in.

Since the lowering of the National Living Wage age threshold to 23, Usdaw has continued to work with employers to abolish discriminatory youth rates. In Poundland, as part of the 2021 pay deal, the Company removed their 21-24 year banding altogether, with all employees over 21 now paid a basic rate of £9 per hour. Similarly, Argos has removed all youth rates and in Tamworth Co-op all over-18s are now paid the National Living Wage.

The overwhelming majority of employers that Usdaw works with – across both grocery and non-food retailers, manufacturing and distribution – already pay all their staff at or above the full rate, regardless of age. As many employers have already done away with age related pay bandings, this change has not had a significant affect for a whole range of employers.

11. At what level should the NLW be set from April 2022? Our current central projection for the on-course rate is £9.42, with a likely range of 7 pence above or below this figure.

In 2022, the National Living Wage needs to be raised at least in line with the planned trajectory towards 66% of median earnings. The Government's clear intention when introducing the National Living Wage was to significantly increase the value of the statutory minimum wage.

At the same time, the Low Pay Commission should acknowledge the changed world we are now in. The impact of any recommendation falls disproportionately on key workers who have been essential in getting us through the Coronavirus outbreak. It can no longer be acceptable that those workers who have ensured that the country has been able to get through the crisis are not paid a real Living Wage.

To resolve this, the Low Pay Commission should explore the possibility of an increase above the planned trajectory, to help address the very real need to fully recognise the contributions of all key workers.

Usdaw supports a National Living Wage of at least £10 per hour and urges the Low Pay Commission to make progress towards this target.

There is growing support for a minimum wage that takes into account the cost of living, and there is a real need for strong wage growth to stimulate the economy. We would like to see a commitment to widening the scope of the National Living Wage, with a view to including all workers irrespective of age.

Whilst we welcome the current progress of bringing the for NLW down to 23, our concern is that with every year that goes by, the current age structure is becoming more entrenched and the gap is not being closed.

Young People

12. **What do you think has been the effect of the minimum wage on young people and on their employment prospects?**

The Coronavirus pandemic and the tightening of the labour market has had a significant impact on young people and their employment prospects, but recent rises in the minimum wage have not. Even with the pandemic, by historical standards unemployment levels for young people remain low, showing that that there are no barriers to larger increases for young workers. Our experience shows that many of those companies which employ significant numbers of young people, especially across the Retail Sector, are able to do so whilst paying the full adult rate.

Usdaw remains of the view that there is no compelling evidence that higher pay rates for young people prove a barrier to their employment and that there is no evidence of a requirement for a differing pay rates. Where higher increases in the youth rate have been seen, such as the higher increases provided in 2018, Usdaw did not notice any negative impact on younger workers. Usdaw does not see any barrier to larger increases for age related rates.

In addition to low rates of pay, there is also a crisis of zero hours contracts and 'under-employment' for younger workers. Short hours or flexible contracts are very common in retail. Many workers are regularly working far more hours than they are contracted to, but the employer can just reduce them back down to contracted hours at any point. Our recent survey of our members on their living showed that those young workers (under 27) surveyed are significantly more likely to be underemployed, with 32% wanting more hours compared to 19% of all workers. As well as working with employers and the Low Pay Commission to improve workers' pay, Usdaw is campaigning for a minimum contract of 16 hours per week for everyone who wants it, as well as giving everyone who regularly work additional hours a contract that reflects their 'normal' working hours.

13. **This year sees the creation of a new 21-22 Year Old Rate, which will remain in place until the NLW age threshold is lowered again to 21.**

- **To what extent will employers use the new 21-22 Year Old Rate?**
- **At what level should it be set from April 2022?**
- **When do you think the NLW age threshold should be lowered to 21?**
- **What factors should we consider in making this decision?**

Usdaw believes that all staff should receive the same rate for doing the same job. No doubt some employers will raise cost as an issue when objecting to the proposal to pay all their adult staff the full wage for the job they are carrying out. Similar concerns were raised when the National Minimum Wage was first introduced in 1998 and when the National Living Wage was introduced in 2016.

History has shown that - despite the well publicised fears of employers – businesses have not collapsed and there is no clear evidence of job losses as a result of these measures. It is our view that the same will be the case when the age banding for the National Living Wage is reduced to 21.

We believe that the reduction in the age threshold to 21 should be introduced as soon as possible. The step to a 21-22 year old age banding should only be seen as an interim measure. The longer such a rate is in place, the more established it will become.

Usdaw believes that the notion that all staff should receive the same rate for their role is basic fairness, and that to pay young people less demeans the vital contribution they make to the industries they work in. The current approach to incremental rates based on age, is overly complicated and the presence of age related bandings creates additional confusion for employers in keeping track of their employee's personal data or risk under paying a particular band of the National Minimum Wage.

Usdaw has worked hard to negotiate away lower age related pay rates across many of the companies we work with. For instance, in Poundland, as part of the 2021 pay deal, the Company removed their 21-24 year banding altogether, with all employees over 21 now paid a basic rate of £9 per hour. We do not expect any employers who do not discriminate pay based on age to look to alter their pay structure as a result of this change. Therefore, we do not see significant take up of the 21-22 Year Old Rate, especially as the rate has been clearly publicised as a temporary measure.

Usdaw believes that the 21-22 Year Old rate needs to be set as close to the full adult rate as possible. This will ensure a smoother transition to its eventual eradication and help to tackle unfair pay practices in the workplace.

14. At what level should each of the other NMW youth rates (the 18-20 Year Old Rate and the 16-17 Year Old Rate) be set from April 2022?

The practice of paying young people less than older people for doing the same job is unfair, and demeans the role of young people in the workplace. The most sensible way to tackle this inequity is to start to close the gap between the different rates.

Applying the same per cent increase to all rates only widens the gap on a monetary basis.

This will not only further undermine the work of young people in the short term, it will also make it more financially painful for businesses when youth rates are finally abolished in the future. Therefore, Usdaw is calling for the Commission to recommend a greater increase to all youth rates than the current projection, as a step towards their eradication.

Apprentices

15. What is the outlook for the recruitment and employment of apprentices?

Usdaw supports apprenticeships and continues to work with a range of employers to broker new schemes. However, we firmly believe that the apprenticeship rate needs to be addressed. The majority of apprenticeships undertaken by Usdaw members are Level 2, although apprenticeships are available up to and including Level 7, which is the equivalent to a postgraduate qualification.

Providing recognised workplace training is something that is of benefit to workers – both young workers and existing staff. In many of the companies we deal with, apprentices are paid the full rate for the job while they are training.

Usdaw sees the apprenticeship rate as a historical anomaly which no longer belongs in the workplace. Even with the relatively higher increase in 2021 compared to other rates, a rate of £4.30 an hour is simply unacceptable and this needs to be urgently addressed. Across Usdaw's agreements, we are not aware of any employers utilising the apprenticeship rate. Where employers have commenced negotiations around trying to start apprenticeship programmes based on the apprenticeship minimum wage, it has quickly become clear that they would struggle to recruit the correct calibre of staff at the rate.

The rate was introduced to provide a financial incentive for employers to offer apprenticeship programmes. This financial incentive has now been wholly overtaken by the provision of the Apprenticeship Levy which provides significant funds to encourage employers to offer apprenticeship programmes.

Usdaw policy calls for all workers, irrespective of age or apprenticeship status, to be paid a minimum of £10 per hour.

16. What have been the impacts of recent increases in the Apprentice Rate?

Usdaw does not have experience of employers utlising the Apprenticeship Rate.

17. At what level should the Apprentice Rate be set from April 2022? Should we go ahead with our intention to equalise the rate with the 16-17 Year Old Rate next year?

Usdaw wholeheartedly supports this response, as an important step towards abolishing an apprenticeship rates and youth rates altogether. The equalisation of these two rates would go some way towards making the system fairer and ensuring that apprenticeships are seen as a viable option for workers from all walks of life.

Young people in particular are adversely affected by the apprenticeship rate, because, while all apprentices can be paid £4.30 for the first 12 months of their training, those aged under 19 can remain on that rate as long as they are in an apprenticeship. Young people are far more likely than their older colleagues to be paid the Apprenticeship Rate.

As noted above, Usdaw strongly believes that the rate of £4.30 per hour has no place in UK workplaces in 2021. We call for all workers – irrespective of age – to be paid a minimum wage of at least £10 per hour, but in the immediate term, the apprentice rate must be abolished, and the 16-17 year old rate must be paid as a minimum.

Compliance and Enforcement

18. What issues are there with compliance with the minimum wage and what could be done to address these?

Usdaw notes the recent Government announcing regarding a new workers' rights watchdog to take over responsibility for enforcing the minimum wage, as well as for tackling modern slavery, by combining the Gangmasters and Labour Abuse Authority, the Employment Agency Standards Inspectorate and HMRC's National Minimum Wage Enforcement into a single enforcement body. Whilst accepting there may be advantages to having a single enforcement body and whilst acknowledging that any action to ensure rigorous enforcement of the minimum wage is welcome, the fact there is no timetable for this or any extra funding is extremely disappointing. This is particularly the case given the limited resources of HMRC and the complex set of challenges it faces, as identified by the Low Pay Commission itself in its Non Compliance and Enforcement reports. The new body announced by the Government gives no extra protection for workers and represents a missed opportunity to break new ground with regards to compliance and enforcement.

Compliance issues continue to be significant. The relatively low gap between pay rates and the legal minimum amongst some of the employers we deal with has resulted in significant risks around non-compliance, for instance with salary sacrifice schemes. Usdaw believes there is a growing problem with underpayment of the National Minimum and National Living Wage rates. As a result of the Coronavirus pandemic, many workers on furlough were paid below the level of the minimum wage. Excluding furloughed employees on reduced rates of pay, the provisional ONS data estimates that 752,000 jobs were paid below the hourly minimum in 2020, significantly above the estimated 424,000 in 2019.

Usdaw's main concerns around compliance are as follows:

- **Prosecutions and Penalties**

  Usdaw believes that a clear strategy for prosecution in the worst cases of non-compliance needs to be adopted. The extremely low number of criminal prosecutions (15 since 2007) may well be motivated by pragmatic reasons (for instance the speed of receiving arrears, and providing value for taxpayers' money), but it does not send out the right message to employers. Where there has been a deliberate failure to pay staff their legal entitlement, and there is a good chance that a prosecution would have a successful outcome, prosecutions ought to be pursued. This would demonstrate to employers and to workers that the rights of low paid workers are to be taken seriously.

  Where there has been a clear and deliberate failure to pay an increase on time, Usdaw believes that the employer should face a fine, even if they have self-corrected before the investigation begins. While self-correction could be considered as mitigation, it should not automatically preclude HMRC from imposing any fine.

  Usdaw believes that workers who are underpaid should not only be entitled to arrears, but also to compensation. Currently there is no right to any compensation for the delay in receiving the pay that they are legally entitled to. An individual can demand compensation for distress and inconvenience caused by, for example, an unfair bank charge, but would not receive any such payment where their employer has failed in one of its most basic duties towards them. Requiring employers to pay compensation in such cases would go some way to redressing the power imbalance for low paid workers and demonstrate that minimum wage compliance is a serious issue. It would also act as a further incentive for employers to get it right in the first place.

  Usdaw would also like to see consideration given to an interim relief provision, similar to that available under s128 (1) of the Employment Rights Act. If an employer is wilfully underpaying the National Minimum Wage, the individual should be entitled to an expedited decision to be granted the correct rate of pay pending the findings of a full investigation. Any full investigation must have the power to levy significant fines and compensation as outlined above.

  Whilst BEIS has increased the funding for promoting compliance and enforcement of the National Minimum Wage, in reality, civil penalties recouping wages lost are still by far the most common way cases are settled. More needs to be done to prosecute those who willfully ignore the National Minimum Wage legislation by ignoring minimum wage increases. Simply put – if employers are allowed to get away with it, they will continue to do it. Employers must face criminal prosecution for the illegal underpayment of wages.

- **Short-term lack of compliance**

  Usdaw receives numerous queries from members who are facing a short-term underpayment of the National Minimum Wage. Usdaw members report employers, frequently, and typically as a decision of local management, habitually underpaying workers for additional hours in an effort to meet operational budgets. Such underpayments will normally be rectified in the following pay reference period, which for retail workers is typically four weeks. Such issues cause distress and financial hardship for low paid workers who are frequently reliant on such additional hours.

  Where employers are able to fix the error in the next pay period there is not enough time to bring enforcement proceedings, and there are no legal penalties imposed. Usdaw believes that employers should face enforcement proceedings where they allow continued payroll processes which regularly result in employees facing an underpayment of the National Minimum Wage and even all wages due. Where an employer fails to implement an immediate, permanent fix to underpayment of the National Minimum Wage, fast-tracked enforcement proceedings should be possible, which should include financial recompense to the individual for the underpayment.

- **Digital Payslips**

  Despite moves to increase transparency of the information available on payslips, Usdaw members are increasingly finding it difficult to access and verify information regarding how their wages have been calculated. In recent years, many employers have moved away from paper based payslips and instead provide electronic payslips. As a result of privacy requirements around such a move, electronic payslips typically sit behind a protected system which requires various passwords, identification verification and computer know-how to be able to access.

  Usdaw routinely provides training to members on this issue, mostly as a result of individuals finding it difficult to access their payslips or engage with other processes which their employer has moved online. Where we have recognition, and an organised membership, Usdaw is able to help our members overcome the problems presented through increasing digitalisation.

  Usdaw believes that a piece of work examining the impact around recent changes to payslips would be valuable in examining the understanding employees have of minimum wage requirements.

- **Complex Pay Arrangements**

  Across a range of Usdaw agreements, the total rate of pay for an individual is made up of a variety of complex payments for individual factors. For example, individuals may be paid a basic hourly rate along with numerous entitlements to varying bonus payments depending on the specific work done at any time, payments related to unsociable shift patterns, historical 'red-circled' payments based on outdated agreements, consolidated payments in respect of previous bank holiday premium entitlements and one of a number of different overtime rates dependant on the hours at which overtime is worked. These issues are often exacerbated by complex payroll arrangements, with sometimes two or event three payroll systems being utilised within one company.

Unfortunately, employees continue to experience difficulties in gaining information on how their wages are calculated. As such, it is incredibly challenging for the employee to determine if they are being paid the National Minimum Wage meaning that the regulations are not entirely enforced. Usdaw welcomes the requirement for employers to list details of paid hours worked on the payslip. In addition to this, we believe that there should be work done to raise awareness of an individual's right under Section 10 of the National Minimum Wage Regulations to access their pay records.

- **Working Unpaid Hours**

  There have been some cases of large retail employers expecting their workers to be on-site and engaged in activities outside of their paid hours, which have resulted in non-payment of the National Living Wage or National Minimum Wage. These activities have included security procedures (staff searches), and staff briefings.

  There is further risk in retail of under-payment where staff are required to stay behind to 'cash up' or to lock up the premises, and where deductions are made for unpaid breaks which have not actually been taken. Even outside of minimum wage compliance, such behaviour is clearly poor practice and should be dealt with by accurate recording of hours and adequate staffing levels, both of which are issues that we would raise with employers as a matter of course. Our concern is that in non-unionised workplaces there is little monitoring of such practices and vast potential for under-payment. We therefore believe that continued targeted enforcement in the Retail Sector should be made a priority, along with an awareness campaign about the importance of accurately recording hours, aimed at both employers and employees in the Retail Sector.

- **Making a Complaint**

  Figures show that the number of workers making a complaint increased significantly as a result of the introduction of the online reporting form in 2017/18, but have since fallen and continue to fall. Workers need to have confidence in the process. Continued close working with trade unions on reinforcing routes for complaints and building understanding amongst workforces is clearly crucial.

- **Pay Reference Periods**

  In cases where the next pay reference period falls at the end of April, workers are losing out on their pay increase for several weeks. We believe that this is an unfair loophole and needs to be addressed so that workers are entitled to receive the uprated minimum rate backdated to 1 April, regardless of their employer's pay schedule.

19. What comments do you have on HMRC's enforcement work and the guidance available to employers?

Usdaw accepts that the reduced number of investigations and contacts over the last year can be directly attributed to the impact of the Coronavirus and that, in the context of the pandemic, it made sense for HMRC's enforcement work to focus on targeted efforts. Updates to the minimum wage calculator and the work of the promote team in signposting guidance, help and support have been particularly welcome. Going forward, HMRC must redouble their efforts, working closely with trade unions, to improve awareness of the National Minimum Wage amongst employers and workers. Any recruitment challenges need to be addressed. Rigorous enforcement must continue to be a priority, with stringent penalties and prosecutions to ensure a credible deterrent.

Accommodation Offset

20. What are your views on the Accommodation Offset? What difference, if any, have recent increases in the rate made to the provision of accommodation?

Usdaw does not have current experience of employer-provided accommodation or utilisation of the Accommodation Offset.

Live-in domestic workers

21. Under section 57(3) of the National Minimum Wage Regulations 2015, work done by a worker in relation to an employee's family household is exempt from the NMW if the worker lives with the employer and is treated as a member of the family. What evidence do you have on the use of this exemption? We are particularly interested in evidence on the characteristics of workers affected; and the prevalence of its use

Usdaw does not have current experience of the use of this exemption.

Paddy Lillis
General Secretary
Usdaw
Voyager Building
2 Furness Quay
Salford Quays
M50 3XZ